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Canada's    
**BLACK JUSTICE**  
 Strategy

# Canada's Black Justice Strategy: Framework

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Akwasi Owusu-Bempah  
Zilla Jones

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# Introduction

Black people have a long history in Canada and played an integral role in the formation of the country (Winks, 1997). Despite our contributions to this country, Black populations continue to experience various forms of discrimination and marginalization. Over the past two decades, the negative experiences and overrepresentation of Black people in Canada's criminal justice system (CJS) have been increasingly acknowledged as an important social issue that prevents full social participation of Black people and denies our constitutionally protected right to equality (Owusu-Bempah and Gabbidon, 2020; Kakembo, 2021).

Black people are often known as an original settler people in Canada because of the length of time we have been on this land. The earliest recorded Black person in Canada is said to be Mathieu da Costa, who is suggested to have worked as an interpreter in New France in the early 1600s. He also spent time in jail in Europe for the nebulous charge of "insolence" (Millette, Lambert, and Poulin, 2023), and so his life embodies the way Black people and the criminal justice system have been entwined since the beginning of European colonialism.

Black people are diverse and come from multiple diasporas, all connecting back at some point to the African continent. Today's Black Canadians may have roots in Canada going back hundreds of years, or we may be the product of more recent immigration. Black Canadians speak a variety of languages, practice a multiplicity of faiths, and have a wide range of socio-economic backgrounds. The term African-Canadian may also be used for Black people, or people may be described with their particular country, region or nation of origin.

On the African continent prior to colonization both by Arabs and by Europeans, African peoples had our own well-developed justice systems, often oriented toward community wellness and accountability and embodying principles of restorative justice. Today, virtually everywhere Black communities are found, Black people are either subject to a legal system imposed or influenced by colonial authorities, or living in a legal vacuum where civil society has broken down due to conflict, which traces its roots to colonial disruption.

Despite decades of work on the topic of inequality in the justice system, a comprehensive and consolidated picture of Black people's views of and experiences with the CJS across Canada remains absent. Even without that comprehensive and consolidated picture, however, there are hundreds of recommendations advanced by public and community organizations, by academics, and by various task forces established to examine systemic inequalities in the CJS.

Canada's Black Justice Strategy (the Strategy) aims to address anti-Black racism and systemic discrimination and the overrepresentation of individuals from Black communities in the CJS, aiming to

ensure all people in Canada have access to equal treatment and the equal protection of the law. This document, the Framework, pulls together the information gathered from existing literature, research, and reports, as well as previous engagements with Black communities, experts and organizations, and the key recommendations stemming from earlier work to reflect what we know and what we have heard to date. The aim of the Framework is to inform a consultation process, which will be organized by Black-led local community organizations providing justice-related services and programs. Community organizations will use the Framework as a starting point to validate the information already heard, identify missing information or recommendations, and to highlight gaps in policies, legislation, data, services, initiatives, programs, and community supports, all of which will inform the development and implementation of the Strategy.

The Strategy must be developed with validation of the Framework and the voice of Black communities across the country. This is the beginning of the development of a comprehensive and consolidated picture of Black people's views of and experiences with the criminal justice system across Canada.

## **Background**

### **How We Got Here**

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, leaders, scholars, provinces and territories. The work is led by Canada's Black Justice Strategy Team at the Department of Justice Canada, and supported by the Federal Anti-Racism Secretariat at Canadian Heritage. For decades, Black communities and the organizations that support them, advocates, academics, and many others have called for solutions to address the overrepresentation of Black people in Canada's CJS. These calls have been most recently amplified following the murder of George Floyd by a police officer in Minneapolis, Minnesota in the summer of 2020, which sparked a global (re)awakening to the presence of systemic anti-Black racism in our society. Attention to the policing of Black people in Canada, and our experiences throughout the CJS, gained even greater prominence and sparked further calls for change. These calls have also come from international agencies such as the United Nations and Amnesty International. Canada's Black Justice Strategy comes in response to these calls and aligns with Canada's formal recognition of the International Decade for People of African Descent.

