

A ROADMAP FOR TRANSFORMATIVE CHANGE: Canada's Black Justice Strategy

Akwasi Owusu-Bempah
Zilla Jones



Department of Justice
Canada

Ministère de la Justice
Canada

Canada

Information contained in this publication or product may be reproduced, in part or in whole, and by any means, for personal or public non-commercial purposes, without charge or further permission, unless otherwise specified.

You are asked to:

exercise due diligence in ensuring the accuracy of the materials reproduced

indicate both the complete title of the materials reproduced, as well as the author organization

indicate that the reproduction is a copy of an official work that is published by the Government of Canada and that the reproduction has not been produced in affiliation with, or with the endorsement of, the Government of Canada.

Commercial reproduction and distribution is prohibited except with written permission from the Department of Justice Canada. For more information, please contact the Department of Justice Canada at www.justice.gc.ca.

© His Majesty the King in Right of Canada, represented by the Minister of Justice and Attorney General of Canada, 2023

ISSN 978-0-660-72237-5

No de cat.J4-162/2024E-PDF

June 2024

About the illustration

To illustrate the report of the External Steering Group for Canada's Black Justice Strategy, I first explored various ideas of symbolic concepts before simply returning to the essentials: individuals and their humanity.

It is said that the eyes are the mirror of the soul. This soul-to-soul connection persists just as much in the eyes of a real person as in those recreated in a painting or illustration. That's why I chose to depict a host of Black and Afro-descendant people, each with a varied profile, a history, and experience. A diverse community that shares a common humanity, but also experiences dehumanization due to anti-Black racism in Canada.

Drawing on our past experiences and envisioning the exponential positive impact of implementing the recommendations of the External Steering Group report for Canada's Black Justice Strategy, I have illustrated characters who look us straight in the eye, confident, grounded, and enthusiastic about the simple yet complex active recognition of our humanities that we are moving towards!

About the artist MALICIOUZ

Born in 1989, MALICIOUZ is a Montreal visual artist of Haitian origin, renowned for her Afro, urban and contemporary art. Her artistic approach is characterized by the strength of spirit that emanates from her characters, mostly Black women, whom she presents in her works as monumental entities. Her works can be found on street walls in cities such as Montreal, New York, Port-au-Prince, Jacmel, Abidjan and Douala.

Artistic approach

Through my work, I explore my multiple identities by putting forward characters, mainly Black women, whom I represent in the form of monumental entities. Spiritual posture is central to my artistic approach. My figures are therefore often placed in a timeless context and in postures that testify to their sovereignty.

I'm interested in how the socio-political environment in which I grew up impacts our identities. More specifically, the paradox between the pernicious effects on identity that coexist with the magnificence of our spiritual postures that I recognize and remind us of.

In my Afro-diasporic, Haitian, hip hop, urban, Montreal and North American culture, I examine the elements that are currently being sacralised, as well as those of our traditional heritages that are being re-actualized.


www.maliciouz.com

A stylized, handwritten signature of the artist Maliciouz in white ink, positioned at the bottom center of the page. The signature is fluid and cursive, with the name 'Maliciouz' clearly legible.

This report was developed in collaboration with members of the Steering Group for Canada's Black Justice Strategy:

Fernando Belton, Vanessa Fells, Mandela Kuet, Sandra Muchekeza, Anthony Morgan, Suzanne Taffot and Moya Teklu



A close-up photograph of a person's eyes, looking directly at the camera. The eyes are dark and expressive, with a slight reflection on the surface. The skin around the eyes is a warm, brownish tone. The background is dark and out of focus.

when i first held you
i held the ancestors too
I felt their wisdom settle
into the lightness of your bones

my child
you had just come through an ocean
of blood and salt and desire
and you emerged
into our shared future
robed in our shining past

as you grew
the ancestors held you
and they whispered
things can change and you can change them.
this is the great hope we are born into and die into,
this,
only this.

oh Black child of mine
how long you have been waiting
may you never know
what it took to bring you here
what we did to survive

Zilla Jones

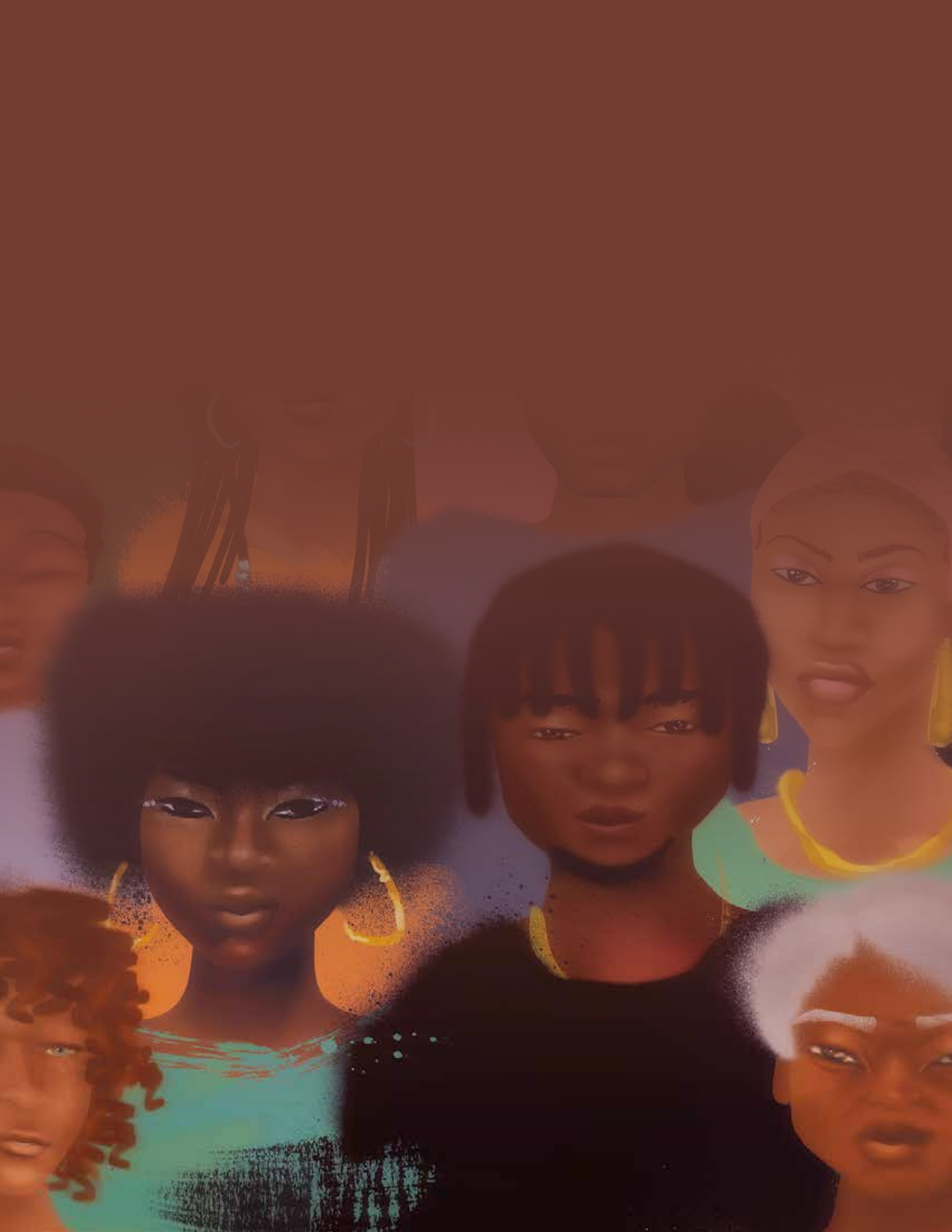




Table of contents

| | |
|--|----|
| Acknowledgements..... | 8 |
| Executive summary..... | 9 |
| Introduction..... | 11 |
| Guiding principles | 15 |
| Pillars of Canada’s Black Justice Strategy | 17 |
| Five priority areas | 18 |
| Overarching recommendations..... | 19 |
| Social determinants of justice..... | 24 |
| Policing..... | 29 |
| Courts and legislation..... | 35 |
| Corrections | 44 |
| Parole, re-entry and reintegration..... | 49 |
| Conclusion | 52 |
| References..... | 53 |
| Glossary | 56 |



Acknowledgements

We extend our deepest gratitude to the many individuals and organizations whose dedicated efforts have profoundly shaped Canada's Black Justice Strategy. Foremost, we recognize the Black communities across Canada, whose enduring work over the past five centuries to address our complex relationship with, and disproportionate representation in the justice system has been foundational. We honour and acknowledge the lived experiences of Black individuals—those directly and indirectly impacted by the justice system—whose stories and struggles underscore the urgent need for this strategy.

We are immensely grateful to the members of the Steering Group for Canada's Black Justice Strategy, whose invaluable insights and unwavering commitment have guided this strategy from conception through to realization. Our efforts have also been significantly enriched by the community-based organizations that have tirelessly gathered diverse perspectives and experiences. Additionally, we appreciate the contributions from all individuals and organizations that submitted their input during the consultation phases. These contributions have been instrumental in ensuring that the Strategy is grounded in the realities faced by Black Canadians.

We also wish to acknowledge the representatives from the United Nations, whose recommendations called for the development of this strategy, highlighting

its importance on an international scale and reinforcing a global commitment to justice and equity. We recognize the dedicated staff at the Canada's Black Justice Strategy team, the Department of Justice, and other government departments whose support and collaboration have been pivotal in advancing this strategy. Their hard work and dedication have ensured that the Strategy not only addresses immediate concerns but also provides a roadmap for transformative change.

Finally, we thank our own ancestors for their perseverance and guidance in bringing us here today and leading us into this work, and we dedicate our efforts to our children. This strategy is for them and the future they will inherit and inhabit.





Executive summary

The December 2021 Mandate Letter tasked the Minister of Justice and Attorney General of Canada with the development of Canada's Black Justice Strategy (the Strategy) to address the overrepresentation of Black people in the criminal justice system, including as victims of crime. An external Steering Group composed of nine experts and leaders from Black communities across Canada was established in February 2023 to provide advice to the Minister of Justice on the development of the Strategy.

From March 2023 to February 2024, Steering Group discussions centered around five key issues, or pillars, that inform Black people's experiences with the criminal justice system: Pillar 1 - Social Determinants of Justice (Employment and Income; Housing; Education; Health and Mental Health; Child Welfare; and Immigration and Settlement); Pillar 2 - Policing; Pillar 3 - Courts and Legislation; Pillar 4 - Corrections; and Pillar 5 - Parole, Re-entry and Reintegration. In Fall 2023, 12 Black-led community-based organizations (CBOs) used the *Framework* developed by the Steering Group to guide community consultations, to lead engagements and consultations with Black communities in nine provinces and territories. The CBOs provided reports to the Steering Group detailing the outcomes of the consultations and engagement. Justice Canada also provided the Steering Group with the outcome of the online survey, which was developed to gather insight from community members who were unable to participate in CBO-led consultations and engagement. The Final Report of the external Steering Group (the Report) builds on the *Framework* and is informed by the Steering Group discussions as well as the outcomes of community engagements and consultations.

The Report identifies five principles to guide practical actions and policies in achieving justice for Black communities in Canada: *Sankofa*, Africentrism, the Principle of Restraint, Evidence-based Decision Making, and Reparative Justice. Five priority areas

that inform the recommendations are as follows: Decarceration, Legislative Change, Targeted Resourcing, Structural Change, and Collaboration with Provinces, Territories and Municipalities. In relation to decarceration, the report recommends reducing the incarceration rate of Black and Indigenous people by 50% of the current rate by 2034. The Report identifies eight overarching structural and accountability recommendations, described as actions that do not fit within only one specific pillar but that are intended to drive systemic change. In addition to the overarching recommendations, there are 106 recommendations under the five pillars, organized as short, medium, or long-term.

Summary of Recommendations:

- **Pillar 1** – Social Determinants of Justice (recs. 9 – 33) includes recommendations for targeted resourcing for employment, income, education, and settlement and integration programs. This Pillar includes the only long-term actions, which concern income and housing.
- **Pillar 2** – Policing (recs. 34 – 42) includes recommendations to increase the use of pre-charge diversion, increase funding for preventative programs and services, increase oversight and accountability mechanisms, mandatory anti-racism and cultural competency training in police curriculum, and legislative change to address racial profiling.

- **Pillar 3** – Courts and Legislation (recs. 43 – 85) mostly concern legislative changes to the *Criminal Code*, *Immigration and Refugee Protection Act*, *Youth Criminal Justice Act*, and the *Controlled Drugs and Substances Act*, and almost all are identified as short-term actions. Of the suggested changes, there is specific focus on changes to the laws concerning criminal inadmissibility, bail, drug offences, and sentencing. There are also recommendations for additional programming, including a court worker program, additional diversion programs, and expansion of the funding and training for the writing of Impact of Race and Culture Assessment sentencing reports.
- **Pillar 4** – Corrections (recs. 86 – 103) includes recommendations for external reviews of practices and policies that have a disparate impact on Black offenders, to provide Black-specific programs, and to increase and strengthen oversight and accountability mechanisms.
- **Pillar 5** – Parole, Re-entry, and Reintegration (recs. 104 – 114) recommendations include calls for

partnerships with Black communities to support reintegration, increased representation of Black people among parole and probation officers, as well as parole board members, reconsider the waiting period to apply for a record suspension, and reviewing and revising parole criteria for disparate impact on Black offenders.

Most of the recommendations in the Report, other than under Pillar 1 and 3, fall within the Public Safety mandate. Many of the recommendations that concern areas of provincial and territorial jurisdiction are contained under Pillar 1 – Social Determinants of Justice and Pillar 2 – Policing. Ultimately, the Strategy envisions a justice system very different from any that Canada has ever had. If all these recommendations are enacted, we expect that, with time, the criminal justice system will transform from one that punishes the poorest and most marginalized members of our society, and that carries a history of racism and oppression, to one that is fair and equitable and free from discrimination; in other words, a justice system that is truly just.



Introduction

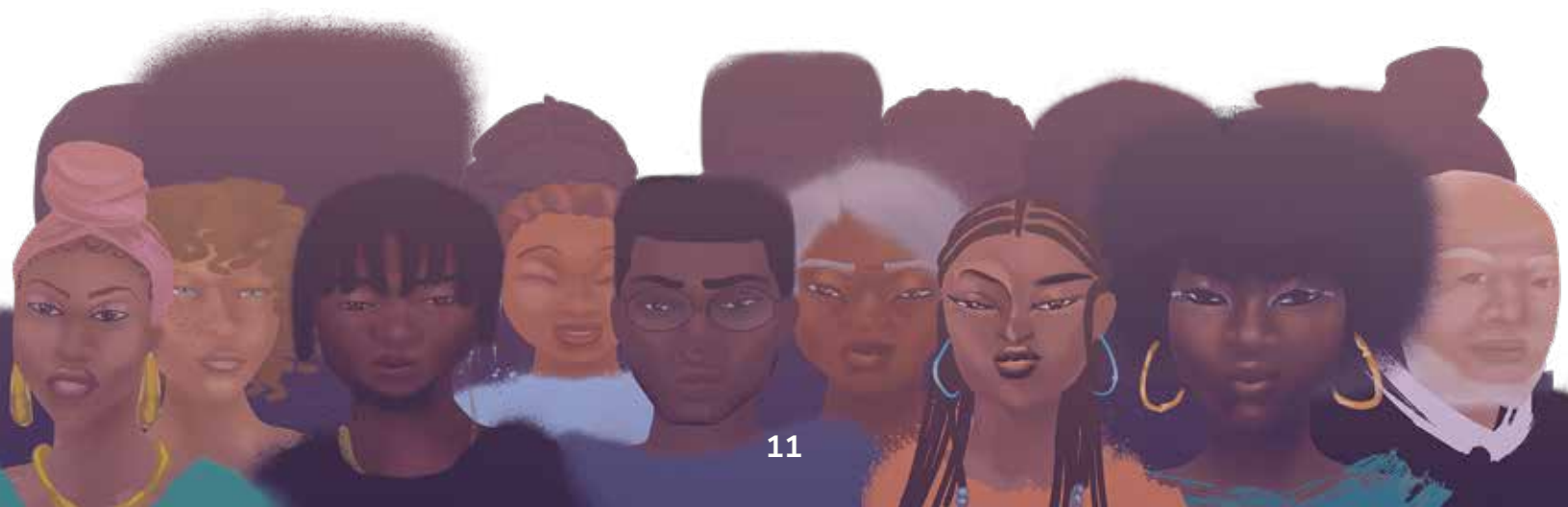
People of African descent have been present on the land now known as Canada over 400 years. The early Black experience in Canada began largely with enslavement, and after slavery was abolished, racial segregation and restrictions on Black immigration served to continue the subjugation and control of the Black population well into the twentieth century. From the beginning, Black people resisted these atrocities and worked hard to gain increasing rights and freedoms. Most recently, these calls for justice gained momentum in 2020 following the murder of George Floyd by police in Minneapolis, Minnesota. His killing sparked deeper reflection over the presence of systemic and structural racism in countries across the globe. While the Government of Canada has turned its attention to this issue more recently, Black Canadian organizations and advocates have spent decades pushing for systemic justice reform with inadequate responsiveness from the Government. The [Framework](#) for Canada's Black Justice Strategy provides further details of this shameful history.

The harms of the past continue to influence the operation of the modern Canadian justice system in which Black people are overrepresented and disproportionately experience negative outcomes. The goal of Canada's Black Justice Strategy is to remedy these longstanding problems. This Report provides recommendations to the Government of Canada which, if enacted, can be expected to reduce the overrepresentation of, and negative outcomes for, African Canadians in the justice system. While it is a continuation of the work Black people have long undertaken, the Strategy is groundbreaking in the sense that the Government of Canada has never before confronted anti-Black racism in the justice system on such a large scale.

We acknowledge the limitations of working within a legal system that was not developed to serve the needs of Black people and was designed to harm us. However, there are many areas of our criminal justice system where better outcomes for Black people can be achieved by setting and meeting measurable goals and targets. We remain hopeful that Canadian society will continue to evolve and look forward, and that the work of this Strategy will continue well into the future to bring about transformative change in our justice system.

Our diverse communities

Black identity is self-determined, based on a combination of factors such as parentage and ancestry, self-perception, social perception,



cultural background, and acceptance within Black communities. Black people are diverse and come from multiple diasporas, all connecting back at some point to the African continent. Black people may have roots in Canada going back hundreds of years, or we may be the product of more recent immigration. Black people speak a variety of languages, practice a multiplicity of faiths, and have a wide range of socio-economic backgrounds. Within Black communities, there is gender diversity and a variety of sexual orientations. Black people may have mixed racial or ethnic heritage, including Afro-Indigenous peoples. The term African Canadian can also be used, or people may be described with their particular country, region or nation of origin. In this report, we use the terms Black and African Canadian interchangeably, in recognition of the varying preferences within our communities.

