

Justice and Police Reform

In theory, Canadians have equal rights. In practice, they do not. Our justice system is neither fair nor accessible. It works best for the economic and social elites who have access to money, and who are not burdened by systemic discrimination and biases. Our criminal justice system suffers from systemic racism and prioritizes punishment over rehabilitation. Our civil justice system is unaffordable except to the very wealthy, with women most severely affected. Government and private companies are using technology in ways that erode privacy and human rights.

Ultimately, our legal system does not fulfil the basic function of a justice system: to provide citizens with security, dignity and compassion. To create an equitable society, there are seven areas of reform we need to address:

Police and Prosecution Reform

Indigenous and racialized communities in Canada are over-policed.

Moreover, police resort to force far too often, and frequently employ excessive force. Racialized communities and those living at a lower socio-economic status are disproportionately “randomly” stopped and carded. Not only are these stops arbitrary, the information collected from them is not well-regulated. Police forces are sharing this information without proper respect for the privacy interests of people who are stopped, and without the necessary caution to ensure the information is not improperly used. (See [\[1\]](#)).

Our policing system deals with the symptoms of criminal behaviour and not the root causes. By refocusing our resources and efforts on addressing the root causes of crime, we can ultimately **create a society in which the police are unnecessary and can be abolished.**

Because policing in Canada is managed at both the federal and provincial level, the federal government must act in the areas where it has power to effect change. Primarily, this means the RCMP.

Canada should:

- Over five years, **defund the RCMP by 50%** and reallocate those funds to initiatives and systems that empower communities to promote their wellbeing and prevent violence before it escalates. This reallocation of funding is particularly important in marginalized communities where policing disproportionately occurs.
- Institute a **national ban on carding**, and prohibit the RCMP and CSIS from receiving or using information obtained from carding.
- **Strengthen civilian oversight** of the RCMP by requiring the Civilian Review and Complaints Commission (CRCC) to disclose its reports in any case where the complainant and witnesses to the alleged RCMP misconduct consent to disclosure.

- Require the CRCC to **track and disclose annual data** on the racial background of complainants.
- **Make the CRCC's recommendations enforceable**, so that the RCMP no longer has the authority to disregard the recommendations of the CRCC.
- Conduct an external **human rights audit of the RCMP** annually to ensure progress against human rights indicators. The goal of this audit would be to support cultural change within the force and prevent further harassment and discrimination by the RCMP as detailed in the Merlo Davidson class action settlement. The RCMP sought over \$50 million dollars in extra funding to pay for this class action alone. This money would have been better spent serving communities than paying for decades of harassment and human rights abuses. (On the budget request, see [\[2\]](#). On the settlement, see [\[3\]](#))
- **Require police forces to recruit equitably**, so that forces reflect the racial, sexual orientation, and gender composition of the population they serve, and ensure that trainers are experts in equality, diversity and inclusion principles and practices.
- **Monitor prosecutorial decision-making for biases** and tunnel vision in deciding which offenses to prosecute. This can be done, in part, by introducing a “contrarian thinking advocate” within Crown Prosecutors offices as recognized by the Public Prosecution Services of Canada. (see [\[4\]](#))

To ensure Canadian policing is de-militarized and shifts to non-violent policing approaches, Canada should:

- Institute a major programme of **training in non-violent policing**, aimed at enhancing the trustworthiness of police forces within the communities they serve.
- **Review RCMP training methods and manuals** to ensure these do not encourage the use of force, especially potentially lethal force.
- **Review hiring practices** to ensure that recruits have the necessary skills to problem-solve without resorting to use of force.
- **Ban counter-productive training exercises** between Canadian police and foreign police forces that have a record of infringing civil liberties or human rights.

Prison and Parole Reform

Indigenous and racialized communities are over-incarcerated, and are treated unequally within the prison system.

In January 2020, Canada's correctional commissioner revealed that over 30% of inmates in Canadian prisons are Indigenous – even though aboriginal people make up just 5% of the population. Between 2005 and 2015, the number of Black inmates in Canada's federal prisons ballooned by 69%.

Experts have been sounding the alarm for years. For example, in 2017, the John Howard Society reported the following:

"The extent to which Blacks and Aboriginals are over represented in Canadian correctional institutions is similar to that of African Americans in the United

States. Blacks are over represented in federal prisons by more than 300% vs their population, while for Aboriginals the over representation is nearly 500%. The same disparities exist in provincial jails. In Nova Scotia Blacks are 2% of the population but 14% of the jail population. In Manitoba Aboriginals are 16% of the population but 70% of the jail population. In Alberta the numbers for Aboriginals are 6% and 39%. Moreover, these imbalances are getting worse, not better."