To actualize 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 and Attorney General of Canada. The Steering Group is comprised of nine members, with diverse

backgrounds and professional expertise, from jurisdictions across Canada. The mandate of the Steering Group is to provide strategic advice to the Department of Justice Canada and other federal partners on key elements for the development of the Strategy. Two members chair the Steering Group and will coauthor the Strategy report and recommendations. The Steering Group is an independent community-led group that is not part of the Government of Canada, but is funded by the Department of Justice Canada to do its work at arm's length from the Government.

## Understanding our history

In order to move forward with a workable justice strategy for the twenty-first century and beyond, it is crucial that we understand the long, tortured relationship people of African descent have had with the Canadian legal system. One of the most horrific chapters of our history is the transatlantic trade of enslaved persons, first recorded in New France in 1628, where both Black and Indigenous persons were held as slaves. The lives of enslaved persons were regulated by laws, which considered them to be property and which dictated their family lives and religious affiliation. It was a criminal offence to try to escape enslavement, or for a free person to encourage an enslaved person to run away (Cooper, 2006).

The 1763 treaties between France and Great Britain, which ceded Quebec to the British, specifically allowed Quebeckers to keep their slaves, and the scourge of enslavement touched Upper Canada and the Maritimes as well; United Empire Loyalists fleeing north were allowed to own slaves, and English-speaking provinces had laws regulating slavery up until 1834, when the British outlawed it in all “their” territories (Henry, 2016). Even after abolition, Ontario collaborated with slave owners seeking extradition of slaves who had escaped to Canada by passing the *Fugitive Offenders Act*, by which Canada could return slaves to their former owners if they were alleged to have committed a serious crime in the United States (Henry, 2022).

Canadian law continued to be used as a tool of inequality and anti-Black racism well past the days of enslavement. The well-known story of Viola Desmond illustrates how *de facto* racial segregation was legally enforced in Nova Scotia without calling it such (Government of Canada, 2022). Until 1962, Canada's immigration laws were explicitly designed to exclude people of African descent and other people of colour, and to bar Black people from settlement on the Prairies, a position explicitly endorsed by Canada's first Prime Minister, Sir John A. Macdonald (Farber, 2014). People of African descent were kept out of Canada through “remarkable efforts” including “selective enforcement of regulations, deception, bribery, and other questionable methods, and through legislation that allowed Canada to deny entry on the basis of nationality or ethnicity” (Mooten, 2021).

## Understanding our legal history

A history of injustice and inequality can be found not just in Canadian laws, but in Canadian court decisions. All too often, the courts have ignored or even defended racial discrimination. For example, the Supreme Court of Canada in *Christie v. The York Corporation* ([1940] SCR 139) held in 1939 that a tavern in Quebec was within its rights to refuse to serve a Black patron in the name of “protecting its business interests” and “freedom of commerce.” Likewise, in *Smithers v. R.*, the Supreme Court of Canada in 1977 ignored the harmful impact of the significant, repeated racial taunting to which a Black defendant had been subjected ([1978] 1 SCR 506). Amar Khoday writes that the Court “painted Smithers as a Black aggressor” and Cobby as “the sympathetic youthful white victim.” He goes on to accuse the Court of presenting the facts in a way that “strongly resemble a white supremacist narrative” (Khoday, 2021).

In more recent times, Canadian courts have begun the long and arduous process of confronting this legacy. The Royal Commission on the Donald Marshall Jr. Prosecution found that racism played a part in the wrongful conviction of Mr. Marshall Jr, an Indigenous man, and that Black people in Nova Scotia also experienced racial discrimination in that province’s justice system. A number of recommendations were made to attempt to rectify this situation, including to increase Legal Aid coverage available to Black accused and to establish a Race Relations Division at the Nova Scotia Human Rights Commission (Hickman, Poitras, Evans, 1989).

In *R. v. Parks*, the Ontario Court of Appeal wrestled with the issue as to whether the jury in the trial of a Black accused should be challenged for cause (questioned) in an attempt to eliminate prospective jurors who held racist views toward Black people (1993 CanLII 3383 (ON CA)). The Court decided to allow this, and acknowledged the racism experienced by Black people in Toronto and the negative impact of anti-Black racism upon every facet of daily life. Significantly, the Court recognized the importance to a Black accused of questioning jurors in their case about potential racial bias.