Relationship with Indigenous peoples

Though the focus of this report is on Black people, we are well aware that Indigenous peoples in Canada are also disadvantaged in the criminal justice system and elsewhere; Black and Indigenous people's present-day experiences in Canadian society generally, and in the criminal justice system in particular, are both rooted in Canada's legacy of colonialism. We know that Indigenous people are overrepresented amongst incarcerated populations, experience disproportionate negative treatment by police, and face discrimination in custodial institutions. While this report focuses on Black people, we acknowledge the important work done to bring attention to the adverse experiences Indigenous people have in the Canadian Justice system, including the Aboriginal Justice Inquiry, the Truth and Reconciliation Commission, the National Inquiry into Missing and Murdered Indigenous Women and Girls, and the work done around sentencing Indigenous offenders according to the principles expressed by the Supreme Court of Canada in *R. v. Gladue*.

As long as Black people have been in Canada, Indigenous and Black struggles have been intertwined. There are several instances where Indigenous and Black encounters with the criminal justice system have been connected, such as the Royal Commission on the Donald Marshall Jr. Prosecution. However, we acknowledge the unique status of Indigenous peoples as the First Peoples of the nation known as Canada, which is legally recognized in our Constitution. Indigenous and Black struggles continue to be intertwined; while there are differences in our circumstances, there are also a number of similarities, and we expect that many of the recommendations we make in this Strategy regarding Black experiences in the criminal justice system will apply equally to Indigenous peoples.

How we got here

In August 2016, at the invitation of the Government of Canada, the United Nations Working Group of Experts on People of African Descent visited Canada on a mission to examine the situation of Black persons in this country. At the conclusion of their mission, the three-member United Nations delegation submitted the *2017 Report of the Working Group of Experts on People of African Descent on its mission to Canada*, presenting recommendations to assist Canada in its efforts to combat all forms of racism, racial discrimination, xenophobia, Afrophobia and related intolerance. One of the central recommendations presented by the Working Group was for Canada to develop and adopt an African Canadian justice strategy to address anti-Black racism and discrimination within Canada's criminal justice system. This recommendation emerged directly from Canada's Black communities, which, after decades of organizing, advocacy and mobilization for justice reform had begun expressing a strong consensus on the need for Canada to adopt a justice strategy focused on African Canadians. This call for systemic change that was vocalized by our country's Black communities and echoed in the Working Group's report motivated the Government

of Canada to look deeper for solutions to fundamental issues faced by Black people in Canada concerning systemic racism, and the overrepresentation of Black people in the criminal justice system, including as victims of crime.

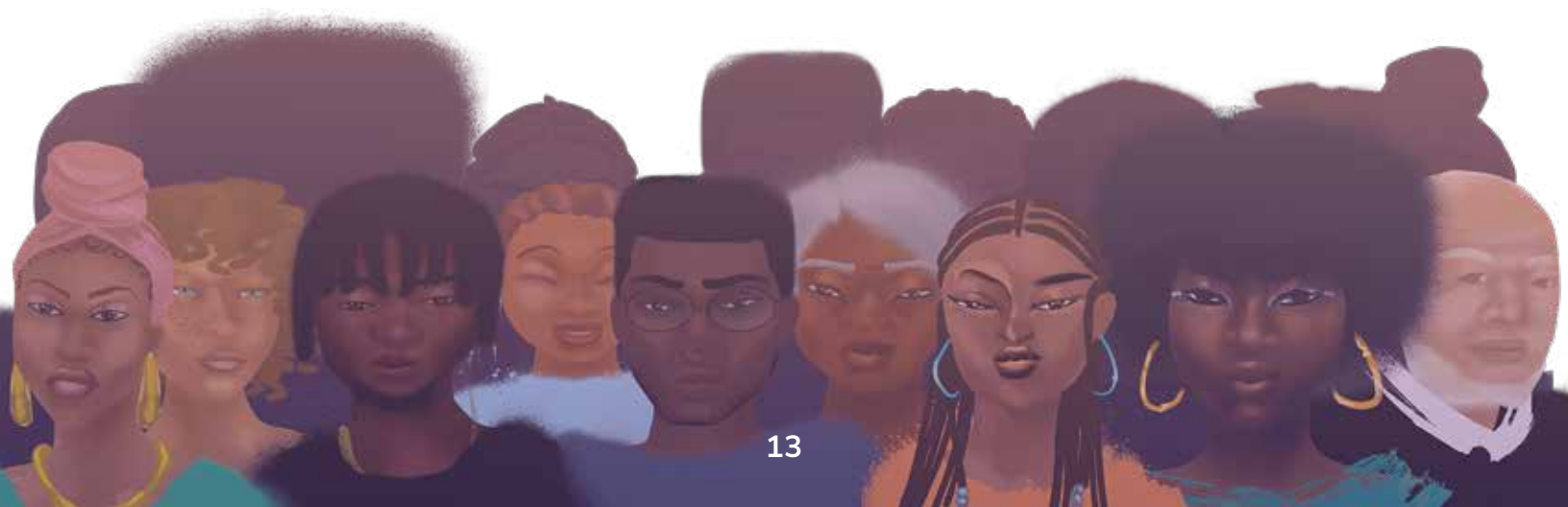
In December 2021, the Minister of Justice and Attorney General of Canada was mandated by the Prime Minister to develop Canada's Black Justice Strategy with the support of the Minister of Housing and Inclusion and Diversity, and in consultation and cooperation with Black communities and provinces and territories.

To develop Canada's Black Justice Strategy, the Department of Justice Canada engaged with Black communities and their leaders from across the country. The formation of Canada's Black Justice Strategy Steering Group was subsequently announced on February 15, 2023, in Ottawa by the Minister of Justice. The Steering Group is made up of nine members, with diverse backgrounds and professional expertise from provinces and territories across Canada. The role of the mandate of the Steering Group is to provide strategic advice to the Department of Justice Canada and other federal partners. The Steering Group is funded by Justice Canada to do its work at arm's length from the Government.

The development of the Strategy involved a series of comprehensive measures. The process included regular meetings of the Steering Group, where each pillar of the Strategy was thoroughly discussed. During these meetings, members of the Steering Group, drawing on their expertise, provided useful insight and detailed recommendations for action. The authors' collaborative engagement with the Steering Group was supported by extensive research, and analysis of existing data, studies, recommendations, reports, and relevant case law. The development process also included a careful review of a series of site reports describing consultations with Black communities facilitated by community organizations across the country, ensuring that their insights and experiences were heard and considered when developing the Strategy. The voices of these communities were at the heart of the development of the Strategy and will continue to be centered as the Strategy is implemented and we move forward.

The following is a list of groups that undertook community consultations to support the development of Canada's Black Justice Strategy:

- African Canadian Civic Engagement Council – Alberta

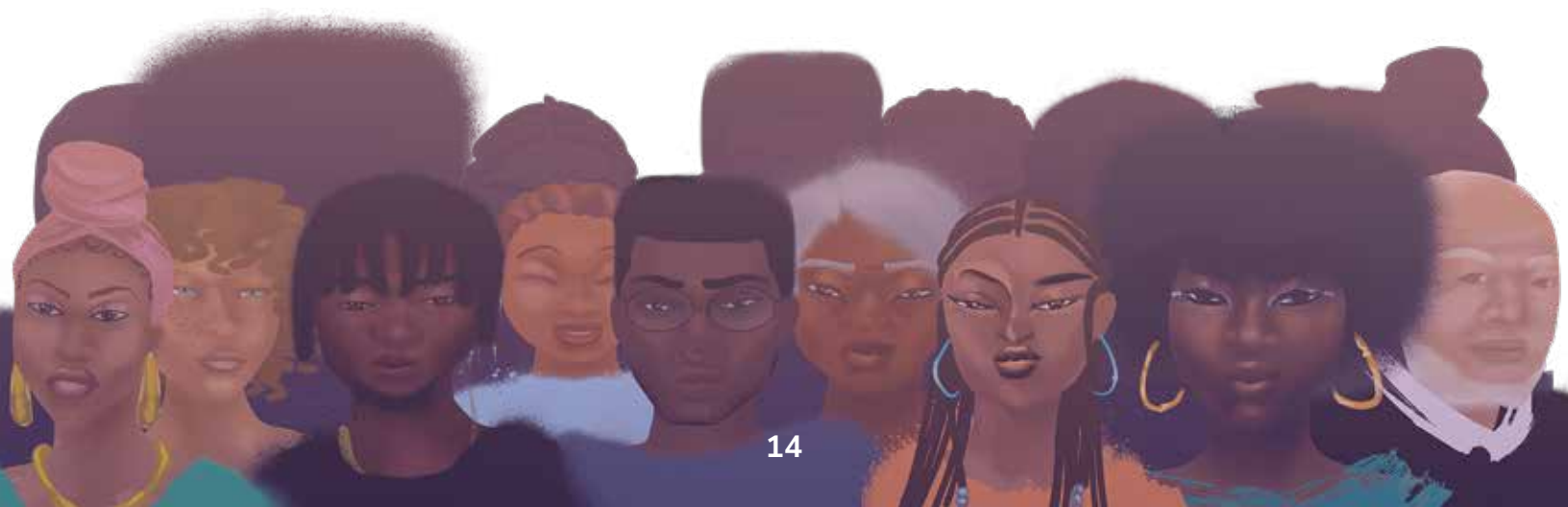


- African Nova Scotian Justice Institute
– Nova Scotia
- Black Advocacy Coalition (BACUpNorth)
– Northwest Territories
- Black Lives Matter New Brunswick
– New Brunswick
- Clinique Juridique de Saint-Michel
– Quebec
- DESTA Black Community Network
– Quebec
- The Holistic Ongoing Opportunities
Development-Facilitation and
Management Services Inc. (HOODFAMS)
– Manitoba
- Issamba Centre – British Columbia
- Jaku Konbit – Ontario
- Network for the Advancement of Black
Communities – Ontario
- Think 2wice – Ontario
- Truly Alive Youth and Family Foundation

Inc. – Saskatchewan

Submissions were also received from the following groups:

- Black Legal Action Centre – Toronto
- Black Opportunity Fund
- Canadian Association of Black Lawyers
- Canadian Race Relations Foundation
- Groupe d'action et de défense contre
les abus policiers – Montréal

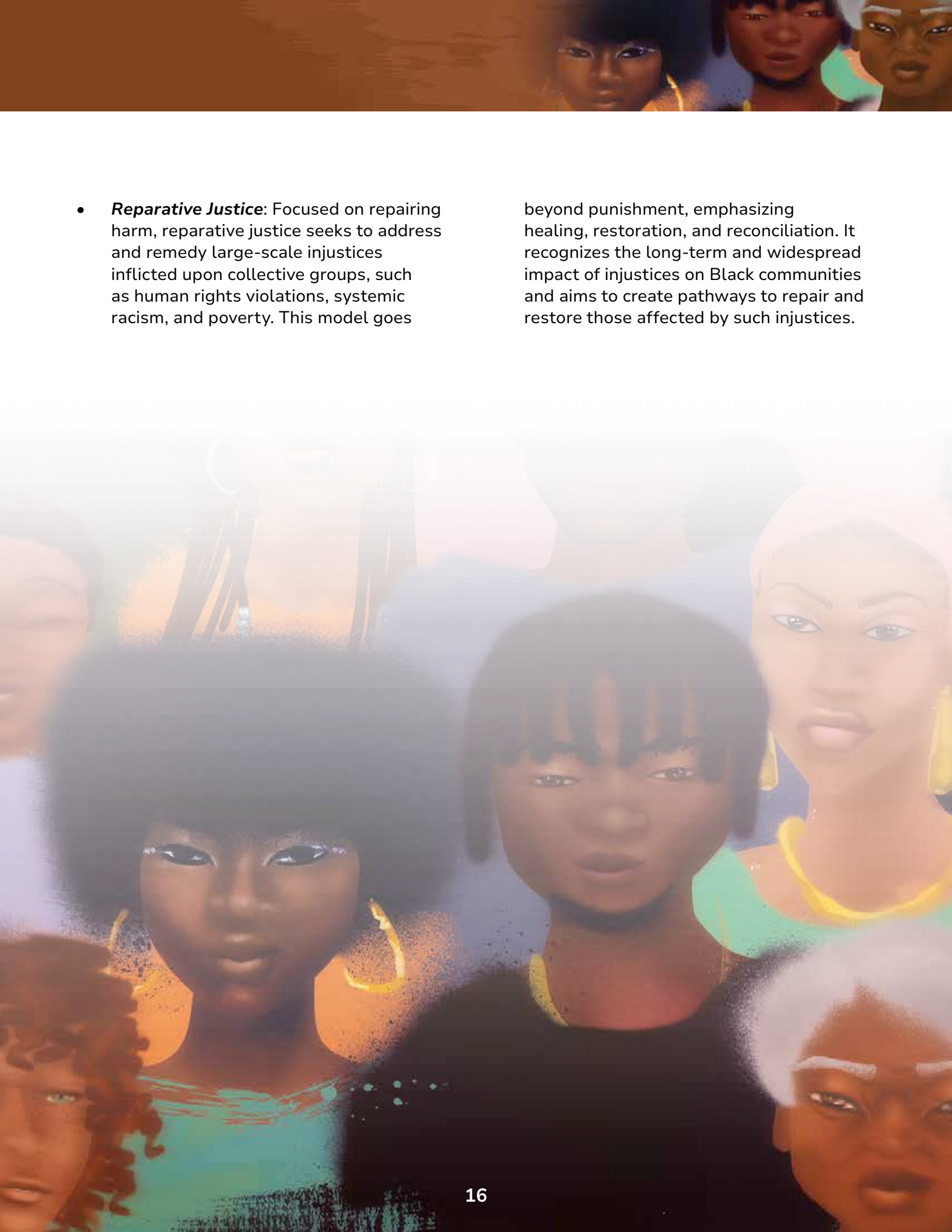




Guiding principles

The work of Canada's Black Justice Strategy's Steering Group and the co-authors of this report were guided by a set of deeply held values that inform our approach to achieving justice for Black communities in Canada. These principles are not only reflective of specific philosophical and ethical stances but also guide practical actions and policies.

- **Sankofa:** Originating from the Twi language of the Akan people in Ghana, Sankofa is a principle that underscores the importance of learning from the past to inform and improve the future. In the context of Canada's Black Justice Strategy, this principle emphasizes understanding the ways in which the justice system of today continues to perpetuate the injustices of the past. It encourages reflection on past mistakes and successes to build a more just future.
- **Africentrism:** This principle places Black people and communities at the center of policy-making and strategy development. It is based on the belief that Black individuals and communities should be actively involved in all processes that affect them, encapsulated in the phrase "nothing about us without us". Africentrism challenges traditional Eurocentric perspectives and ensures that the unique experiences, cultures, and viewpoints of Black communities are acknowledged and respected in the justice system.
- **Principle of Restraint:** The principle of restraint acknowledges the often disproportionate impact of the justice system on Black communities and promotes approaches that avoid unnecessary criminalization and incarceration. It advocates for the use of the justice system as a last resort, and suggests that alternative methods of conflict resolution and community-based interventions should be prioritized over legal and punitive measures. If it is necessary for a matter to be dealt with in the justice system, incarceration should be used only if there is no other punishment or combination of punishments appropriate for the offence and the offender. This is especially relevant in sentencing Black offenders.
- **Evidence-based Decision Making:** This approach involves making decisions based on the best available research, data, and studies. It ensures that policies and strategies are not based on assumptions or biases but are grounded in factual and empirical evidence. This principle is crucial in addressing complex issues within the justice system, as it supports the development of informed, effective, and tailored strategies that can address the specific needs and challenges faced by Black communities.



- **Reparative Justice:** Focused on repairing harm, reparative justice seeks to address and remedy large-scale injustices inflicted upon collective groups, such as human rights violations, systemic racism, and poverty. This model goes

beyond punishment, emphasizing healing, restoration, and reconciliation. It recognizes the long-term and widespread impact of injustices on Black communities and aims to create pathways to repair and restore those affected by such injustices.



Pillars of Canada's Black Justice Strategy

The Strategy centres on five key pillars, or themes, relevant to Black experiences with the criminal justice system. The pillars are consistent themes that inform Black people's experiences with the criminal justice system. These pillars form the foundation of the Strategy's focus for reform and improvement.

- 1 *Social determinants of justice:*** This pillar addresses the fundamental factors such as income, employment, stable housing, education, and health that shape an individual's life and may contribute to initial and/or subsequent contact with the justice system.
- 2 *Policing:*** Focusing on the dynamics of over-policing and over-surveillance in Black communities, this pillar examines policing practices that lead to increased detention, arrest, and other negative outcomes for Black people, including in the use of force.
- 3 *Courts and legislation:*** This pillar is concerned with the experiences of Black people within the Canadian justice system, whether as accused persons, witnesses, victims of crime, justice professionals, or as individuals affected by the laws of the land. It examines how their experiences are shaped by Anti-Black racism and inequity. The pillar includes all stages of a criminal prosecution, from being charged with an offence through bail decision making, to trials and sentencing, and the impact of a sentence upon an individual's immigration status.
- 4 *Corrections:*** Addressing the experiences of sentenced individuals in custody, this pillar focuses on the selection and training of correctional officers, the policies governing life in correctional facilities, and complaint resolution mechanisms. The aim is to ensure humane, equitable, and reformatory treatment of incarcerated individuals. This pillar will also consider the broader impact of a person's incarceration upon their families and communities.
- 5 *Parole, re-entry, and integration:*** Recognizing that most incarcerated individuals will eventually return to re-enter society, this pillar addresses the parole processes, available community resources post-release, and initiatives to reduce recidivism.



Five priority areas

In addition to the five pillars of the Strategy, the Steering Group recommended five priority areas that inform the recommendations being made.

- 1 Decarceration:** Canada must aim to reduce the overall current rate of persons incarcerated relative to the population by 30% by 2034, and given levels of overrepresentation, incarceration rates for Black and Indigenous people must be reduced by 50% of the current rate, relative to their proportion of the population, in this time. We take a broad view of decarceration to mean not only the release of people who are currently in custody, but also to reduce the number of people entering custodial facilities in the first place.
- 2 Legislative change:** Changes to the *Criminal Code*, *Controlled Drugs and Substances Act*, and *Immigration and Refugee Act* are urgently needed, and new legislation is also required to protect the rights of Black employees and those experiencing discrimination and hate crimes.
- 3 Targeted resourcing:** Long-term, sustained funding of initiatives that promote the health and well-being of Black individuals and communities is desperately needed. Beyond support for specific programs, substantial funding for permanent institutions is also required.
- 4 Structural change:** The overrepresentation of Black people in the criminal justice system will not be addressed through minor reforms to the system. Significant structural change is needed to improve the position of Black people in our society, and to address the ongoing impacts of Anti-Black racism within the criminal justice system specifically.
- 5 Collaboration with provinces, territories, and municipalities:** We acknowledge that the Strategy touches on areas of federal jurisdiction as well as areas of provincial/territorial or municipal responsibility, particularly regarding the social determinants of health, policing, and supports available to individuals leaving custody. There are also aspects of the justice system that fall exclusively under provincial or territorial responsibility, such as the appointment and training of provincial judges, probation policies, legal aid funding, and provincial jails. We urge the federal government to co-operate with other jurisdictions wherever possible, and also hope that federal standards and guidelines will be adopted by provinces, territories, and municipalities.