...

"Once in jail, these minorities are more likely to be subject to disciplinary procedures and less likely to be paroled. Aboriginal people make up more than 21% of federal prisoners but less than 14% of parolees, a 50% under-representation."

Rather than solve the problem of bias within the criminal justice system, the current government has allowed it to get worse by failing to regulate the development and use of so called "predictive" software across the criminal justice system and other areas of law, without understanding how these systems perpetuate unfairness and bias. (Predictive software is software that purports to "predict" who is at most risk of (re) offending. These technologies hide and perpetuate biases.) As the Law Commission of Ontario has emphasized:

"Critically, there is no legal framework in Canada to guide the use of these technologies or their intersection with foundational rights related to due process, administrative fairness, human rights, and justice system transparency." (See [\[1\]](#))

To address inequities in the prison system, Canada should:

- Institute a requirement that, at the outset of incarceration, correctional authorities develop a **personal rehabilitation plan (PRP)** that is tailored to the needs and circumstances of each incoming inmate. PRP's will be subject to periodic audits by an independent auditor to ensure that they are effective and are implemented.
- **Ban the use of predictive software** until it can be demonstrated that it does not adopt and perpetuate existing racial and other biases. (See [\[2\]](#))
- Develop a **legal framework for predictive software** to guide the use of these technologies to ensure that they do not automate the violation of human rights and freedoms.
- Give effect to ***The Truth and Reconciliation Commission's Calls to Action*** as they relate to the justice system, including calls for funding to ensure community-based sanctions and realistic alternatives to imprisonment. (See [\[3\]](#))

Our justice system also relies too heavily on punishment, at the cost of rehabilitation. Ultimately, rehabilitation is what reduces future offences and secures the public's safety. Therefore, Canada should:

- Institute a requirement that the criminal justice system be guided by the principle that **prison is a last resort**, and that prolonged prison sentences should be reserved for only the most extreme and intractable offenders.
- **Eliminate mandatory minimum sentences.**
- **Make rehabilitation the primary guideline for sentencing** and prison management, not punishment.
- Institute a **prohibition on solitary confinement**, which constitutes torture and remains in use in our system. (See [\[4\]](#))

Access to Justice

In 2015, Beverly McLachlin, then Chief Justice of Canada, declared that we have an access to justice crisis in this country. (See [\[1\]](#))

The cost of legal representation is beyond the means of many. In 2015, the national average cost of a two-day trial exceeded \$30,000 for the first time. The numbers have not gone down since then, and in some cases, they have gone up. (See [\[2\]](#))

Given the costs of getting legal representation, an increasing number of Canadians are forced to represent themselves in court, at great risk to their rights and their psychological well-being.

Furthermore, because poverty in Canada is gendered and racialized, women and other vulnerable communities are most affected by the fact that legal aid is generally not available outside of matters of criminal law.

Moreover, the inability to access the legal system means that women remain in abusive relationships and/or continue to suffer harassment and other forms of discrimination in the workplace. These forms of violence are the main reasons why women live in poverty in the workplace. (See [\[3\]](#))

Domestic violence has risen during the coronavirus pandemic. Women need to access justice, especially in the family law context, but they are the least likely to be able to afford a lawyer. Even the most inexperienced family lawyer in Canada bills an average of \$200 per hour. (See [\[4\]](#))

Without access to affordable and competent legal representation, individuals cannot navigate the civil justice system effectively. While a number of solutions have been proposed, these remain inadequate without the injection of more funding into the system. (See [\[5\]](#))

Canada should therefore:

- **Implement an Access to Justice tax on corporate litigants**, equivalent to 1% of all damages recovered by corporations in litigation (whether by way of judgment or settlement). Revenues generated by the tax will be used entirely to fund legal representation for individuals (especially in family law) who require representation but who cannot afford a lawyer.
- **Implement a second Access to Justice tax on all members of the legal profession**, equivalent to 5% of their net income from the practice of law in excess of the current median income in Canada. As above, revenues generated by this tax will also be used entirely to fund legal representation for individuals who cannot afford a lawyer.
- Adopt legislation requiring all lawyers practising before Canada's federal courts, tribunals, and regulatory agencies to devote a minimum of **100 hours per year to *pro bono* legal representation of poor and low-income Canadians.**
- **Ensure that women have adequate legal representation**, especially women trying to escape domestic violence, by increasing the scope of legal aid and ensuring the availability of duty counsel.
- Take other immediate measures to **reduce the costs, complexities and delays that plague the family law system**, an area of law that encompasses both federal and provincial jurisdictions.