Representation of Black people among justice system actors, such as counsel and, most significantly the judiciary, is a long-standing concern. Data is difficult to obtain, as the questionnaire used for judicial applications indicates only whether an applicant is a member of a “visible minority,” and not whether they are Black, even though Black lawyers and judges face unique challenges and discrimination specific to their African-Canadian identities. In the case of *R. v. S. (R.D.)*, an African Nova Scotian youth was acquitted of assaulting a police officer by Judge Corinne Sparks, the first judge of African Nova Scotian heritage to be appointed (1994 CanLII 18957 (NS PC)). Because of comments she made when acquitting the youth, the Crown appealed her decision, alleging that there was a reasonable apprehension of bias by Judge Sparks against police, and the matter went all the way to the Supreme Court of Canada ([1997] 3 SCR 484). The Court dismissed the Crown’s appeal and affirmed the appropriateness of a judge using her life experience and social context to judge a case.

In recent years, Canadian courts have considered the use of Impact of Race and Culture Assessment reports, or IRCAs, in which a sentencing judge is presented with information as to how systemic anti-Black racism may have played a role in bringing a Black accused before the court. The Ontario Court of Appeal in *Morris* confirmed that this type of evidence is relevant to the sentencing process (2021 ONCA 680). An IRCA provides helpful evidence on this point and should normally be admitted. The Nova Scotia Court of Appeal reached a similar finding with regard to IRCAs in *Anderson* (2021 NSCA 62).

Canada's Black Justice Strategy will examine and analyze these and other cases to understand their lessons for the justice system going forward; the goal is a justice system that operates free of anti-Black racism and bias, that is accessible to all, and that provides culturally-appropriate supports and opportunities for rehabilitation for those who come before it.

## Statement of principle

The starting point for this Strategy is the work that has already been done across numerous disciplines to demonstrate that Black Canadians face barriers and differential outcomes in a variety of areas of Canadian society. It is important to note that Indigenous peoples in Canada are also disadvantaged in the criminal justice system and elsewhere. The overrepresentation of Indigenous people amongst incarcerated populations, their disproportionately negative treatment by police, and the discrimination they face in custodial institutions, are all well-documented. While this Strategy focuses on Black Canadians, we acknowledge the important work done to bring attention to the adverse experiences Indigenous people have had 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* ([1999] 1 SCR 688).

There are several instances where Indigenous and Black encounters with the CJS have been connected, such as the Royal Commission on the Donald Marshall Jr. Prosecution, referenced earlier. 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 CJS will apply equally to Indigenous people.

## What We Know

### Social Determinants of Justice

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

CJS 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 CJS (Owusu-Bempah and Jeffers, 2022). Working to prevent Black people from coming into contact with the CJS, by addressing the social determinants of justice, represents a key pillar of the Strategy.

The social factors that contribute to Black experiences with the CJS 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).

## **Perceptions of the Justice System**

With respect to the CJS, research has demonstrated 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). Cotter (2022), for example, found that Black people were almost twice as likely as white people (21% and 11%, respectively) to report having little or no confidence in the police, and that Black (and Indigenous) people held particularly negative views about the ability of police to treat people fairly or be approachable and easy to talk to. Findings are somewhat mixed with respect to perceptions of the courts and correctional system. Cotter (2020) and Wortley and Owusu-Bempah (2009) both found that Black survey respondents rated the performance of the court system better than white respondents. In both studies, these positive views were driven largely by the perceptions of Black immigrants, who rated court performance more positively than Canadian-born Black respondents. Here it is important to note that levels of contact and familiarity with the courts were lower among respondents than they were for the police.

## **Experiences with the Police**

The policing of Black populations in Canada has driven much of the discussion about racial inequality in the CJS. An abundance of data demonstrates that Black people are overrepresented in police stop and search practices (Owusu-Bempah and Gabbidon, 2020), and where available, that neither elevated levels

of criminality nor other important factors<sup>1</sup> account for the higher rates of police contact (see for example Wortley and Tanner, 2003; Wortley and Owusu-Bempah, 2011). In line with the negative perceptions of police performance documented above, research shows that Black people hold quite negative perceptions of recent police contacts; often assessing these encounters with the police as unfair, characterized by disrespect, and leaving them feeling “upset” (Wortley and Owusu-Bempah, 2011).