Finally, we recognize that the Government of Canada has undertaken substantial work to reduce inequities in the criminal justice system and to support Black communities more broadly through the development of national frameworks, action plans, programs, and dedicated funding initiatives. The recommendations proposed in the Strategy are intended to build upon this existing work, and to address areas yet untouched by legislation, policy, funding allocation, or other area of action. Our recommendations are positioned for the short, medium, and long-term, with the hope and expectation that all recommendations will be implemented as soon as possible.



Overarching recommendations

This Strategy provides a number of recommendations to the Government of Canada which, if acted upon, can be expected to reduce the overrepresentation of African Canadians in the criminal justice system.

While the Strategy is framed around five pillars, we recognize that there are actions that can be undertaken by the government to advance the interests of Black communities that do not fit neatly within any one pillar. Similarly, there are actions that can be undertaken by government that will have an impact across all or multiple pillars. Our overarching recommendations advance reforms that will have significant impact across and beyond the criminal justice system. We seek the establishment of formal structures and the institutionalization of mechanisms intended to drive systemic change.

1 Establish a centralized federal department or agency responsible for championing and coordinating efforts to advance the interests of Black people in Canada.¹

The establishment of a centralized federal department or agency is a crucial step toward fostering accountability and addressing the systemic inequities faced by Black people in Canada. Historical and ongoing disparities in income, employment, education, housing, and health have significantly impacted Black communities, contributing to disproportionate levels of contact with the criminal justice system. These challenges are not just individual issues but are deeply rooted in social structures that require comprehensive and coordinated responses. A dedicated department or agency is needed to serve as a central body that strategically addresses the social determinants of justice for Black

people. By providing targeted resources, fostering collaborative efforts across sectors, and advocating for policy changes, the agency would aim to dismantle barriers and create a more equitable and just society for Black people in Canada. Its establishment would recognize the urgent need to address longstanding issues across social sectors, with dedicated focus and resources, ensuring that the principles of equity and justice are upheld in Canadian society.

The anticipated outcome of establishing the proposed agency is a marked reduction in disparities affecting Black people, leading to enhanced access to justice, improved socio-economic conditions, and a stronger, more resilient community. The proposed agency would:

- Function as a national hub, coordinating and enhancing efforts across various sectors to address the economic, educational, housing, and health disparities that disproportionately affect Black people. This will involve the strategic allocation and management of funding for initiatives and programs specifically tailored to meet the needs of these communities.
- Foster effective collaborations among government bodies (including managing Federal/ Provincial/Territorial relationships), non-governmental organizations, community groups, and private sector

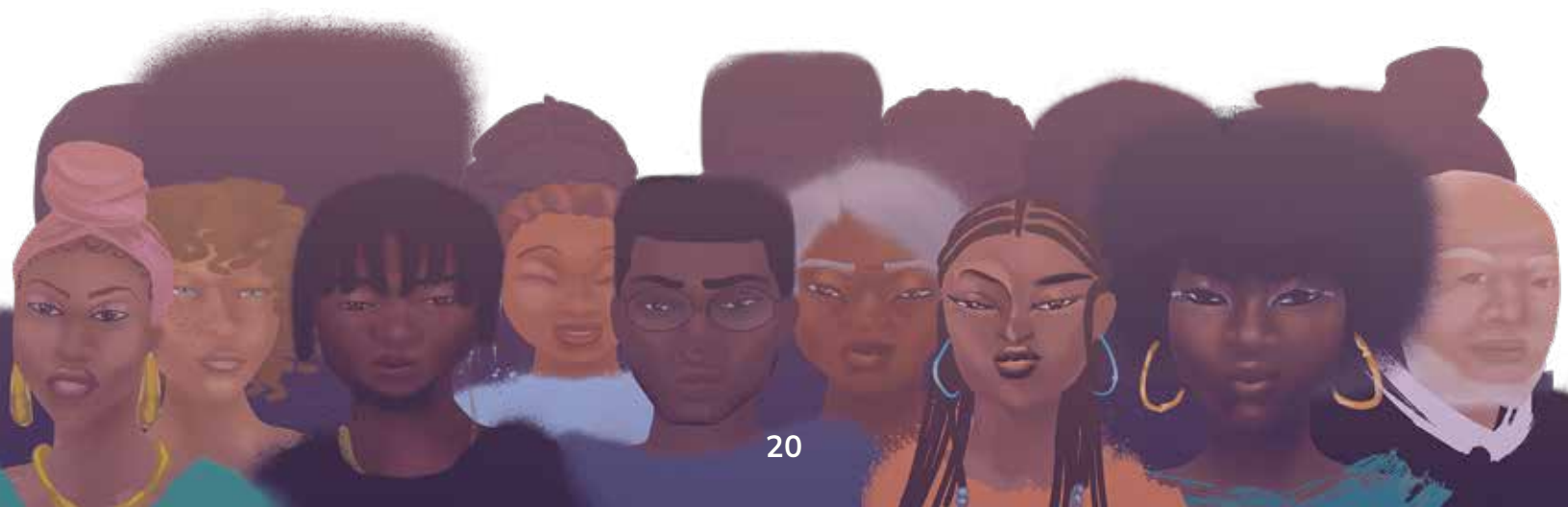
entities. This collaborative approach is essential to develop a cohesive and comprehensive strategy to tackle systemic issues.

- Engage community to ensure that the perspectives and voices of Black people are central in shaping policies and programs. This will be complemented by efforts to build the capacity of NGOs (in particular, Black-led organizations) working with Black people and within Black communities, providing them with the necessary resources and training to maximize their impact.
- Engage in rigorous research and data analysis to deepen the understanding of the underlying causes of disparities faced by Black people. This will enable the development and implementation of evidence-based policies and interventions.
- Advocate for and support the formation of policies that cater to the unique challenges of Black communities in areas such as employment, education, housing, and healthcare.
- Engage in public awareness initiatives aimed at educating the broader Canadian public about the challenges faced by Black people in Canada and the importance of addressing these issues for the betterment of the entire society.

2 Establish a Black Justice Portfolio within the Department of Justice.²

The portfolio would seek to address justice-related issues specific to Black people in Canada. Its role would be crucial in policy development and legal reform, focusing on addressing systemic racial biases in the justice system by reviewing and amending laws, policies, and practices to ensure fairness and prevent disproportionate impacts on Black individuals. The portfolio would also serve as a vital link between the justice system and Black communities, facilitating open dialogue, building trust, and working closely with community leaders and organizations to understand and champion their concerns. The portfolio should:

- Engage in comprehensive research and data collection to understand the effects of laws and policies on Black people.
- Be responsible for identifying and amending laws and reforming justice practices that have a disproportionate negative impact on Black people, including coordinating with other entities to address identified issues that fall outside of the mandate/ jurisdiction of the Department of Justice.



- Be responsible for supporting education for judges, lawyers, and other legal professionals on issues of racial bias, cultural sensitivity, and the specific challenges faced by Black individuals within the legal system.
- Provide tailored support services for Black people navigating the justice system, including through the provision of legal aid, counseling, and resources for victims of racial discrimination and injustice.
- Establish mechanisms for monitoring the treatment of Black individuals in the justice system and ensuring accountability for any biases or unfair practices, including regular reporting on progress and challenges in achieving racial equity.

3 Establish a Black Community Wellbeing and Safety Division within Public Safety Canada.

This division would concentrate on crime prevention and enhancing the safety of Black communities in Canada. It would work in tandem with the justice portfolio to create a holistic approach to addressing the systemic issues faced by these communities.

By focusing on these areas, the Black Community Wellbeing and Safety Division would not only work to address immediate safety concerns but also work toward long-

term solutions to reduce crime and enhance the overall quality of life in Black communities in Canada. The Division should:

- Engage in extensive research and data analysis to understand crime trends and their root causes within Black communities. This data would inform policy development and reform efforts aimed at addressing systemic factors contributing to crime, including legislative reforms and initiatives to bridge socio-economic disparities.
- Undertake active community engagement, collaborating closely with local leaders, organizations, and residents to develop crime prevention strategies tailored to the unique cultural and social dynamics of these communities.
- Implement educational and awareness programs to enhance understanding of crime prevention, legal rights, and community safety practices in Black communities and the broader public.
- Ensure access to necessary resources and support services, including funding community initiatives and victim support services.
- Be responsible for the regular monitoring and evaluation of its initiatives, ensuring responsiveness and adaptability to the evolving needs of Black communities.



4 Prioritize the endowment and establishment of a National Institute for People of African Descent.

We recommend that the government prioritize the endowment and establishment of a National Institute for People of African Descent (NIPAD) to serve as an independent organization working to understand and address the unique challenges faced by Black people. This institute should be a dedicated centre for research, policy development, and advocacy. We recommend that the Government of Canada work with its provincial and territorial partners to secure funding to support the operation of NIPAD for 50 years.

The endowment and establishment of the NIPAD would serve to significantly enhance the understanding and addressing of socio-economic disparities faced by Black people. Through focused research and policy development, the institute should create policies and recommendations that are reflective and responsive to the specific needs of Black communities in Canada. By ensuring that the voices and experiences of Black people are central in the policymaking process, the NIPAD would contribute to a more equitable and inclusive Canadian society, where policies are crafted with a comprehensive understanding of the diverse fabric of the nation.

5 Establish a unit within Statistics Canada's Centre for Justice and Community Safety Statistics responsible for the coordination and implementation of a whole of justice system Race and Identity-Based Data program.

This recommendation underscores the pivotal role of collecting, analyzing, and transparently reporting Race and Identity-Based Data within the criminal justice system. Central to this recommendation is the recognition that Race and Identity-Based Data is essential for identifying, understanding, and addressing the

systemic disparities that disproportionately affect Black people in Canada's criminal justice system.

Race and Identity-Based Data is crucial for several reasons. First, it provides the empirical evidence necessary to reveal existing racial disparities, helping to illuminate a detailed and measurable understanding of the impact of race and identity on various stages of the justice process. This type of data is also crucial in uncovering disparities and patterns of discrimination that might be overlooked or unrecognized.

Second, the availability of Race and Identity-Based Data enables the formulation of targeted interventions. With a clear picture of where and how racial and identity-based disparities manifest, policies and practices can be devised to address these specific issues, enhancing their effectiveness and relevance.

Third, the collection and dissemination of Race and Identity-Based Data serves to promote accountability and transparency within the justice system. By making this data public, the system is held more accountable and encourages involvement from communities and stakeholders in the work of improving the system and its outcomes. Such transparency is crucial in building trust between the justice system and the communities it serves, especially those who have historically been marginalized or underrepresented.

This recommendation places significant emphasis on the focused collection, analysis, and reporting of Race and Identity-Based Data. It signifies a commitment to actively confront and dismantle systemic barriers linked to race and identity, aiming to cultivate a justice system in Canada that is just, equitable, and reflective of its diverse population. This data-driven approach lays the groundwork for enduring reforms, striving toward a fairer and more inclusive justice system.

A whole of justice system Race and Identity-Based Data collection program would include the following:

- All police interactions, including stops, searches, arrests, charges, use of force, other relevant encounters, and outcomes of police interactions;
- The court process, from charges and pre-trial detention to trials and sentencing;
- Correctional outcomes, including incarceration patterns, security assessments and placements, access to rehabilitation and programming, segregation, transfers, use of force incidents, and parole decisions; and
- Reintegration outcomes, focusing on factors such as employment, education, housing, and recidivism rates.

6 Decarceration target

Canada must commit to reducing by 50% the current rate of Black and Indigenous people who are incarcerated, relative to their proportion of the population, and the overall rate of persons incarcerated by 30% relative to the population, by 2034.

7 Recognize Black people as a distinct group

In response to the longstanding disparities and systemic racism faced by Black people in the justice system and society at large, we recommend the introduction of legislation that formally recognizes Black people as a distinct group within Canada. This acknowledgment is crucial for developing targeted policies and programs that effectively address the unique experiences, challenges, and contributions of Black people. This legislation should be developed in consultation with Black communities across Canada.

8 Education and training

Despite ongoing efforts, there remains substantial need for comprehensive education and training on anti-Black racism and cultural competency for criminal justice actors and representatives of adjacent organizations and agencies.³ The Government of Canada should prioritize the provision of comprehensive education and training on anti-Black racism and cultural competency to federal employees, and support provinces and territories to do the same. In the sections below, we advance specific recommendations to address education and training needs that align with each pillar of the Strategy. As a general approach, we recommend that education and training programs:

- Are comprehensive, covering historical and contemporary contexts of anti-Black racism in Canada;
- Involve Black communities in the development of curriculum to incorporate their expertise and lived experiences;
- Incorporate self-reflection for participants to identify personal biases and interrogate the possibility and presence of anti-Black racism in their workplace;
- Assess learning outcomes to ensure sufficient understanding of the materials taught;
- Are regularly updated and responsive to changing social realities and developments in scholarship and research; and
- Are comprehensively evaluated to assess their efficacy, with revision and revocation where necessary.

The comprehensive evaluation of any education and training program in order to demonstrate effectiveness in addressing anti-Black racism is critical to the success of this recommendation.



Social determinants of justice

These factors [social determinants] can intersect and amplify one another, leading to a complex web of circumstances that may bring someone into contact with law enforcement or the court system. It's important to acknowledge these systemic challenges and work towards solutions that promote fairness and equality.”

Words of a participant, ISSAMBA, African Arts & Culture community Contributor Society (AACCCS), Report of Community engagement and consultation held in British Columbia for Canada's Black Justice Strategy (2023).

Available evidence suggests that Black people are overrepresented across a range of negative justice outcomes (Cotter, 2022; Owusu-Bempah and Gabbidon, 2020). It is important to note, however, that the criminal justice system does not operate in a vacuum. Indeed, Black experiences in society more generally inform levels of contact with, and the nature of treatment by, the criminal justice system (Owusu-Bempah and Jeffers, 2022). Working to prevent Black people from coming into contact with the criminal justice system by addressing the social determinants of justice, represents a key pillar of the Strategy.

The social factors that contribute to Black experiences with the criminal justice system can be described as the “determinants of justice” (Institute for Research in Public Policy, 2020). The social determinants of justice include income, employment, stable housing, education, and health (ibid). Where data are available, research demonstrates that Black

people in Canada fare poorly across these dimensions, with lower-than-average incomes, higher rates of unemployment, decreased access to secure and stable housing, poorer educational outcomes in Canadian schools, and poorer health and mental health outcomes (Do, 2020; Dion, 2001; Teixeira, 2008; James and Turner, 2017; Robson et al., 2014; Public Health Agency of Canada, 2020). Anti-Black racism and systemic discrimination are often cited as a driver of these negative outcomes (Dryden and Nnorom, 2021; James and Turner, 2017; DasGupta et al, 2020; Public Health Agency, 2020). Challenges related to immigration and settlement may also exacerbate the problems faced by Black people across the areas identified as social determinants of justice. Importantly, inequities in the criminal justice system, including the over-criminalization and over-incarceration of Black people, can further entrench the broader social inequities that make up the social determinants of justice.

Recommendations

Employment and income

“Foreign diplomas are not recognized. More particularly in the case of Quebec, one of the participants told us that immigrant parents are exhausted by their migratory journey and all the administrative procedures that it involves, so they have neither the time nor the energy to return to school.”

Words of a participant, Clinique juridique de Saint-Michel (CJSM), Report of Community engagement and consultation held in Quebec for Canada’s Black Justice Strategy (2023) (Translation).

Short term

- 9 Increase existing resourcing for employment programs for Black youth, and for the development and improvement of Black businesses.
- 10 Allocate funding to expand access to apprenticeships and other forms of skills training. This includes expanding funding channels for apprenticeships and skills training beyond the Employment Insurance (EI) system to expand eligibility to those who do not qualify for EI, or are unable to access enough funds for training in the trades.
- 11 Regularly name Black people as a priority group in Government of Canada employment, skills, business, and entrepreneurship programs.

Medium term

- 12 Enact all recommendations of The Report of the Standing Senate Committee on Anti-Black Racism, Sexism and Systemic Discrimination in the Canadian Human Rights Commission.
- 13 Increase the maximum damages available in a claim of racial discrimination under the *Canadian Human Rights Act*.
- 14 Expand eligibility for benefits by delivering benefits through means other than the tax system. Implement an alternative direct cash transfer system to ensure income benefits reach those who need them most (i.e., those without a permanent address, those without citizenship status, and those who work in informal or cash-based economies). Consider pre-paid debit or credit cards as an alternative for this population.
- 15 Fund settlements for the Black Class Action taken against the federal government by Black public servants who faced discrimination.
- 16 Invest in enforcement to address misclassification of workers as self-employed and exploitation of vulnerable workers in their workplace.
- 17 Collaborate with all levels of government to tackle deskilling and credential barriers faced by newcomers, and to increase supports for the recognition and certification of foreign qualifications, particularly for job skills and qualifications that support the administration of the criminal justice system.

Long term

- 18 Raise the federal minimum wage to a living wage (\$21/hour).
- 19 Expand the types of training available through EI to include secondary school completion and upgrading, essential literacy and numeracy training, and English or French as a second language instruction. Expand the list of approved educational institutions to include training programs provided by community organizations and unions.
- 20 Introduce a new Canada Livable Income (CLI) to target adults aged 18 to 64 who are living in deep poverty. Provide up to \$9,000 for individuals or \$11,000 for couples.

Housing

“The practice of requesting reference checks for newcomers, landlords raising rent fees for Black people because they assume their property will not be taken care of or failing to return security deposit despite keeping their part of the lease agreement and then pulling the race card on them, are some of the other housing related issues that may have implications for Black involvement with the criminal justice system.”

Words of a participant, Truly Alive Youth and Family Foundation Inc. Report of Community engagement and consultation held in Saskatchewan for Canada’s Black Justice Strategy (2023).

Short term

- 21 Name Black people/ People of African Descent as a group prioritized for service and support within the National Housing Strategy, with special attention paid to newcomers, those with a criminal record, and for people being released from jail or prison.

Long term

- 22 Allocate capital funding to the National Housing Co-investment Fund to build a minimum of 100,000 new non-market and co-op housing units per year.
- 23 Dedicate the equivalent of one per cent of existing GST revenue toward permanently increased infrastructure investment, including the Canada Community Building Fund, which goes directly to support municipal infrastructure priorities, and a core public transit funding stream for both capital and operation.

Education

“There isn’t a place for Black people in the education system. The majority of learning institutes and education are based upon White/European history that leaves out the Black experience and historical accuracy.”

Words of a participant, ISSAMBA, African Arts & Culture community Contributor Society (AACCCS), Report of Community engagement and consultation held in British Columbia for Canada’s Black Justice Strategy (2023).

Short term

- 24 **Work with provincial and territorial governments to:**
- Ensure all public schools are adequately and equally funded;
 - Ensure that all school curricula include Black history, culture, and contributions, as well as anti-racism education.
- 25 **Provide transparent, consistent, and adequate federal funding to the provinces and territories in support of public post-secondary education, through a National Post-Secondary Education Transfer, discrete from the Canada Social Transfer, with agreed conditions established through federal legislation or multilateral or bilateral agreements.**
- 26 **Sign agreements to ensure that the federal funding is in addition to provincial spending for the sector, and is used to lower tuition for all students, invest in workforce renewal (including providing fair wages and reducing precarity among academic staff) and improve access to underserved communities.**

Medium term

- 27 **Work with provincial and territorial governments to:**
- Create targeted education and training for guidance counsellors in anti-Black racism and in guiding Black youth toward success; and
 - Facilitate the development of mentorship programs within communities and schools for Black youth.