Holding Corporations Accountable

Large corporations in Canada are held to a much more lax standard of justice than private citizens. Because large corporations co-ordinate so much of the productive activity in Canada, especially resource extraction, failing to hold them accountable means that regular violations are inevitable. And when those violations occur, it's regular Canadians who suffer.

Canada should:

- **Ban deferred prosecution agreements** for corporate entities and for their directors and officers.
- Ensure that corporations are held **accountable for environmental degradation**. (For example, see [\[1\]](#))
- **Regulate the sale of spy software** by Canadian companies to regimes that violate human rights, and regulate against the increasing use of spyware technologies in Canada, especially against human rights defenders and journalists. (See [\[2\]](#) and [\[3\]](#))
- **Regulate the increasing use of spy software in Canada**, especially against human rights defenders and journalists. (See [\[2\]](#) and [\[3\]](#))
- **Limit public-health tracking projects**, such as coronavirus tracking, by excluding spy software companies that participate in human rights abuses, as they have proven themselves to be untrustworthy. (See [\[4\]](#))
- **Suspend Canadian arms sales to Saudi Arabia**. (See [\[5\]](#))

Reforming Judicial Appointments

The Prime Minister and the executive branch of government have too much power to choose appointees under the current judicial appointment process.

The judiciary must represent the racial, gender and class make-up of the people of Canada, but currently it does not. There is insufficient consideration given to diversity beyond gender. (For a breakdown of appointments by gender, see [\[1\]](#)). The first Black Canadian was appointed to the Ontario Court of Appeal only as recently as 2012 (The Honourable Michael Tulloch).

In 2018-19, 86 judges were appointed to superior courts by the federal government, but only two identified as indigenous, and only four identified as racialized. No persons with disabilities nor LGBTQ+ judges were appointed. (See [\[2\]](#))

Furthermore, there has never been an indigenous appointment to the Supreme Court of Canada, despite many qualified candidates.

Canada should:

- **Appoint an indigenous person to the Supreme Court** at the very next opportunity.
- Keep more thorough **statistics on the diversity of judicial appointments**, adding statistics on racialized groups, indigenous people, persons with disabilities, and LGBTQ+ persons.

- Ensure that those who participate in the judicial appointment process have **demonstrable expertise** in equity, diversity, and inclusion, including implicit bias.

International Law

Too often, international law takes a back seat to political interests. To create a fair international order based on the rule of law, we must remove loopholes and exceptions that prevent international law from being properly applied across borders. Canada should:

- Adopt legislation conferring on Canadian Courts **universal jurisdiction for prosecuting war crimes and crimes against humanity.**
- **Eliminate any requirement of cabinet-level approval** for prosecution of war crimes or crimes against humanity.
- Amend Canada's human rights and environmental laws, so that the victims of human rights abuses by foreign subsidiaries of Canadian companies are guaranteed **the right to sue the Canadian parent companies** in Canadian courts.

CSIS, Surveillance, and Privacy

The privacy relationship between government and people has been turned upside-down. People have a right to their privacy, but are increasingly subject to surveillance and intrusion. Governments should be transparent, but are becoming steadily less transparent as they adopt the use of surveillance technologies and data surveillance, including in the response to the coronavirus pandemic. (See [\[1\]](#)).

Canada should:

- Guarantee and effectively implement **digital and data surveillance privacy rights.** (See [\[2\]](#))
- **Prohibit the routine surveillance of protestors.** Canadians who protest against the government should not be seen as a security threat simply by way of protesting.
- **Prohibit the sharing of protestors' and NGO staff information** with the National Energy Board and with other bodies who have no business receiving that information.
- Amend the legislation governing CSIS to **make CSIS subject to due process requirements** that are the same as police forces.
- Like the RCMP, **subject CSIS to internal human rights and equality audits.** If CSIS is biased and unable to respect human rights within its own ranks, it will not be able to respect diversity and human rights when fulfilling its duties. (See [\[3\]](#))