Health and mental health

“Our problem is our counselors are not trained in how to deal with mental health issues specific to African, Caribbean and Black youth. They do not get the training in their work and then when? So what ends up happening is sometimes, when youth go to the counselors, they actually perpetuate more racialized violence and trauma, and they can actually do more harm than good.”

Words of a participant, ISSAMBA, African Arts & Culture community Contributor Society (AACCCS), Report of Community engagement and consultation held in British Columbia for Canada’s Black Justice Strategy (2023).

Medium term

- 28 **Prioritize funding to programs that identify and train Black mental health professionals to provide culturally-sensitive mental health care and early intervention to Black children, families, and individuals, and ensure that individuals in need of these services can access them without regard to cost.**
- 29 **Extend the Interim Federal Health Program to temporary foreign workers.**

Child welfare

“A mother shared the experience where their young son squabbled with his sister and called 911. Police bang on the door and there a white male officer shoved the mother (who was pregnant at the time) and escorted her to change while he watched. While she was changing, the children got taken from the house.”

Words of a participant, Network for the Advancement of Black Communities (NABC) Report of Community engagement and consultation held in Ontario for Canada’s Black Justice Strategy (2023).

Medium term

30 Work with the provinces and territories to:

- Expand resourcing for parenting support and programming for Black parents and families; and
- Provide greater education and training to social workers that prioritizes keeping families together where possible, and provides education on cultural sensitivity and the realities of anti-Black racism and the challenges faced by newcomers.

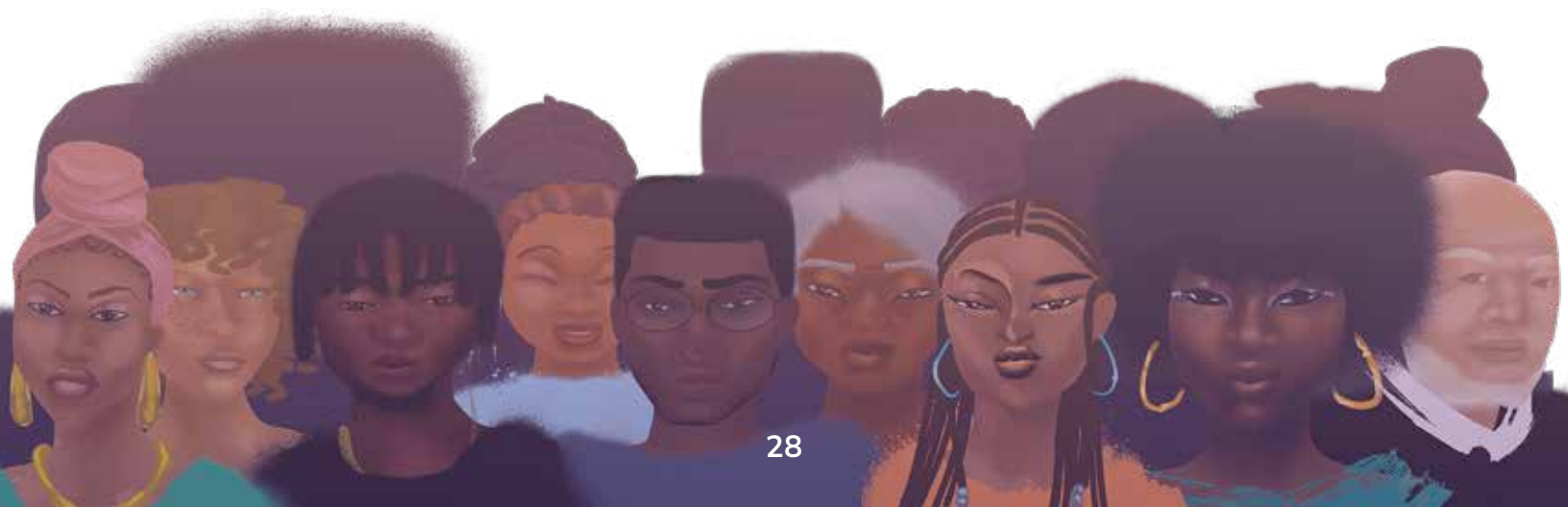
Immigration and settlement

“Young people get involved with friends into trouble because they did not know any better that they could be deported. Help new immigrants to handle culture-shock and go through the whole adjusting process.”

Words of a participant, Network for the Advancement of Black Communities (NABC) Report of Community engagement and consultation held in Ontario for Canada’s Black Justice Strategy (2023).

Short term

- 31 **Work with provinces and territories to properly resource existing specialized settlement and integration programs to address the distinct challenges encountered by Black refugees and newcomers.**
- 32 **Partner with Black community organizations and expand and properly resource existing projects to create toolkits and orientation manuals for newcomers, including information on the criminal justice system and legal services, ensuring translation into major languages spoken by newcomers.**
- 33 **Ensure that Canada signs, ratifies, and adheres to the International Convention on the Protection of the Rights of All Migrant Workers and their Families.**





Policing

“Racism in policing is real and has material effects on Black people. Until this country addresses the lack of accountability and culture of no expectations on police to act with respect and composure when they interact with Black people, very little will change in the justice system.”

Words of a participant, Online Survey on Canada’s Black Justice Strategy (2023).

Black people have a long and troubled relationship with police and policing in Canada. As Maynard (2017) explains, efforts to control the movement and actions of Black people have been present since slavery was practiced on the territories that would become Canada and have persisted ever since (40-41). These efforts, aimed at surveilling and controlling Black bodies, are rooted in longstanding stereotypical assumptions that associate Blackness with criminality, violence, and other forms of danger, and have been championed through both formal (e.g., the police) and informal (e.g., individuals, groups, and organizations) mechanisms of social control (Maynard, 2017; see also Mosher, 1998; Walker, 2010). Given this history, it is perhaps unsurprising that concerns about the policing of Black people in Canada have driven much of the discussion about racial inequality in the criminal justice system.

Black people across Canada are disproportionately subject to police stop, question and search activities (Owusu-Bempah and Gabbidon, 2020). Research also demonstrates that Black people in Canada generally hold more negative views of the police than do members of most other racial groups (Cotter, 2022; Sprott and Doob, 2014; Wortley and Owusu-Bempah, 2009, 2022). These negative views result from both personal and vicarious experiences with the police, with Black people often assessing their encounters with the police as unfair,

characterized by disrespect, and leaving them feeling “upset” (Wortley and Owusu-Bempah, 2011 see also Samuels-Wortley, 2021). Other research has shown that Black people experience more negative outcomes from their encounters with the police which compound inequalities at later stages of the criminal justice system process; they are less likely to be referred to diversion programs that would keep them out of the formal justice system (Samuels-Wortley, 2022), experience higher rates of arrest for highly discretionary charges and are more likely to face poor-quality charges with a low probability of conviction (Wortley & Jung, 2020). This reality again points to policing as an important factor influencing the over-criminalization of Black people. Crucially, while limited, available data demonstrate that Black people are greatly overrepresented in police use of force cases, and are disproportionately more likely to be killed by the police in Canada (OHRC, 2018; Singh, 2020; Mensah et al., 2021). Unnecessary and unwarranted police stops, particularly those stemming from racially-biased policing, have far-reaching consequences beyond the immediate inconvenience they pose. Such practices engender feelings of anger, fear, and frustration in those targeted, with research indicating significant psychological impacts. Research (see for example Sewell et al., 2016; Geller et al., 2014) has linked concentrated police stop and search activities in neighborhoods to increased psychological distress and mental health issues in residents,

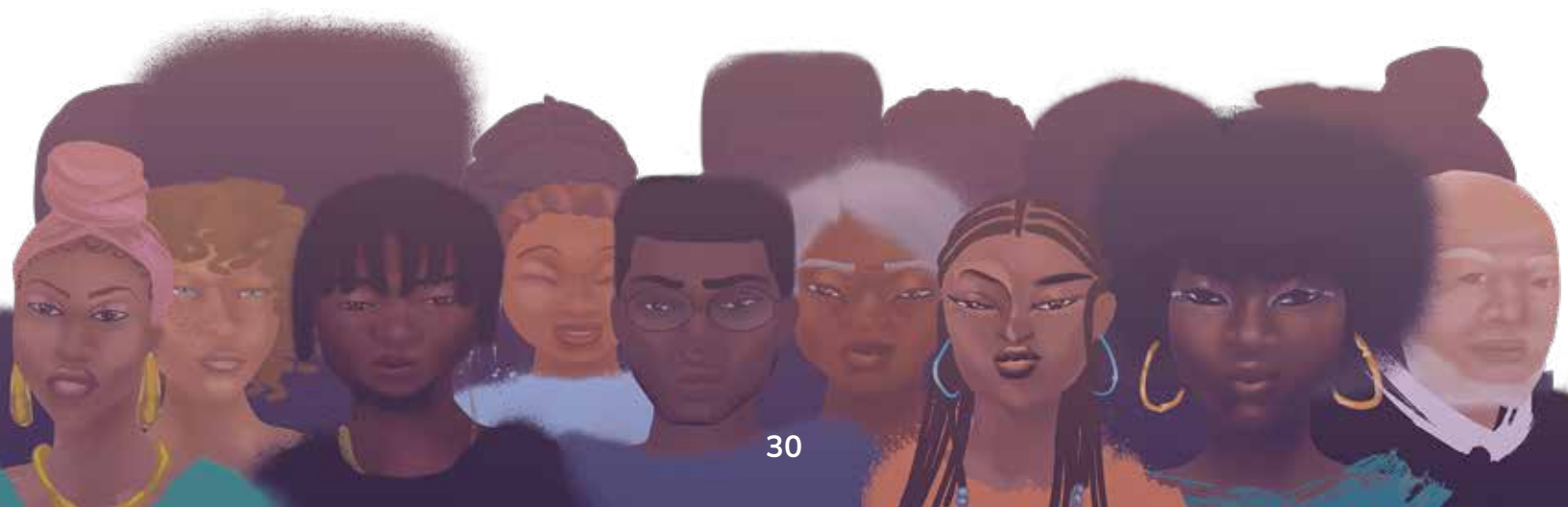
especially men. These effects manifest as heightened nervousness, feelings of worthlessness, and severe psychological distress. The intrusive nature of police stops has been particularly associated with higher levels of anxiety and trauma, including symptoms of PTSD (Geller et al., 2014). This body of research underscores a disturbing correlation between aggressive policing strategies and deteriorating mental health in communities subject to such scrutiny.

Moreover, biased policing practices contribute to broader societal issues by exacerbating social disadvantages and racial disparities within the criminal justice system. Empirical data suggest that, as a result of increased levels of surveillance and differential treatment during police interactions, Black people are more likely to be apprehended and criminalized for similar behaviors as compared to their white counterparts, leading to disproportionate arrest rates (Samuels-Wortley, 2022). These inequities compound at each subsequent stage of the criminal justice system, from bail decision-making, through sentencing, to incarceration, so that the inequities Black people experience at the early stages of the criminal justice process have a cascading effect, resulting in the over-criminalization and incarceration of Black people (Drakulich and Rodriguez-Whitney, 2018).

Furthermore, unjust policing practices undermine the legitimacy of the criminal justice system, eroding public trust and cooperation,

which are crucial for effective law enforcement and social order (Cane, 2005; Tyler and Fagan, 2008). Without trust and confidence in the system, members of the public become alienated and reluctant to cooperate with the police and the courts as victims, witnesses, complainants, and the accused. Such a situation serves to thwart the efforts of the police to control crime and maintain social order (Decker & Smith, 1980; Murty et al, 1990; Kaukmen & Colavecchia, 1999). Finally, research also suggests that early unwarranted police interactions, particularly with young Black men, may inadvertently contribute to subsequent delinquent behavior, challenging the effectiveness of such policing strategies in crime reduction (Del Toro et al., 2019).

The findings of existing research call for a serious reconsideration of current approaches to policing and their broader implications for society as a whole. While there remains a need to better understand the nuances of the policing of Black people in Canada, the insights and recommendations advanced in previous research and commissions of inquiry such as the Commission on Systemic Racism in the Ontario Criminal Justice System, the Inquiry into Police Street Checks in Halifax, Nova Scotia, and the House of Commons review on Systemic Racism in Policing in Canada, among many others, demand attention.



Recommendations

“In our experience with trauma from anti-Black racism, it sits with us forever and there are things we will never forget. To the general public of white people, they do not look the same and we are judged for being traumatized. A police officer arrested a person I know for ‘fitting a description’, they got roughed up, put in jail and then were just told that they were not the person they were looking for”.

Words of a participant, African Nova Scotian Justice Institute (ANSJI), Report of Community engagement and consultation in Nova Scotia for Canada’s Black Justice Strategy (2023).

Police pre-charge diversion

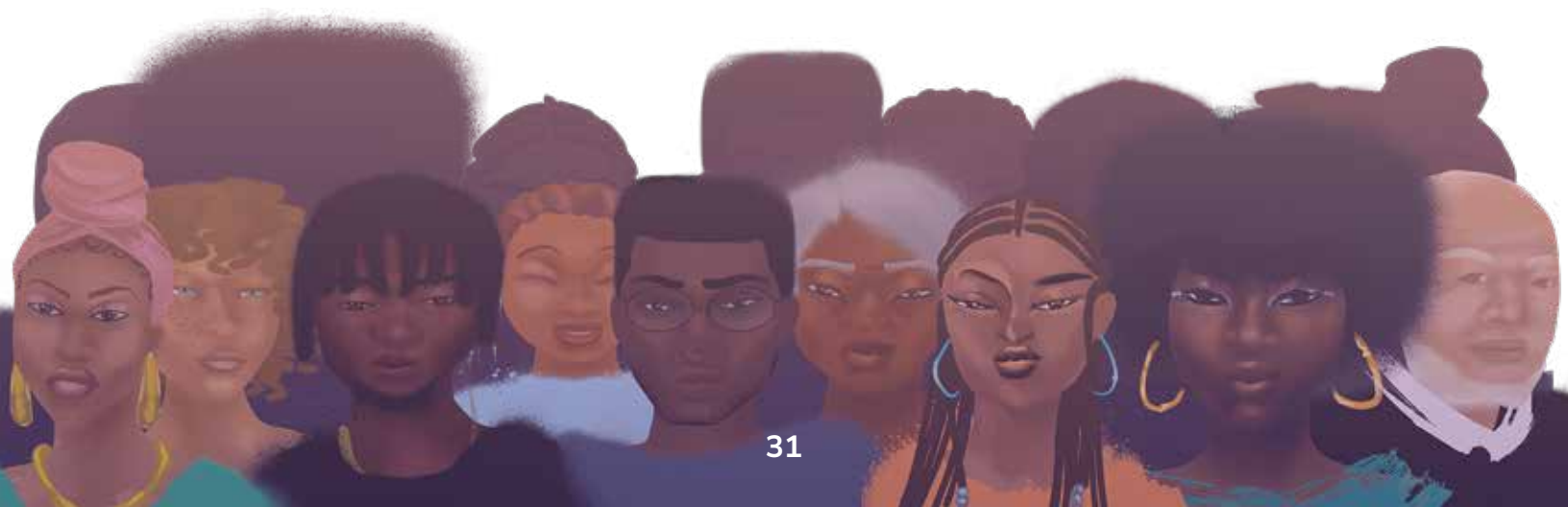
“There is an overrepresentation of Black people in the justice system. There is an underrepresentation of them in diversion programs which would allow them to not have a criminal record”.

Words of a participant, Clinique juridique de Saint-Michel (CJSM), Report of Community engagement and consultation held in Quebec for Canada’s Black Justice Strategy (2023) (Translation).

Short term

34 **Mandate the greater use of police pre-charge diversion across Canada.**

We recommend that police agencies across Canada be mandated to make greater use of diversion programs as alternative justice processes that redirect individuals away from the traditional criminal justice system, focusing instead on rehabilitation, community service, or restorative justice measures, especially those that are offered by Black-led and focused organizations that provide identity-affirming services, supports and programs.



Additional short-term policing recommendations

- 35 **Require that 25 percent of all Public Safety Canada (PSC) federal transfer payments and Solicitor General and Attorney General grants be allocated to non-police organizations that are directly involved in integrated service delivery programs operating in the pre-criminal space or “alternative response to police” programs for persons in crisis that focus on health, prevention, community safety and well-being.**⁴

This approach recognizes that public safety is not exclusively a matter of policing and traditional law enforcement. Instead, it involves a collaboration of various sectors, including health, social services, and community organizations, aiming to address root causes of criminal behavior such as mental health issues, substance abuse, and socio-economic factors before they escalate into criminal activities. The recommendation suggests reallocating a significant portion of federal funds to non-police organizations. These organizations are often better equipped to handle situations related to mental health, homelessness, or substance abuse, offering an alternative to traditional policing, especially in managing persons in crisis. By focusing on health, prevention, community safety, and well-being, the approach seeks to enhance community safety through preventative measures and alternative responses that align with specific community needs. This shift in resource allocation underscores a growing understanding of the complex nature of public safety and the necessity for a more diversified and holistic approach. It is imperative that these funds are not reallocated from existing funding sources for the provision and support of social services (i.e., reallocating existing social service funding through Public Safety Canada).

- 36 **Establish a timeline of implementation and mechanism for monitoring the adoption and implementation of recommendations tabled in the Systemic Racism in Policing in Canada Report of the House of Commons Standing Committee on Public Safety and National Security (McKay, 2021).**
- 37 **Establish a mental health fund for people who have experienced police violence to access no-cost mental health supports.**

Medium-term policing recommendations

- 38 **Introduce legislation codifying the prohibition of racial profiling and racially-biased policing.**⁵

We recommend that the government introduce specific legislation to address the issues of racial profiling and racially-biased policing. This legislation should clearly define and explicitly prohibit these practices, drawing upon existing legal precedents and jurisprudence. A critical component of this legislative effort would be to provide a precise definition of racial profiling and racially-biased policing, utilizing legal precedents to ensure clarity and eliminate ambiguity in interpretation. By grounding the legislation in existing jurisprudence that has already designated such practices as unconstitutional or illegal, it would be firmly anchored in established legal principles. Additionally, the legislation must outline strong prohibitive measures against racial profiling and racially-biased policing, coupled with significant penalties for individuals and law enforcement agencies found in violation of these standards. These penalties are essential to act as a robust deterrent, ensuring that the law is not just symbolic but effectively enforced. Through this approach, the legislation would create a clear, enforceable framework that significantly advances fairness and equality in law enforcement, directly tackling the challenges posed

by racial profiling and racially-biased practices.

39 Prioritize the development of a set of national standards for policing in Canada.

“Yes, I once got pulled over and before the cop came to talk to me and he called for backup and 8 other cops showed up, they talked to me with their hands on their weapons. Only for them to ask for id and they let me go. They needed 8 cops with their hands on weapons to do a traffic stop on a single black male”.

Words of a participant, Black Advocacy Coalition Up North (BACupNorth), Report of Community engagement and consultation held in Northwest Territories for Canada’s Black Justice Strategy (2023).

The government should prioritize the establishment of clear and uniform set of national standards for policing. These standards must comprehensively cover areas such as recruitment,⁶ use of force, community engagement, hate crimes, and crisis intervention, ensuring consistency and respect for human rights across all Canadian police forces. Central to enforcing these standards would be the creation of a National Police College. This college would standardize training for law enforcement officers across the country, aligning it with the national standards.

The development and continual refinement of a set of national standards should be grounded in evidence-based, peer-reviewed research. This ensures that the practices are effective

and respectful of individual rights, particularly in Black and otherwise marginalized communities. It is crucial that these national standards are incorporated into training programs at every level of policing—federal, provincial, and municipal—to guarantee uniformity in law enforcement training across Canada.

Regular review and updating of these standards are essential to keep pace with new research findings, societal changes, and emerging challenges in law enforcement. Moreover, involving communities, especially those disproportionately affected by policing practices, in the development and review of these standards is vital.

40 Increase police accountability for brutality, excessive use of force, harassment, and the under-policing of Black people by:

- Working with the provinces and territories to develop and strengthen independent oversight bodies for police across each province and territory;
- Introducing legislation to prohibit the withholding of the names of peace officers charged with offences under the *Criminal Code* by police oversight bodies;
- Establishing a nation-wide database that tracks racially disaggregated data on complaints brought to independent oversight bodies, as well as information on case outcomes. These data should be publicly available; and
- Working with the provinces, territories, municipalities and First Nations to develop a mechanism that prohibits the hiring of officers who

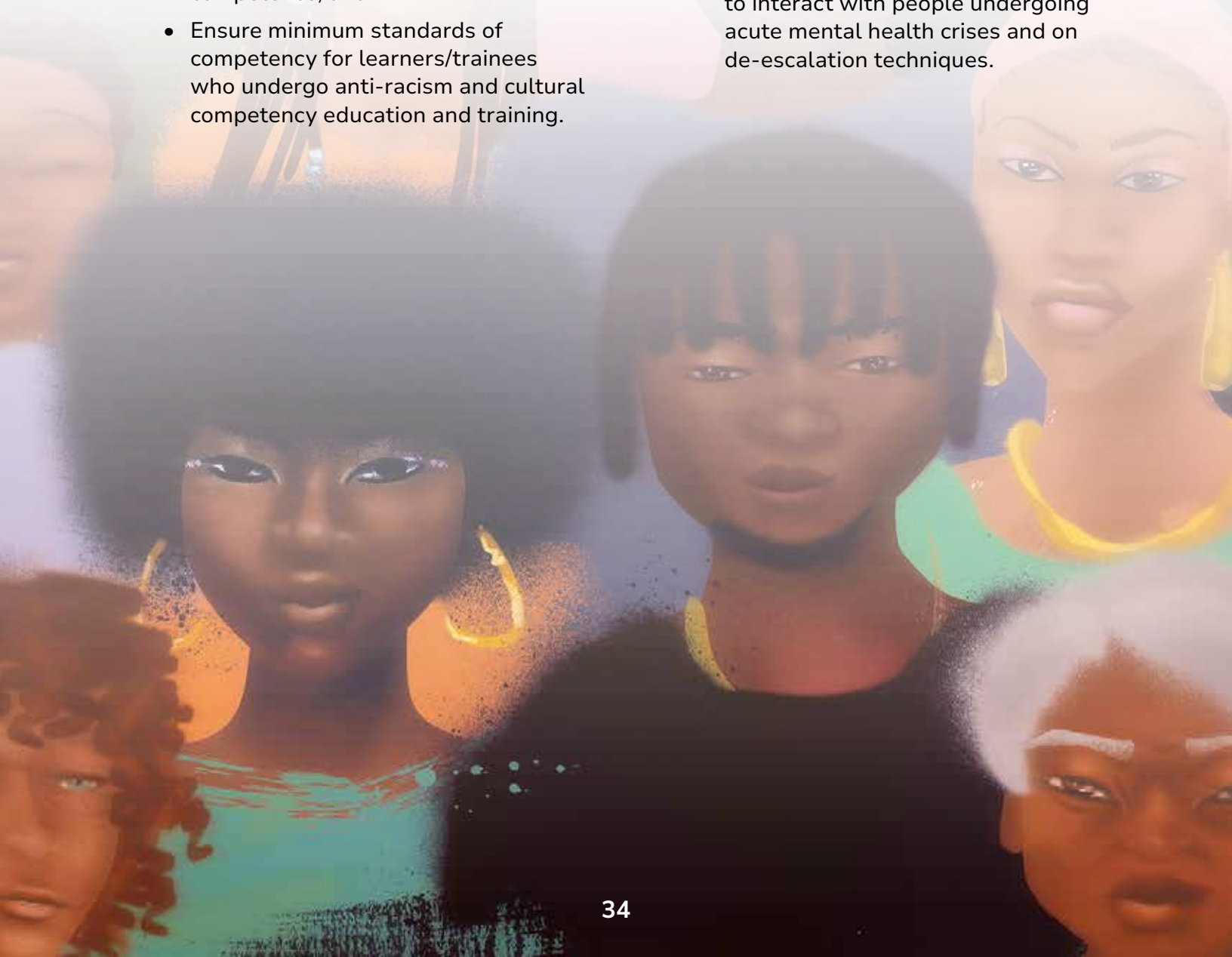
have been terminated for serious misconduct by other police agencies in Canada.

41 Enhance education and training on anti-racism and cultural competency:

- Fully integrate anti-racism and cultural competency education and training into the police curriculum (for example, the African Canadian Experience Workshop for the RCMP could be revised for expanded mandatory use with all RCMP members across Canada);
- Provide ongoing professional development opportunities for officers to deepen their understanding of systemic racism and cultural competence; and
- Ensure minimum standards of competency for learners/trainees who undergo anti-racism and cultural competency education and training.

42 Work with provinces, territories, municipalities and First Nations to address the current approach to dealing with mental health issues by:

- Requiring mental health workers to accompany police officers for requests for assistance pertaining to people in mental health crises who possess weapons. In instances where there are no weapons reported, mental health workers should respond without police presence;
- Discontinuing the practice of police officers conducting wellness checks and redirect funds for mental health workers to do this work; and
- Mandating and enhancing education and training for police officers on how to interact with people undergoing acute mental health crises and on de-escalation techniques.





Courts and legislation

“There needs to be a recognition that the current institutions were built on racism and colonial ideology. These systems are based on racism and discrimination, they are doing what they were created to do.”

Words of a participant, ISSAMBA, African Arts & Culture community Contributor Society (AACCCS), Report of Community engagement and consultation held in British Columbia for Canada’s Black Justice Strategy (2023).

The focus in Canadian criminal law is on the actions of individuals. Reparatory justice, on the other hand, is concerned with the injustices committed by the state, such as the centuries of oppression that Black people have experienced in Canada, which, as noted by participants in the consultations and online survey, the Canadian government has still not fully acknowledged or remedied. Participants also noted that the Canadian justice system offers insufficient methods of dealing with present-day acts of racism and discrimination. Acts, such as the illegal withholding of wages, mistreatment of foreign workers, sexual harassment of Black immigrant women by employers, and racist treatment of Black employees by co-workers or supervisors, are not addressed by criminal law, but complaints can be made to human rights or labour tribunals. Complainants often find these processes to be lengthy with frequent delays, and to be inadequate in understanding and dealing with anti-Black racism. Transformative change in the justice system begins with the recognition that it has caused harm, and to earn the trust and confidence of African Canadians, the justice system must make reparations for this harm.

Relatively little data on court outcomes disaggregated by race exists in Canada. Research on pre-trial detention has found that Black accused face a greater likelihood of being detained before trial than do white accused (Kellough and Wortley, 2002). Black accused in Ontario also spend longer in pre-trial detention than white accused (Mehler-Paperny, 2017). To address the relative lack of research in this area, Justice Canada recently undertook a study using national statistics to examine specific court outcomes for Black accused (Sagbini and Paquin-Marseille, 2023). In addition to their overrepresentation in Canadian criminal courts, relative to their representation in the general population, and in comparison to white accused, Sagbini and Paquin-Marseille (2023, p.6) found that Black accused were:

- more likely to encounter a withdrawal, dismissal or discharge;
- less likely to encounter a stay of proceedings or to be found guilty (including guilty pleas);
- equally likely to be acquitted;
- less likely to receive a fine or a conditional sentence;
- more likely to receive probation or a custodial sentence; and
- more likely to receive long-term custodial sentences of two or more years.

The pillar of the social determinants of justice demonstrates that poor outcomes in a number of areas contribute to Black individuals disproportionately coming into conflict with the law, and the policing pillar shows that over-policing and excessive surveillance can trigger a cascade of interactions and interventions within the justice system, each one affected by anti-Black racism. The courts and legislation pillar recognizes that many injustices and traumas have already happened by the time an individual accused person attends court. It also acknowledges that anti-Black racism is also faced by Black people who are part of the justice system in ways other than being accused persons, such as justice professionals, court staff, witnesses, or loved ones of accused persons.

The War on Drugs has disproportionately harmed African Canadians and has also been very destructive in the countries of origin of many Black people. Justice Canada (2017) has previously found, for example, that mandatory minimum penalties or sentences have a disproportionate impact on Black people, contributing to their overrepresentation in correctional facilities. Between 2007/08 and 2016/17, Justice Canada (ibid) found that drug offences accounted for 75% of offences punishable by a mandatory minimum penalty for which offenders were admitted to federal custody. We recognize that the Government of Canada has taken steps to reform the approach to dealing with controlled substances. However, these measures do not go far enough, and there is an urgent need for immediate action.

An individual's involvement with the criminal law as an accused begins when they are arrested and charged with an offence. Charging procedures vary across the country. In Quebec, British Columbia and New Brunswick, Crown attorneys pre-screen charges and determine whether it is appropriate to continue with the prosecution. A Statistics Canada report showed that in 2017 in Ontario, a province where police lay charges, almost half of those charges ended up being withdrawn

or dismissed before trial (Statistics Canada, 2023).⁷ Not only does this mean that a large number of people had to live with the anxiety and uncertainty of pending charges while on bail conditions or in pre-trial detention, but it also causes unnecessary expense and delay in the criminal justice system as a whole.

Even if charges are stayed against an individual, a participant in the community engagement and consultation held in 2023 in British Columbia for Canada's Black Justice Strategy (by ISSAMBA African Arts & Culture Community Contributor Society), noted that "the suspicions, allegations and unkind legal processes could mar their mental and emotional wellbeing", and, especially when they are young, they can "leave very angry" which may put them into a "dangerous spiral of recidivism that could bring them to the courts frequently." Crown attorneys, as trained lawyers whose job is to act in the public interest, are better placed than police to screen charges and make sure that they are properly laid.

There is some evidence that Black accused spend more time in pre-trial detention than do white accused. Pre-trial detention is known as "hard time" because many programs and services are not available to individuals who have not yet been sentenced, and offenders of all levels of risk are housed together. The Supreme Court of Canada acknowledged this hardship in *R. v. Summers*, 2014 SCC 26 (CanLII.)

There is a strong relationship between the social determinants of justice and the ability of an individual to succeed on bail, probation, parole, or a conditional or intermittent sentence. Despite these inequities in the bail system, politicians often complain that it is too easy to get bail, and they ask for the law to make it harder to receive. Most recently, this led to the Government of Canada enacting a "bail reform" bill. This thinking is misguided; the problem with bail is that, despite having a constitutional right to reasonable bail, not enough accused persons

are able to get it, and jails are overcrowded as a result. Furthermore, the tertiary ground⁸ is too broad and susceptible to being invoked due to unconscious or conscious racial bias. Prosecutors and decision-makers should be able to articulate a good faith, rational basis for detaining an individual prior to trial.

Where cases go to trial, African Canadians rarely get to appear before decision-makers who look like them, and more must be done to recruit and appoint Black judges. Participants in the consultations for the Strategy expressed their feelings of mistrust and alienation due to the underrepresentation of Black professionals in the criminal justice system. A community member from the community engagements and consultations held in 2023 in Saskatchewan (by Truly Alive Youth and Family Foundation Inc.) noted that “This makes the setting hostile, unpleasant, and socially unsafe for Black people with cases to address.” Another participant from the same consultation in Saskatchewan, stated that this type of environment “re-enacts the historical colonial/slavery injustices and experiences of Black people that have led to the present-day circumstances of bias, discrimination, and inequalities.”

Anti-Black racism on juries has been a longstanding concern in Canada. In *R. v. Parks*, 1993 CanLII 3383, the Ontario Court of Appeal agreed that it was possible that white jurors in Toronto might hold conscious or unconscious bias against Black people and that the trial safeguards of the jurors’ oath, warnings from the judge and the solemnity of the occasion might not be sufficient to overcome this bias.

Challenge for cause, the ability of lawyers to question jurors as to possible bias, is not a sufficient safeguard especially where potential jurors may hold unconscious biases toward Black people. Yet challenge for cause is now the only tool defence lawyers have to try to

compose a jury that will give their client the fairest trial possible. Peremptory challenges (where lawyers can strike a prospective juror without giving a reason) are no longer available in Canada as of September 2019, when Bill C-759 came into effect. The Supreme Court of Canada made it clear in *R. v. Chouhan*, 2021 SCC 26 (CanLII) that judges cannot use their powers to ensure that a jury is diverse. The court suggested that other legislative means be used to do so. This Strategy has provided those recommendations.

Especially after judges have received training in anti-Black racism, it is preferable for judges to use their discretion to sentence accused rather than have that discretion limited by Parliament. All sentencing tools should be available for all accused. Judges must still follow s.718 of the *Criminal Code*, which requires them to consider various principles, including that a sentence must be proportional to the degree of moral culpability, and that it must serve the aims of denunciation and deterrence as well as rehabilitation, and they must consider aggravating and mitigating factors. Case law providing the appropriate ranges for similar cases will also continue to be used. Removing mandatory minimums does not mean that everyone will get probation or a conditional sentence, but it means that exceptional circumstances can always be considered.

Impact of Race and Culture Assessment reports, or IRCAs, are used to give sentencing judges background information on an accused and information that shows how systemic anti-Black racism, adverse childhood experiences and other socio-economic factors have played a role in bringing a Black accused before the court. The federal government must expand and maintain funding for IRCAs in all provinces and territories. There is a pressing need for more trained IRCA writers outside Nova Scotia and Ontario.

A big area of concern for participants in the community consultations for the Strategy was the link between criminal law and immigration law, which often leads to removal of non-citizens. Deportation is devastating: it breaks up families and can send deportees to countries where they may not have lived since they were very young and no longer have connections. It also places an unfair burden on receiving countries, many of which are already struggling.

Very young adults aged 18-24 should not be housed in correctional facilities with more seasoned offenders, and should have the same opportunities as youth aged 12-17 to recover from a criminal conviction. It has been acknowledged elsewhere that some individuals do not mature until their mid-20s, and some provinces allow extension of care under child welfare legislation for that reason. The criminal justice system should extend the same opportunity.

Many participants in the consultation for the Strategy expressed having difficulties finding competent counsel with cultural knowledge. Part of the problem is that legal aid is chronically underfunded in every province, and its lawyers are inadequately paid. Black people also face significant barriers in becoming lawyers and in being able to do legal aid work. Transformative change in the legal system will be undertaken by well-trained, well-resourced lawyers who are responsive to the individuals they serve.

Recommendations

Reparative Justice

Medium term

- 43 **Establish a committee of Black justice professionals, academics and community leaders to study options for reparations to Black people for enslavement, segregation and racially-biased laws.**

Pre-charge stage

“The court system does not “protect or serve” us. It works to keep us oppressed.”

Words of a participant, ISSAMBA, African Arts & Culture Community Contributor Society (AACCCS), Report of Community engagement and consultation held in British Columbia for Canada’s Black Justice Strategy (2023).

Medium term

- 44 **Amend s.504 of the *Criminal Code* to require that all criminal charges referred by police be pre-screened by the Crown Attorney’s office before they are formally laid.**

Judicial interim release (bail)

Short term

- 45 **Add a section to s.515 of the *Criminal Code* that requires a judge or magistrate to consider the individual circumstances and background of every accused who applies for judicial interim release and to take those into account when imposing conditions of release.**
- 46 **Amend s.523.1(3) of the *Criminal Code* to state that an individual referred on an administration of justice offence where no harm to an individual or to property is alleged, shall not be detained in custody unless the prosecutor can demonstrate a material change in circumstance since the accused was last released on a summons, appearance notice, undertaking or release order, and that change in circumstance demonstrates clearly and cogently that the detention is necessary for the protection and safety of the public.**

- 47 Amend s.515(4) of the *Criminal Code* to add that judges may direct the accused to comply with these conditions only where the prosecutor can demonstrate that the condition(s) are necessary for the protection and safety of the public.
- 48 Amend the *Criminal Code* to remove s.515(10)(c), the tertiary ground of detention.

Drug offences

“I have very little faith in the system’s responsiveness to the needs of Black victims and its ability to be fair and just to accused Black people.”

Words of a participant, Jaku Konbit, Report of Community engagement and consultation held in Ontario for Canada’s Black Justice Strategy (2023).

Short term

- 49 Amend s.4(1) of the *Controlled Drugs and Substances Act* to remove all criminal penalties for possession offences of up to a 30-day supply of a controlled substance.
- 50 Automatically grant record suspensions for all existing convictions for possession offences.
- 51 Provide greater access to a controlled, safe supply of drugs.
- 52 Enact a section of the *Criminal Code* that prohibits the prosecution from calling as expert witnesses individuals who are employed as police officers or have been so employed in the last 5 years.

Victims and witnesses

“Black victims and witnesses are often treated like the accused or convicted rather than someone who has been harmed. ...Historical and contemporary instances of police brutality and racial profiling have eroded trust between the Black community and law enforcement. This lack of trust deters Black individuals from reporting crimes, cooperating as witnesses, or seeking help from the criminal justice system.”

Words of a participant, Jaku Konbit, Report of Community engagement and consultation held in Ontario for Canada’s Black Justice Strategy (2023).

Medium term

- 53 Provide mandatory training in anti-Black racism and cultural competence to all justice system professionals that must include specific training on treating victims of crime and witnesses in proceedings with respect and dignity.
- 54 Provide funding and training to ensure that all judicial centres have access to interpreters who speak a wide variety of languages other than English or French.
- 55 Fund the creation of an African Canadian Court Worker program that would place trained Black justice professionals in courthouses where a significant Black population attend court as accused, victims or witnesses and their family members. The Court Workers would act as a resource to Black court attendees, referring them to appropriate services, providing emotional support, and helping them navigate the court process.

Judicial selection

Short term

- 56 **Judicial selection committees must be proactive in recruiting and encouraging Black people and those from other underrepresented groups to apply to be judges and to sit on judicial selection committees:**
- Judicial selection committees must include representatives from Black and Indigenous communities in each province and territory.
 - Work with provinces and territories to enact similar provisions for their judicial selection committees.

Jury selection

Short term

- 57 **Restore the provisions for peremptory challenges as they existed prior to Bill C-75. Add a clause allowing either defence or prosecution to bring it to the judge's attention if they believe individuals are being challenged solely on the basis of their race, and for the judge to overrule challenges determined to be made on that basis.**
- 58 **Add race, ethnicity, citizenship and having a criminal record to s.626(2) of the *Criminal Code*.**
- Make corresponding changes to s.638(1) of the *Criminal Code*.

Medium term

- 59 **Work with the provinces and territories to ensure sufficient payment to jurors, and that transportation and childcare costs are covered for prospective jurors.**

Sentencing

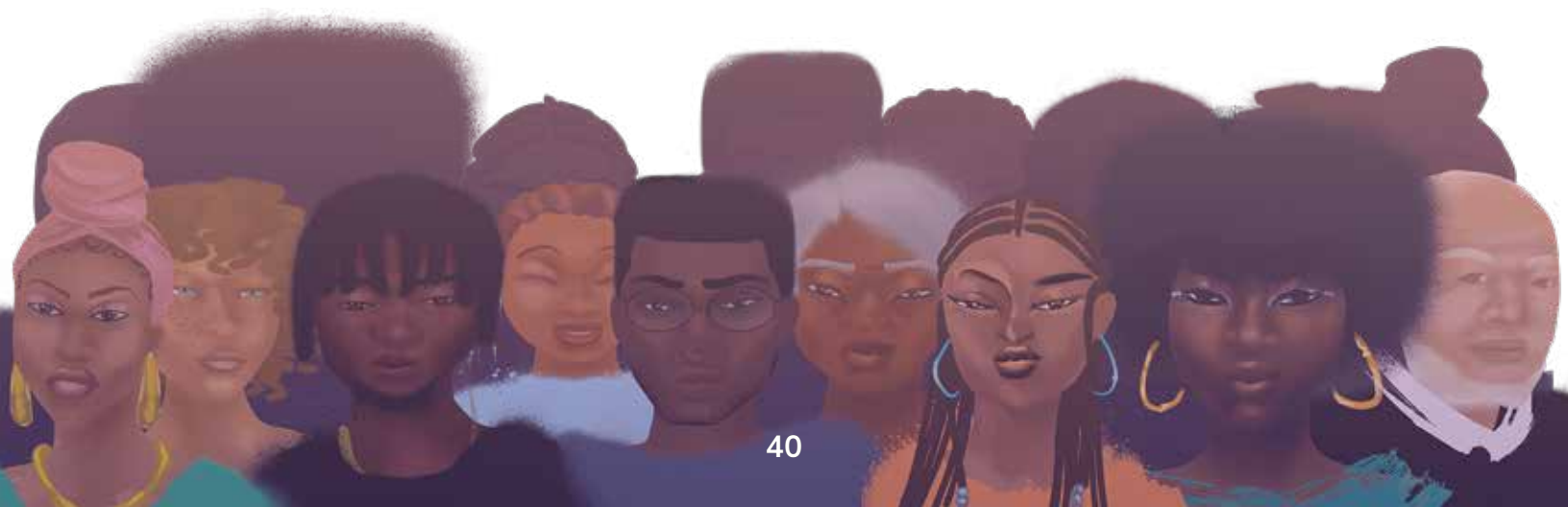
Short term

- 60 **Add Black offenders to s.718.2(e) of the *Criminal Code*.**
- 61 **Remove all mandatory minimum penalties in the *Criminal Code*.**
- 62 **Make conditional sentence orders available for all offences.**
- 63 **Work with the provinces and territories to expand the availability and use of restorative justice options, with a special focus on Black offenders.**

Impact of Race and Culture Assessments (IRCA)

Short term

- 64 **Ensure judges are educated and trained in the importance of ordering IRCA and the proper use of IRCA in sentencing Black offenders.**
- 65 **Provide stable, committed and long-term resourcing to every province and territory to train IRCA writers and provide accused with IRCA reports.**
- 66 **Expand funding of IRCA for use in parole hearings.**



Medium term

- 67 Work with the provinces to resource and create specialized courts for African Canadian accused that take a trauma-informed approach.

Immigration

“Deporting offenders after they have served their times contradicts the ethos of restorative justice.”

African Canadian Civic Engagement Counsel (ACCEC), Report of Community engagement and consultation held in Alberta for Canada’s Black Justice Strategy (2023).

Short term

If the recommendation is followed to eliminate all mandatory minimum sentences and make conditional sentence orders available for all offences, the following changes will not be needed. However, they are an alternative short-term solution to the problem of individuals being removed from Canada due to criminal convictions despite having strong ties to the community and various humanitarian and compassionate factors.

- 68 Amend s.36(1) of the *Immigration and Refugee Protection Act* to:

- Increase from 10 to 14 years the maximum term of imprisonment that makes a permanent resident or foreign national inadmissible;
- Increase from six months to 5 years the imposed term of imprisonment that makes a permanent resident or foreign national inadmissible, both for offences committed inside and outside Canada; and
- No longer consider all hybrid offences indictable, but proceed on the same election that the Crown did.

- 69 Amend s.44 of the *Immigration and Refugee Protection Act* to mandate Canada Border Services agents who complete admissibility reports to consider the impact of anti-Black systemic racism on individual applicants, take into account humanitarian and compassionate factors and length of stay in Canada. These considerations should be clearly communicated in training and instruction manuals.
- 70 That the *Immigration and Refugee Protection Act* be amended to allow for the filing of an application for permanent residence on humanitarian and compassionate grounds should a removal order be made. The filing of this application would suspend removal until there is a decision made by the Immigration, Refugees and Citizenship Canada and the judicial review process to the Federal Court is completed, if applicable.
- 71 That a legislative amendment to the *Immigration and Refugee Protection Act* and the *Immigration and Refugee Protection Regulations* be made to delay the enforcement of a removal order until all appeal deadlines and processes have been exhausted.
- 72 That a legislative amendment to the *Immigration and Refugee Protection Act* and *Immigration and Refugee Protection Regulations* be made to allow children 12 years of age and older whose parent or guardian is being removed from Canada to make the decision to follow their parent or guardian or remain in Canada, if reasonable arrangements can be made.
- 73 Provide a path for family members of individuals under removal orders to remain in Canada through the filing of an application for permanent residence on humanitarian and compassionate grounds, notwithstanding family, financial or medical inadmissibility under sections 38, 39 and 42 of the *Immigration and Refugee Protection Act*.

- 74 Amend the *Immigration and Refugee Protection Act* and *Immigration and Refugee Protection Regulations* to delay the enforcement of a removal order until a deported person on probation or parole has served their sentence and filed and received a decision on their application for a judicial record suspension.
- 75 Amend s.40(3) of the *Immigration and Refugee Protection Act* to suspend removal for misrepresentation until an application to grant permanent resident status on humanitarian and compassionate grounds can be filed, decided and appealed if applicable.
- 76 Amend s.63(3) and s.64 of the *Immigration and Refugee Protection Act* to allow all foreign nationals and permanent residents to appeal any removal order.
- 77 Add a provision to s.25 of the *Immigration and Refugee Protection Act* so that individuals awaiting a decision on a Humanitarian and Compassionate application shall not be removed from Canada until that decision is made.
- 78 Allow an application for permanent residence on humanitarian and compassionate grounds to be filed, notwithstanding the one-year delay following receipt of a refusal decision from the Refugee Protection Division, Immigration Appeal Division or Pre-Removal Risk Assessment hearing.
- 79 Amend s.48 of the *Immigration and Refugee Protection Act* to maintain permanent resident status for individuals who have removal orders in force against them but cannot be removed from the country.

- 80 Asylum seekers should not be detained in provincial or federal correctional facilities for more than 48 hours unless a representative of Canada Border Services Agency can demonstrate to a member of the Immigration and Refugee Board that detention of the individual poses a risk to national or public safety and conditions other than detention cannot be crafted to mitigate that risk.

Youth

Short term

- 81 Extend the *Youth Criminal Justice Act* to apply to individuals from ages 12-24.

Access to justice

“The Human Rights Tribunal as it functions is a big joke. They are simply not equipped to take and/or act upon reports of racial discrimination and abuse levied towards Black people in BC. At the federal level, it is a game of passing-the-buck, where the conversation is circular and refers people victimized by racial violence back to the provincial level.”

Words of a participant, ISSAMBA, African Arts & Culture Community Contributor Society (AACCCS), Report of Community engagement and consultation held in British Columbia for Canada’s Black Justice Strategy (2023).

Short term

- 82 Provide increased funding to the provinces and territories for the provision of legal aid to individuals in need of counsel, and ensure these transfers are specifically earmarked so that they cannot be used for any other purpose.
- 83 Provide legal aid funding to allow Black and other applicants to challenge violations of their civil and human rights in criminal, prison law, regulatory and civil cases that may not otherwise be covered according to provincial legal aid criteria.

- 84 Substantially expand the Court Challenges program to include a stream of litigation based on challenges to anti-Black racism.

Medium term

- 85 Partner with Canadian Banks to launch and maintain a Black Legal Education Debt Relief Program that includes robust offerings of lower-interest rates, longer repayment periods, debt forgiveness and other debt relief programs for Black articling students and early-career lawyers who choose a public interest job within the legal profession that earns them less than \$120,000 for 3 consecutive tax years.





Corrections

“The correction system is so violent towards Black inmates.”

Words of a participant, African Canadian Civic Engagement Council (ACCEC) Report of Community engagement and consultation held in Alberta for Canada’s Black Justice Strategy, (2023).

The over-incarceration of Black people in Canada, along with their experiences within correctional institutions, continues to garner significant public attention and concern. While a small number of studies document the overrepresentation of Black people in provincial institutions (see for example, Owusu-Bempah and Wortley, 2014; Owusu-Bempah et al., 2023), limited data at the provincial/territorial level means that much of our understanding of the incarceration of Black people in Canada centres on the federal system. Recent reports from the Standing Senate Committee on Human Rights (2021), the Auditor General of Canada (2022), and the Office of the Correctional Investigator (OCI, 2022), all highlight the overrepresentation of Black people in federal corrections and document negative experiences across a host of correctional outcomes. Data from 2021-2022 show that Black people make up 9.2% of the overall population in federal custody, despite making up 4.3% of the general Canadian population (OCI, 2022; Statistics Canada, 2022).

The OCI’s annual report for 2022 includes an “Update on the Experiences of Black Persons in Canadian Federal Penitentiaries”, building upon the agency’s ground-breaking 2013 investigation, “A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries”. The OCI’s (2013) study found negative outcomes and experiences for Black prisoners across key correctional areas/outcomes including security classification, access to programming and employment opportunities, involuntary transfers,

institutional discipline, the use of force, solitary confinement, and parole. The OCI’s updated study reveals minimal changes since its 2013 investigation and, in some respects, conditions for federally incarcerated Black individuals may have worsened. The OCI (2022) notes the persistence of institutional racism, challenges in accessing culturally-relevant services and interventions, and correctional programming that does not reflect their lived experiences, as important challenges facing Black prisoners. The OCI concludes its 2022 report by stating that “All of the problems and concerns identified in the Office’s 2013 investigation, including racism, discrimination, stereotyping and labelling of Black prisoners remain pervasive and continue to raise significant concerns” (OCI 2022, p. 69). These concerns are echoed in the Standing Senate Committee on Human Rights and Auditor General of Canada reports cited above.

Incarceration represents one of the greatest deprivations of liberty an individual can experience in Canada. The findings of previous research call for a thorough examination of the correctional experiences of Black people, and a reassessment of current approaches to managing this vulnerable population within corrections. While there remains a need to better understand the correctional experiences of Black prisoners, the insights and recommendations advanced in previous research and commissions of inquiry such as those documented above, demand attention.

Recommendations

“(As) part of our correctional plan we are must attend programs. Parole depends on this, however the programs that are recognized are CSC are geared to the White population.”

Words of a participant, Think Twice Report of Community engagement and consultation held in Ontario for Canada’s Black Justice Strategy (2023).

Short term

86 In order to maintain familial relationships and ties to the community, telephone call costs for individuals in federal correctional facilities should, within reasonable limits, be covered by the correctional system instead of by prisoners.

- The federal government should work with provinces and territories to expand this measure to provincial and territorial institutions.

87 Provide supports for the families of Black people who are incarcerated. For example, by providing funding for transportation, food, subsidies for lodging to support overnight stays. This funding should also support childcare costs to ensure that those incarcerated can stay connected to their families.

Medium term

i) The Correctional Service of Canada (CSC) cease using the “Ethnocultural Offender” label, amend associated policies and practices, and treat Black people as a distinct group.

Despite ongoing efforts to improve correctional experiences and outcomes for Black prisoners, CSC continues to utilize its “ethnocultural offender” designation to develop policies and interventions aimed at meeting the needs

of Black and other racialized prisoners. CSC defines an “ethnocultural offender” as “any offender who has specific needs based on ethnicity, culture, religion or language and who has a desire to preserve their cultural identity and practices”.

The use of the term “ethnocultural offender” by CSC, particularly when applied to Black people, demands critical review. The failure to explicitly address race within the “ethnocultural offender” classification is a critical flaw; it overlooks the importance of race in structuring life outcomes, and seemingly negates the impact of systemic racism and racial discrimination that significantly impact the lives of Black individuals, both within and outside the correctional system. Black people face severe overrepresentation in the Canadian correctional system, and experience a host of negative correctional outcomes, a reality that cannot be fully understood or addressed without acknowledging the influence of race, in addition to factors such as culture, ethnicity and religion.

By not explicitly considering race, and more clearly identifying Black people as a distinct category, rehabilitation programs and policies developed for “ethnocultural offenders” may fall short in addressing the unique challenges faced by Black prisoners. These challenges include dealing with racial bias, discrimination, and the long-term effects of systemic racism, which require specific attention and strategies beyond what might be provided under a general ethnocultural framework.

Below is a list of suggested actions:

88 Cease Use of “Ethnocultural Offender” Label: CSC should discontinue the use of this label, which generalizes and fails to recognize the distinct challenges faced by Black prisoners. The cessation of this label is the first step toward acknowledging the unique racial and socio-economic experiences of Black prisoners.

89 Amend Policies and Practices: Revise existing policies and practices to ensure they are race-conscious and address the specific needs of Black prisoners. This includes reforming rehabilitation programs, intervention strategies, and reintegration plans to be more inclusive and effective for Black individuals.

90 Create Specific Programs for Black Prisoners that:

- Are culturally relevant to Black people and trauma-informed;
- Are oriented toward rehabilitation and self-development, providing cognitive-behavioural approaches to deal with mental health and addiction issues, acquiring academic diplomas, providing skills that are transferrable to needs in the labour market (especially those connected directly to employment opportunities upon release); and
- Are developed and implemented in partnership with community organizations.

91 Education, Training and Awareness for Staff: Implement comprehensive education and training programs for CSC staff to enhance their understanding of systemic racism, racial discrimination, and the unique challenges Black prisoners face. This education and training should foster a more empathetic and informed approach in dealing with Black prisoners.

92 Public Reporting and Transparency: Ensure transparency by publicly reporting the progress and outcomes of these measures.

A more comprehensive approach is needed, one that recognizes Black prisoners as a distinct group due to their unique racial and socio-economic experiences, while also respecting their cultural and ethnic diversity. Such an approach is crucial for effectively addressing the systemic factors contributing to the overrepresentation of Black prisoners and

for ensuring that programming, interventions, and reintegration strategies are appropriate, equitable, and effective.

ii) CSC should undertake a comprehensive external review and validation of its risk assessment and classification tools to ensure suitability for Black people.

93 In light of the ongoing concerns regarding the treatment and classification of Black people within Canada's federal correctional system, we recommended that CSC undertake a comprehensive external review of its risk assessment and classification tools (e.g., the Custody Rating Scale and Security Reclassification Scale) to ensure their validity and suitability for Black people. This review should be conducted with the following objectives:

- *Assessing Cultural and Racial Bias:* The review should specifically assess the extent to which current risk assessment and classification tools may embed cultural or racial biases that disproportionately affect Black prisoners. It is essential to determine if these tools are inadvertently perpetuating systemic racism or misrepresenting the risk levels of Black people.
- *Involving Experts and Community Leaders:* The review should be conducted by an independent panel comprising experts in criminal justice, psychology, and sociology, with a significant representation from leaders drawn from Black communities and those with expertise in anti-racism and racial (in)justice.
- *Comparative Analysis:* The review should include a comparative analysis with other jurisdictions that have taken action to reform risk assessment tools to reduce racial biases. Learning from these models can provide valuable insights into potential improvements and innovations.

- *Public Transparency:* The process and findings of the review should be made public to ensure transparency and build trust within the community. This transparency is crucial for demonstrating CSC's commitment to anti-racism, fairness and equity.
- *Recommendations for Reform:* The review should result in concrete recommendations for reforming current risk assessment and classification tools. These recommendations should focus on eliminating racial bias, increasing cultural sensitivity, and ensuring that the tools accurately and fairly assess risk for Black prisoners.
- *Implementation and Follow-up:* Following the review, CSC should develop a clear implementation plan to incorporate the recommended changes. This plan should include timelines, accountability measures, and a framework for ongoing evaluation of the effectiveness of the revised tools. Additionally, CSC should commit to regular follow-up assessments to ensure that the implemented changes continue to serve their intended purpose and adapt to evolving understandings of racial and cultural dynamics. The commitment to this external review and the subsequent implementation of its findings are critical steps for CSC to address systemic issues and ensure that its practices are fair, unbiased, and suitable for all individuals, particularly people who are Black.

iii) CSC should undertake a comprehensive external review of its use of force policies and practices.

- 94 CSC should conduct an external review of its use of force policies and practices, specifically addressing the overrepresentation of Black individuals in use of force incidents. This review should thoroughly assess the extent of this disproportionality, explore preventative interventions to reduce the use of force involving Black prisoners, and critically evaluate CSC's related training programs for cultural sensitivity and racial bias.**
- 95 Furthermore, the CSC should work in earnest to address the recommendations previously advanced by important government bodies and agencies, including the OCI (2022), the Auditor General of Canada (2022), and the Senate Standing Committee on Human Rights (2021).**
- 96 Limit the use of Structured Intervention Units (SIUs) for Black prisoners:**
- Implement regular reviews of SIU placements to identify potential patterns of racial bias;
 - Provide training for staff on the impact of racial bias in SIU placement decision-making and strategies to mitigate its influence;
 - Comprehensive training in anti-Black racism must include the Independent External Decision-Makers who review an offender's time in an SIU.
 - Amend the *Corrections and Conditional Release Act* to include consequences to an institutional head where a matter is not referred to an Independent External Decision-Maker within the prescribed time frame; and
 - Include consequences to institutional staff where the SIU provisions of the *Corrections and Conditional Release Act* are not followed without justification.

97 Reevaluate gang labeling practices:

- Implement transparent and fair criteria for gang labeling and provide an accessible process for prisoners to challenge gang labels; and
- Regularly review gang affiliation criteria to ensure their accuracy and prevent over-labeling.

98 Examine involuntary transfer policies:

- Implement regular reviews of transfer decisions to ensure compliance with guidelines and to identify potential issues of racial inequity.

99 Promote equitable access to temporary absences for Black prisoners:

- Mitigate the impact that systemic racial inequalities in correctional outcomes has on access to temporary absences (e.g., racial inequities in risk assessments and security classification, inequities in disciplinary practices, inequities in assessments of institutional adjustment and attitudes towards the justice system); and
- Ensure that decisions regarding temporary absences are based on objective criteria and not influenced by racial bias.

100 Address racial disparities in institutional discipline that have been demonstrated to negatively affect Black prisoners:

- Regularly review disciplinary practices to identify and address any racial disparities or bias in the treatment of Black prisoners;
- Implement regular audits of disciplinary actions to identify potential patterns of racial bias; and

- Provide training for staff on the impact of racial bias in disciplinary decision-making and strategies to mitigate its influence.

101 Improve the complaints processes for prisoners:

- Establish a transparent and accessible complaint process, with appropriate oversight.

102 Increase accountability within correctional institutions, ensuring staff are addressing unnecessarily punitive practices such as dehumanizing, neglecting, brutalizing, or harassing Black people by:

- Creating legislation that outlines the parameters of acceptable practices, and prohibits and/or legally penalizes behaviour that transgresses parameters. The efficacy of this legislation should be assessed;
- Mandating and funding de-escalation education and training; and
- Work with the provinces and territories to fund and develop independent provincial/territorial oversight bodies for correctional facilities that handle misconduct within institutions and that can penalize staff members through firings and legal action. The oversight body should be evaluated for efficacy.

103 Work with provinces and territories to establish a nation-wide database that tracks complaints and penalties for staff in custodial settings. Prohibit hiring correctional staff that have been terminated for misconduct in other institutions.



Parole, re-entry and reintegration

“The system is set up to keep you committing crime...Conditions that are being imposed that don’t make sense. There is the lack of things that actually break recidivism, like job training.”

DESTA Black Community Network, Report of Community engagement and consultation held in Quebec for Canada’s Black Justice Strategy (2023).

Given the gross overrepresentation of Black people in correctional institutions in Canada, parole, re-entry, and reintegration into the community represent another key focus of the Strategy. This Strategy calls for wide-spread decarceration because we recognize the vast collateral consequences of incarceration (see Kirk and Wakefield, 2018) and question its utility as a broad approach to dealing with criminality (Cullen et al, 2011), especially in light of what we have documented with respect to the “social determinants of justice” above (see Clear, 2009).

Evidence from the federal system suggests that Black prisoners are less likely on average than the general prisoner population to receive temporary absences, day parole, and full parole (OCI, 2020). An analysis of grant rates by race between 2012-2018 found that Black men in federal prisons were 24 percent less likely than white men to be granted parole in the first year they became eligible, even after controlling for other relevant factors like age, sentence length, offence severity, and risk assessment scores (Cardoso, 2022). Differential access to parole is especially pronounced for young Black prisoners, who are even less likely to be granted both day and full parole compared to the general prisoner population (OCI, 2017).

Access to temporary absences, day parole, and full parole are important as they serve to facilitate the re-entry and reintegration process by enabling prisoners to transition

back into the community while still serving their sentence. A lack of access to these forms of release by Black prisoners may be influenced by other forms of racial inequity experienced within correctional settings, such as those discussed in the previous section, “Corrections.” A lack of health care, mental health care, skills training, counselling or even the ability to make affordable phone calls, and trauma from being mistreated in the institution, means that many offenders are not doing well when they are released. They can then be overwhelmed with their new freedom.

In light of this reality, the Standing Senate Committee on Human Rights has called on CSC to “implement a strategy to reduce barriers to early release for federally-sentenced Black persons” (2021). CSC must make more concerted efforts to better prepare Black prisoners for release.

The opinion of a parole officer, as shared at a parole hearing, is very important, and the recommendations in the Corrections section regarding programming, culturally-appropriate resources, resolution of complaints and the conduct of correctional officers also apply to our proposed recommendations for the parole system.

Consultation participants noted that community groups are not involved in release planning as often as they should be, and even where they are involved, they do not

always have the resources to properly support individuals needing their services. Even successful community-led programs, such as the Hoodistique program in Quebec which provides targeted parole services to Black offenders, have limited funding (in that case, a 3-year funding commitment) and face barriers in getting started.

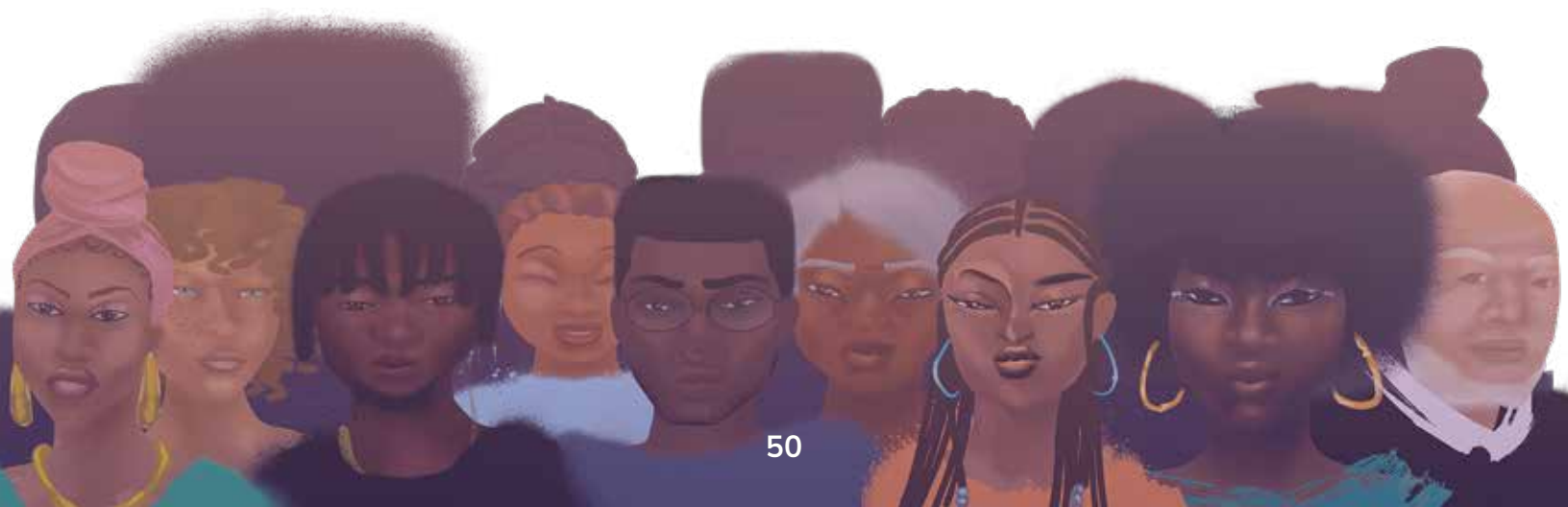
The re-entry and reintegration experiences of Black people are also heavily influenced by factors in the community. Through its work on the Federal Framework to Reduce Recidivism (2022), Public Safety Canada has recently identified five priority areas to assist offenders with their reintegration: housing, education, employment, health, and positive support networks. These priority areas align with the social determinants of justice outlined above. Individuals returning to the community after a period of incarceration also have the additional concern of a criminal record, which can make it even harder to access services or find employment. They may also require specialized services, especially in the areas of addictions and mental health and gang disaffiliation, as incarceration often worsens these issues.

The great needs of inmates being released were summed up by a participant from the DESTA Black Community Network, Community engagements and consultations held in Quebec, in 2023, who said, “Treat them with love and respect.”

Recommendations

Short term

- 104 Enhance funding and resourcing to increase the number of African Canadian Integration Officers.**
- 105 Increase funding for IRCAs to enable their utilization at parole hearings.**
- 106 Release inmates in the province where they wish to be released, with access to services in the official language of their choice.**
- 107 Create partnerships with community-based organizations with experience in assisting African Canadians with reintegration. Properly resource these organizations and allow them access to inmates while they are still incarcerated to help with release planning.**
- 108 Identify, hire and train more Black people to work as parole officers, probation officers, correctional officers, parole board members and others involved in release and reintegration.**
- 109 Retroactively cancel the imposition of the Victim Services Surcharge for all convictions from 1989 – 2018 and consider the five-year waiting period for a record suspension to start running from the time that the rest of the sentence was complete.**



110 Amend s.732 of the *Criminal Code* to prevent individuals being placed on strict probation programs without the knowledge and input of the sentencing judge and defence counsel.

Medium term

111 Review and revise the criteria for parole decisions to make sure that decisions are based on objective information and not influenced by racial bias.

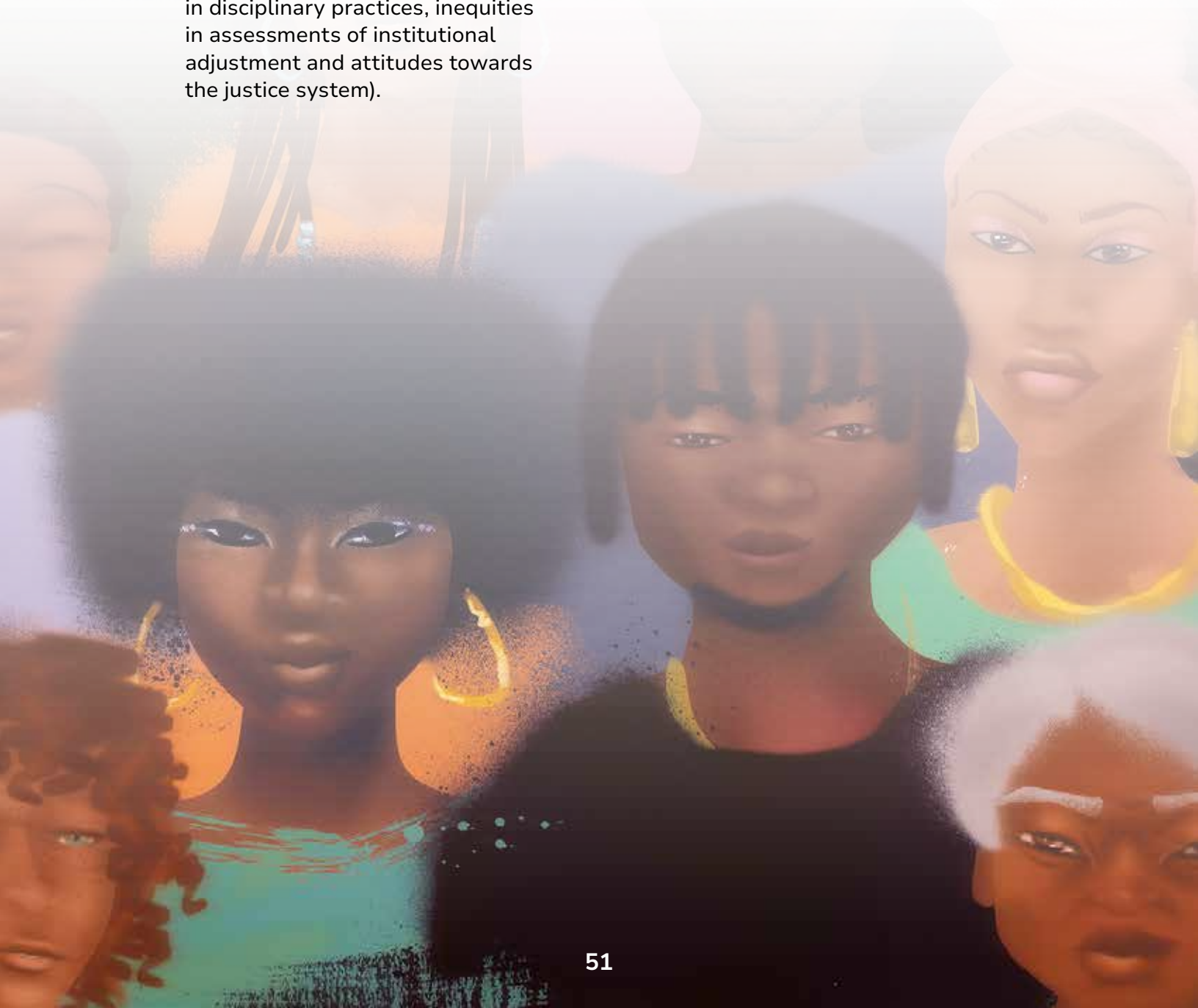
- Mitigate the impact that systemic racial inequalities in correctional outcomes has on access to parole (e.g., racial inequities in risk assessments and security classification, inequities in disciplinary practices, inequities in assessments of institutional adjustment and attitudes towards the justice system).

112 Provide mandatory education and training in anti-Black racism and cultural competency to parole officers and parole board members.

- Work with the provinces and territories to provide this training to probation officers.

113 Create a mechanism to hold decision-makers accountable when they make biased decisions on parole.

114 Work with stakeholders from Black communities to revise the National Crime Prevention Strategy and Federal Framework to Reduce Recidivism to include measures targeted to Black





Conclusion

Concerns with the process

We cannot conclude this report without acknowledging some of the obstacles faced in undertaking the work to develop the Strategy. The community consultations and the Steering Group meetings led to rich and important conversations that have informed the Strategy. However, concerns were expressed about the short timelines provided to undertake the work. There was only a year between the formation of the Steering Group and the completion of the Strategy, and even less time was given to community groups to develop and implement broad public consultations. Furthermore, some community organizations expressed that their membership was experiencing “consultation fatigue” and a distrust of the process, given the perceived lack of action resulting from previous engagements. Some organizations also expressed challenges in gaining access to custodial institutions to speak to Black prisoners. Others were unable to attend all the cities and towns in their province or territory. This limited the number and diversity of voices that were heard, and meant that there was a lack of standardization between the reports from each province or territory. As well, community groups expressed a need for greater resources to adequately undertake this work.

If similar work is done in the future, we recommend that more time be dedicated to it, and that there be increased compensation and more structure surrounding the process. We also recommend that the work of the Strategy continue, with further consultations and opportunities to participate offered to community groups and stakeholders.

With these considerations in mind, this Strategy envisions a justice system very different from any that Canada has ever had. If all these recommendations are enacted, we expect that, with time, the criminal justice system will transform from one that punishes the poorest and most marginalized members of our society, and that carries a history of racism and oppression, to one that is fair and equitable and free from discrimination; in other words, a justice system that is truly just.

We are proposing big changes that require Canadians to think of justice differently; to move away from narratives of punishment

to ones of accountability, reparations, and crime prevention. These changes will redirect resources to communities, to address the root causes of crime by healing trauma and increasing opportunity. The criminal justice system we have was built over centuries, and it will take time to dismantle it and to build a new relationship with Black communities of trust and confidence in a new system. This is the only way forward to safer, healthier communities, and the sooner we start implementing this Strategy, the sooner we will see its positive effects. It is the hope of the authors that what we have offered will make a real and important difference in the lives of our children, and all who come after us. In the spirit of the Africentric lens by which we wrote this report, we conclude with a Yoruba word often used in Black communities to signal the life force or power that creates that of which we speak: Ase.

References

- Auditor General of Canada. (2022). *Systemic Barriers—Correctional Service Canada*. Available: https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202205_04_e.pdf
- Barnes, A. (2009). Displacing Danger: Managing Crime Through Deportation. *Journal of International Migration and Integration*, 10(4), 431.
- Clear, T. R. (2009). *Imprisoning communities: How mass incarceration makes disadvantaged neighborhoods worse*. New York: Oxford University Press.
- Commission on Systemic Racism in the Ontario Criminal Justice System. (1995). *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*. Toronto: Queen's Printer for Ontario.
- Cotter, A. (2022). *Perceptions of and experiences with police and the justice system among the Black and Indigenous populations in Canada*. Canadian Centre for Justice and Community Safety Statistics. Available: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2022001/article/00003-eng.htm>.
- Cullen, F. T., Jonson, C. L., & Nagin, D. S. (2011). Prisons do not reduce recidivism: The high cost of ignoring science. *The Prison Journal*, 91(3_suppl), 48S-65S.
- Drakulich, K., & Rodriguez-Whitney, E. (2018). Intentional inequalities and compounding effects: The state of race and justice theory and research. *The handbook of race, ethnicity, crime, and justice*, 17-38.
- Decker, S. H., & Smith, R. L. (1980). Police minority recruitment: A note on its effectiveness in improving black evaluations of the police. *Journal of Criminal Justice*, 8(6), 387-393.
- Del Toro, J., Lloyd, T., Buchanan, K. S., Robins, S. J., Bencharit, L. Z., Smiedt, M. G., ... & Goff, P. A. (2019). The criminogenic and psychological effects of police stops on adolescent black and Latino boys. *Proceedings of the National Academy of Sciences*, 116(17), 8261-8268.
- Department of Justice. (2017). *The Impact of Mandatory Minimum Penalties on Indigenous, Black and Other Visible Minorities*. Available: <https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/docs/oct02.pdf>.
- Geller, A., Fagan, J., Tyler, T., & Link, B. G. (2014). Aggressive policing and the mental health of young urban men. *American journal of public health*, 104(12), 2321-2327.
- Kaukinen, C., & Colavecchia, S. (1999). *Public perceptions of the courts: An examination of attitudes toward the treatment of victims and accused*. Ottawa: Canadian Criminal Justice Association.
- Kirk, D. S., & Wakefield, S. (2018). Collateral consequences of punishment: A critical review and path forward. *Annual Review of Criminology*, 1, 171-194.
- Maynard, R. (2017). *Policing Black lives: State violence in Canada from slavery to the present*. Halifax: Fernwood Publishing.
- Mensah, J., Firang, D., J. Williams, C., & Afrifah, M. (2021). Racial discrimination in the Canadian criminal justice system: How anti-Black racism by the Toronto police harms us all. *Canadian Social Work Review*, 38(2), 63-86.
- Mosher, C. (1998). *Discrimination and denial: Systemic racism in Ontario's legal and criminal justice systems, 1892-1961*. Toronto: University of Toronto Press.
- Murty, S., Komanduri, R., Julian, B. & Smith, J. (1990). The Image of the Police in Black Atlanta Communities. *Journal of Police Science and Administration*, 17(4):280-287.
- Office of the Correctional Investigator. (2013). *A Case Study of Diversity in Corrections: The Black Prisoner Experience in Federal Penitentiaries*. Available: <https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx>.

- Office of the Correctional Investigator. (2017). Annual Report of the Office of the Correctional Investigator 2016-2017. Ottawa, ON. <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20162017-eng.aspx>
- Office of the Correctional Investigator. (2021). Annual Report 2020-2021. Office of the Correctional Investigator. <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20202021-eng.pdf>
- Office of the Correctional Investigator. (2022). Annual Report of the Office of the Correctional Investigator 2021-2022. Available: <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20212022-eng.aspx#s11>
- Ontario Human Rights Commission. (2018). *A Collective impact: Interim Report on the Inquiry into Racial Profiling and Racial Discrimination of Black Persons by the Toronto Police Service*. Toronto: Government of Ontario.
- Owusu-Bempah, A., & Gabbidon S. (2020). *Race, Ethnicity, Crime, and Justice: An International Dilemma*. New York: Routledge.
- Owusu-Bempah, A., Jung, M., Sbaï, F., Wilton, A. S., & Kouyoumdjian, F. (2023). Race and incarceration: The representation and characteristics of Black people in provincial correctional facilities in Ontario, Canada. *Race and Justice*, 13(4), 530-542.
- Owusu-Bempah, A., & Luscombe, A. (2021). Race, Cannabis and the Canadian War on Drugs: An Examination of Cannabis Arrest Data by Race in Five Cities. *International Journal of Drug Policy*, 91, 102937.
- Owusu-Bempah, A., & S. Wortley. (2014). Race, Crime, and Criminal Justice in Canada. In S. Bucerius and M. Tonry (eds.) *The Oxford Handbook on Race, Ethnicity, Crime, and Immigration* (pp. 281–320). New York: Oxford University Press.
- Samuels-Wortley, K. (2021). To serve and protect whom? Using composite counter-storytelling to explore Black and Indigenous youth experiences and perceptions of the police in Canada. *Crime & delinquency*, 67(8), 1137-1164.
- Samuels-Wortley, K. (2022). Youthful discretion: Police selection bias in access to pre-charge diversion programs in Canada. *Race and Justice*, 12(2), 387-410.
- Sewell, A. A., Jefferson, K. A., & Lee, H. (2016). Living under surveillance: Gender, psychological distress, and stop-question-and-frisk policing in New York City. *Social science & medicine*, 159, 1-13.
- Singh, I. (2020). 2020 already a particularly deadly year for people killed in police encounters, CBC research shows: CBC's Deadly Force database looks at role of race, mental health in deaths. *CBC News*. Available: <https://newsinteractives.cbc.ca/features/2020/fatalpoliceencounters/>.
- Sprott, J. B., & Doob, A. N. (2014). Confidence in the police: Variation across groups classified as visible minorities. *Canadian Journal of Criminology and Criminal Justice*, 56(3), 367-379.
- Sprott, J. B., & Doob, A. N. (2014). Confidence in the police: Variation across groups classified as visible minorities. *Canadian Journal of Criminology and Criminal Justice*, 56(3), 367-379.
- Standing Senate Committee on Human Rights. 2021. *Human Rights of Federally-Sentenced Persons*. Ottawa, ON: Senate. https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf.

Tyler, T. R. (1988). What is procedural justice?: Criteria used by citizens to assess the fairness of legal procedures. *Law and Society Review*, 103-135.

Tyler, T. R. (2003). Procedural justice, legitimacy, and the effective rule of law. *Crime and Justice*, 30, 283-357.

Tyler, T. R., & Fagan, J. (2008). Legitimacy and cooperation: Why do people help the police fight crime in their communities? *Ohio St. J. Crim. L.*, 6, 231.

Wortley, S. & Jung, M. (2020). *Racial Disparity in Arrests and Charges: An analysis of arrest and charge data from the Toronto Police Service*. Ontario Human Rights Commission.

Wortley, S., & Owusu-Bempah, A. (2009). Unequal before the law: Immigrant and racial minority perceptions of the Canadian criminal justice system. *Journal of International Migration and Integration*, 10(4), 447-473.

Wortley, S., & Owusu-Bempah, A. (2011). The usual suspects: police stop and search practices in Canada. *Policing and Society*, 21(4), 395-407.

Wortley, S., & Owusu-Bempah, A. (2022). Race, police stops, and perceptions of anti-Black police discrimination in Toronto, Canada over a quarter century. *Policing: An International Journal*, 45(4), 570-585.

Wortley, S., & Tanner, J. (2003). Data, denials, and confusion: The racial profiling debate in Toronto. *Canadian Journal of Criminology and Criminal Justice*, 45(3), 367-390.

Wortley, Scot. (2019). *Final Report of the Inquiry into Police Street Checks in Halifax, Nova Scotia*. Halifax: Nova Scotia Human Rights Commission.



Glossary

Accused: a person who has been charged with a crime by police and/or prosecutors, but has not yet been found guilty.

Administration of justice offence: a breach of a condition of an undertaking, release order, probation order, or other offence of a court, which has not caused any damage to property or any harm to another person.

Africentrism: a conceptual framework that is rooted in the epistemology, cosmology, and axiology of the indigenous African worldview ([Africentrism—Standing on Its Own Cultural Ground - Tolliver - 2015 - New Directions for Adult and Continuing Education - Wiley Online Library](#)).

Anti-Black racism: “Anti-Black racism is prejudice, attitudes, beliefs, stereotyping and discrimination that is directed at people of African descent and is rooted in their unique history and experience of enslavement and its legacy. Anti-Black racism is deeply entrenched in Canadian institutions, policies and practices, to the extent that anti-Black racism is either functionally normalized or rendered invisible to the larger White society. Anti-Black racism is manifest in the current social, economic, and political marginalization of African Canadians, which includes unequal opportunities, lower socio-economic status, higher unemployment, significant poverty rates and overrepresentation in the criminal justice system” (Government of Ontario, 2021).

Anti-racism approach: “Anti-racism is a process, a systematic method of analysis, and a proactive course of action rooted in the recognition of the existence of racism, including systemic racism. Anti-racism actively seeks to identify, remove, prevent, and mitigate racially inequitable outcomes and power imbalances between groups and change the structures that sustain inequities” (Government of Ontario, 2021).

Bail or judicial interim release: judicial interim release is the formal legal term for what most people refer to as “bail.” When an individual is arrested and charged with a crime, they are presumed innocent, but if the police and/or the Crown believe that it would be too dangerous to release the person into the community, they are taken into custody and must appear before a magistrate or a judge to ask that they be released on conditions until they come back to court to deal with their charges.

Conditional sentence order: the formal legal term for what many people refer to as “house arrest.” “The conditional sentence is a meaningful alternative to incarceration for less serious and nondangerous offenders. The offenders who meet the criteria ... will serve a sentence under strict surveillance in the community instead of going to prison. These offenders’ liberty will be constrained by conditions to be attached to the sentence... In case of breach of conditions, the offender will be brought back before a judge If an offender cannot provide a reasonable excuse for breaching the conditions of his or her sentence, the judge may order him or her to serve the remainder of the sentence in jail.” (*R. v. Proulx*, 2000 SCC 5 (CanLII), [2000] 1 SCR 61 at 21-22.).

Challenge for cause: section 638 of the *Criminal Code* allows either defence counsel or a prosecutor to ask a judge not to place a potential juror on the jury for a number of reasons, including that they believe that the juror is not impartial, i.e., that they do not have an open mind or are biased for or against one side.

Colonialism: the process whereby one country controls another by conquering its population, settling it with their own people, and exploiting it economically.

Constitution/constitutional: the Constitution of Canada is the supreme law of Canada. It describes the type of government we have and the powers each branch of government holds. The Canadian Charter of Rights and Freedoms is a part of the Constitution that provides the rights and freedoms every person in Canada has. All laws passed in Canada must agree with the principles stated in the Constitution to be, and if individuals or groups think that a law does not, they can challenge it in court.

Convicted: being found guilty of a criminal offence, either by pleading guilty or being found guilty after a trial.

Cultural competence: the ability to understand people from other cultures and interact fairly and effectively with them.

Custody: being in jail or prison.

De-escalation: reducing the level of intensity of a situation.

Denunciation: publicly stating that something is wrong; public condemnation.

De-skilling: being placed in a situation with lower skill requirements than the person has through their education and experience.

Detention: keeping someone in jail.

Deterrence: giving someone a consequence to discourage them from doing the same thing again (specific deterrence) or to discourage others from doing it (general deterrence).

Disaggregated data: separating information into smaller groups or units so as to better analyze it for trends. In the context of the recommendations in this document, the need for disaggregated data refers to the desire to break down data gathered about “visible minorities” into specific categories, including one for those who identify as Black or African.

Discretion: the power given to public officials such as judges, magistrates, prosecutors, police, immigration officials and others to use their own judgment and conscience, within the law, to make a decision.

Discrimination: “Treating someone unfairly by either imposing a burden on them, or denying them a privilege, benefit or opportunity enjoyed by others, because of their race, citizenship, family status, disability, sex or other personal characteristics.” (Canadian Heritage, 2019a).

Diverse/diversity: inclusion of people from a wide variety of backgrounds.

Diversion: diverting, or moving, cases away from the criminal justice system by offering an individual charged with a criminal offence the opportunity to complete counselling or programming in the community. Once this is successfully completed, the Crown will agree to withdraw or stay the charges (see definition below). Some jurisdictions have specialized diversion courts, such as mental health courts, drug treatment courts, or Fetal Alcohol Spectrum Disorder courts, which have more structured programs that offer diversion if individuals agree to receive programming and supports specific to the focus of that particular court.

Empirical evidence: information obtained by observing and documenting human behaviour.

Ex-officio: a person acting as a result of the office they hold.

Gang disaffiliation: the process of leaving a gang.

Guilty plea: a person’s choice to take responsibility for committing a criminal offence and admit that they did something wrong.

Hybrid offence: a criminal offence that can be prosecuted either as a summary conviction or indictable offence, as determined by the prosecutor.

Incarceration/incarcerated: being in jail or prison.

Indictable offence: the most serious crimes with the longest sentences.

Intermittent sentence: a jail sentence that allows the person serving it to live in the community for part of the time and report to jail for part of the time until the sentence is finished.

Intersectionality: “Acknowledges the ways in which people’s lives are shaped by their multiple and overlapping identities and social locations, which, together, can produce a unique and distinct experience for that individual or group, for example, creating additional barriers or opportunities” (Government of Canada, Canadian Heritage, 2019b). This term was first used by African American legal scholar Kimberlé Crenshaw to describe how race and gender discrimination both impact the lives of Black women.

Impact of Race and Culture Assessment

(IRCA): “An Impact of Race and Culture Assessment (IRCA) is an attempt to articulate the issues of anti-Black racism and systemic racism in Canadian society to the court at the sentencing stage of adjudicating African Canadians. A founding premise of IRCA is that a person’s race and cultural heritage should be considered as a significant factor in considering their sentence in a criminal matter.” *R. v. Jackson*, 2018 ONSC 2527 (CanLII) at p. 28. An IRCA is a report prepared by a social worker or other professional that contains information provided by a Black accused person and their family, friends and supports that helps to explain how anti-Black racism contributed to their criminal offending.

Legislative reform: making changes to laws so that they work better and are fair.

Mandatory minimums: sentences for criminal offences that require a judge to impose a sentence of at least the length of time provided in sentencing laws such as the *Criminal Code*, *Controlled Drugs and Substances Act*, or *Youth Criminal Justice Act*. The judge cannot impose a lower sentence unless the accused person is able to show that the mandatory minimum is cruel and unusual punishment, pursuant to the Canadian Charter of Rights and Freedoms.

Marginalization: “Marginalization is a long-term, structural process of systemic discrimination that creates a class of disadvantaged minorities. Marginalized groups become permanently confined to the fringes of society. Their status is perpetuated through various dimensions of exclusion, particularly in the labour market, from full and meaningful participation in society” (Government of Ontario, 2021).

Over-policing: an excessive response from law enforcement characterized by a heavy police presence and over-surveillance, an aggressive response to minor offences, frequent interactions with people who are not breaking any laws especially among low-income individuals and racial minorities.

Microaggressions: commonplace daily, subtle messages, slights and insults against marginalized people that are verbal, unconscious, and take a psychological and physiological toll on the target person or group (City of Toronto, 2023).

Moral culpability: a court’s finding as to the level of blame that should be placed upon an offender, considering all their circumstances and the circumstance of the offence. *R. v. Stone*, 1999 CanLII 688 (SCC), [1999] 2 SCR 290 at 233-234.

Overrepresented: where more individuals from a particular group are found in a specific place or situation than their proportion of the overall population.

Peremptory challenge: the ability of defence counsel or the prosecutor to remove a potential juror from serving on a jury without giving a reason.

Policy: statements of principles or values that lead to consistent decision making.

Pre-trial detention / remand custody: if an individual is not granted bail, or does not apply for it, they are held in pre-trial detention or remand custody, where they are housed in a jail and treated in a similar manner to sentenced inmates, although they are still presumed innocent and have not been convicted of a crime.

Proportionality: the principle found in s.718.1 of the *Criminal Code* which states that the sentence an individual receives must not be any greater than their level of moral culpability.

Prosecuted/prosecution: the process of trying to find an accused person guilty of an offence.

Race: “Race is a term used to classify people into groups based principally on physical traits (phenotypes) such as skin colour. Racial categories are not based on science or biology but on differences that society has created (i.e., “socially constructed”), with significant consequences for people’s lives. Racial categories may vary over time and place and can overlap with ethnic, cultural or religious groupings” (Government of Ontario, 2021).

Racial profiling: “Racial profiling is any action undertaken for reasons of safety, security or public protection, that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin, or on a combination of those traits, rather than on a reasonable suspicion, to single out an individual for greater scrutiny or different treatment” (Government of Ontario, 2021).

Recidivism: refers to a person who has been convicted of a crime, served a sentence of incarceration and been released into the community, and then commits a new crime.

Record suspension or pardon: record suspensions are granted by the Parole Board of Canada and former offenders can apply for them either 5 or 10 years after finishing their sentences, depending on the type of offence they committed. There is a fee. If granted, a record suspension requires police not to disclose an individual’s criminal record when someone does a criminal record check on that individual. Certain offences are not eligible.

Re-entry or reintegration: the process by which a person housed in a correctional institution transitions back to living in the community. For federal prisoners, the process is overseen by the Parole Board of Canada. For provincial offenders who have received probation as part of their sentence, their parole officer supervises their return to the community.

Rehabilitation: punishment that allows an offender to receive help to become a law-abiding member of society.

Restorative justice: a process that brings together an offender and a victim, and any other persons affected by the crime, who agree to participate. The parties discuss the effects of the crime and ways to hold the perpetrator accountable to remedy the harm (<https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rest.html>).

Retroactive: a law that goes into effect at a date earlier than it first comes into effect.

Social determinants of justice: socio-economic factors from outside the justice system that affect outcomes inside the justice system.

Socio-economic: the interaction of social factors such as race, gender, etc. and economic factors such as income.

Stay of proceedings or withdrawal of charges: occurs when a prosecutor agrees not to continue a prosecution; commonly known as “having your charges dropped.” The person who receives a stay of proceedings is not convicted of the offence and no longer needs to attend court. Though people often use the terms stay of proceedings and withdrawal of charges interchangeably, the two are different. A withdrawal of charges means that the prosecution can never bring those charges back, but with a stay of proceedings, charges can be revived within a year.

Stereotype: the unfair or untrue assumption that all individuals from a group share certain characteristics

Stop and frisk/carding/street checks: when police stop and question individuals without a good reason or any evidence that they have committed a crime; often an example of racial profiling.

Summary conviction offence: a less serious criminal offence with a less serious sentence.

Surety: an individual who agrees to supervise a person on bail and pledges an amount of money to be paid if the person on bail does not follow their conditions.

Surveillance: being closely watched and monitored.

Systemic and institutional racism: “Consists of patterns of behaviour, policies or practices that are part of the social or administrative structures of an organization, and which create or perpetuate a position of relative disadvantage for racialized persons. These appear neutral on the surface but, nevertheless, have an exclusionary impact on racialized persons” (Canadian Heritage, 2019a).

Temporary absence: the first type of release that an individual in the penitentiary may get; it allows them to leave the penitentiary for a few hours, either escorted by a correctional officer or unescorted. Offenders apply to either the Correctional Service of Canada or the Parole Board for temporary absences to attend work or school, family events such as funerals, etc.

Tertiary ground: found in s.515(10) of the *Criminal Code*, it is the ability of a judge to deny someone bail where to grant them bail would reduce the confidence of the public in the administration of justice. *R. v. St-Cloud* 2015 SCC 27 (CanLII), [2015] 2 SCR 328 at 63-80.

Trauma-informed: an approach to providing services that assumes it is likely that an individual has experienced trauma, and which is aware of the symptoms and effects of trauma and how to address them.

Unconscious bias: negative stereotypes and assumptions about groups of people that affects the way a person deals with others, but they are not aware of doing this.

White supremacy: the belief that white people are naturally superior to other races, which leads to white people creating political, economic and social systems that control other races and keep white people in a privileged position.

Endnotes

- 1 The proposed entity would be distinct from existing ones, such as the Anti-Racism Secretariat, in that its focus would be specific to the needs and interests of Black people. Examples of existing agencies with mandates covering specific demographic groups include Women and Gender Equality Canada and the Youth Secretariat.
- 2 A version of these proposals were advanced by Mr. Anthony Morgan in an article published in *Policy Options* in April 2018: <https://policyoptions.irpp.org/magazines/april-2018/doing-justice-by-black-canadians/>.
- 3 Including, but not limited to: Federal public service employees; child welfare sector employees; educators, guidance counsellors and school administrators and; justice system professionals (including police officers, sheriffs, court staff, lawyers, judges, magistrates, correctional officials, probation and parole officers and parole board members).
- 4 See Sloly (2023) in the Canadian Urban Institute's *State of Canada's Cities - At the Crossroads - Maximizing Possibilities* report. https://canurb.org/wp-content/uploads/CUI_SOCC_At-the-Crossroads-1.pdf
- 5 Building upon common law precedent, for example in *R v Le*, 2019 SCC 34.
- 6 Including the introduction of a standardized set of screening procedures, drawing on best practice and including the use of psychometric testing, to assess racial and other forms of bias in police recruits.
- 7 Statistics Canada. Table 35-10-0027-01 Adult criminal courts, number of cases and charges by type of decision
- 8 The tertiary ground is the basis for detaining someone in order to maintain public confidence in the administration of justice. It is found in section 515(10)(c) of the *Criminal Code*.
- 9 Bill C-75 in the 42nd Parliament: *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*
- 10 See for example CSC's "Anti-racism framework and actions" plan and the adoption of a Black Offender Social History pilot in the Ontario Region. <https://www.csc-scc.gc.ca/publications/005007-0006-en.shtml>. https://www.csc-scc.gc.ca/acts-and-regulations/767-cd-en.shtml#D_Ethnocultural_offender
- 11 We acknowledge that a validation exercise has been undertaken to assess the suitability of CSC's risk assessment tools for Black men. In light of this knowledge, we have tabled this recommendation given ongoing concerns about the aforementioned validation exercise.
- 12 In Canada, SIUs were introduced in 2019 to federal correctional institutions to replace the use of segregation of prisoners. The purpose of the SIUs is to provide a space where inmates can be held separately from others if required for security or other reasons. Inmates must still receive meaningful human contact and access to programming while in these units. However, federal inmates are very clear that these units still function too often as segregation by another name. An Implementation Panel was formed to monitor the functioning of the SIUs and has released several reports, which show that inmates are frequently not receiving time out of their cells, they are not always receiving a timely review of their time in the SIU by an independent external decision maker, external decision makers vary widely in their decision

making and decisions are inconsistent across the country, and mental health of inmates is being negatively affected by their time in SIUs. There are some indications that Black inmates may be disproportionately affected by the negative aspects of the SIUs, but this data is forthcoming.

- 13 “Institutional discipline” in this context refers to disciplinary action taken against individuals under the supervision of correctional authorities, i.e., prisoners.
- 14 As for why Black prisoners are more likely to be denied parole in the federal system, it is not due to lack of success. Black prisoners, when successful in their applications, have a higher rate of both day and full parole completion than white prisoners (OCI, 2020). Black prisoners in 2011-2012 had a full parole completion rate of 83% compared to 79% in the white prisoner population (OCI, 2013). Black prisoners who successfully complete full parole or statutory release also have lower rates of recidivism than white prisoners – that is, they are less likely to be readmitted post-release for committing a new offence (OCI, 2020). Indeed, Black prisoners, second to Southeast Asian prisoners, have the lowest rate of recidivism in Canada (OCI, 2019).