These experiences can have serious outcomes; negative perceptions of police treatment (and of treatment by other justice actors) undermine the legitimacy of the CJS, which can impact the likelihood of cooperation with justice officials (for example, an individual’s willingness to act as a witness in court) and can contribute to criminal offending (Tyler, 1988; Tyler, 2003; Tyler & Fagan, 2008). Other research shows that Black accused 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 and Jung, 2020). 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 (Singh, 2020). For example, an analysis of Special Investigation Unit (SIU) data from 2013–2017, conducted on behalf of the Ontario Human Rights Commission (OHRC, 2018, p. 3) showed that while Black people made up 8.9% of Toronto’s population, they accounted for:

- 25.4% of SIU investigations;
- 28.8% of police use of force cases;
- 36% of police shootings;
- 61.5% of police use of force cases that resulted in civilian death; and
- 70% of police shootings that resulted in civilian death.

Studies also show that in the Halifax area, Black people are “grossly-overrepresented” in street check statistics kept by the police themselves, and found little evidence that street checks lower crime (Wortley, 2019).

While available statistics paint a damning picture, police use of force represents a key area where further data is needed to fully comprehend the impact of policing on Black people in Canada.

## **Criminal Court Outcomes**

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

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<sup>1</sup> These include: drug and alcohol use, driving habits, use of public spaces, poverty, or residence within a high-crime community.

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 dearth of research in this area, the Department of Justice Canada recently undertook a study utilizing national statistics to assess the likelihood of Black accused encountering specific court outcomes (Sagbini and Paquin-Marseille, 2023). In addition to their overrepresentation in Canadian criminal courts, relative to their representation in the general population, compared 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.

While there are some notable limitations to this study, the findings suggest that Black accused in Canadian criminal courts face differential and disproportionate outcomes, some of which may result in prolonged involvement with the CJS (Sagbini and Paquin-Marseille, 2023, p. 7).

## Corrections

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., 2021), 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. The most current 2021-2022 data show that Black people make up 9.2% of the overall population in federal custody, despite making up 3.5%<sup>2</sup> of the general Canadian population (OCI, 2022).

The Office of the Correctional Investigator's 2022 annual report includes an "Update on the Experiences of Black Persons in Canadian Federal Penitentiaries", which builds on its ground-breaking 2013 investigation, "A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal

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<sup>2</sup> Black people now account for 4.3% of the population in Canada, as per 2021 Census data (Statistics Canada, 2022).

Penitentiaries”. Consistent with the OCI’s findings in its 2013 report on Black prisoners’ experiences of federal incarceration, Black prisoners continue to fare poorly across a range of outcomes. Below is a summary list of the areas where Black prisoners face negative outcomes:

- Security classification
- Gang labelling
- Involuntary transfer
- Access to programming (including employment)
- Institutional discipline
- Segregation
- Complaints
- Use of force
- Temporary absences and parole.

Notably, in its most recent study, the OCI argues that little has changed since its 2013 investigation. In some respects, the OCI suggests things may have gotten worse for federally incarcerated Black people. The OCI (2022) notes:

Despite CSC’s concerted efforts to make changes with respect to inclusion, diversity and anti-racism, incarcerated Black persons reported to OCI investigators that very little had materially changed for the better over the years. They continue to experience pervasive racism and systemic discrimination, have difficulties accessing culturally relevant services and interventions and must engage in correctional programming that does not reflect their lived experiences. It has been nearly ten years since the Office completed its investigation examining the experiences of Black persons in federal penitentiaries. Our review suggests that very little has changed for Black persons and in many respects, their situation has deteriorated even further. All of the issues identified in 2013 remain today. (p. 48)

As the OCI concludes the study: “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” (2022, p. 69). The concerns raised by the OCI are largely echoed in the Standing Senate Committee on Human Rights and Auditor General of Canada reports cited above.

## **Parole, Re-entry, and Reintegration**

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. Available evidence from the federal system suggests that Black prisoners have lower grant rates on average than

the general prisoner population for 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).<sup>3</sup>

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 they experience within correctional settings, such as those discussed in the previous section, “Corrections.” In light of this reality, the Standing Senate Committee on Human Rights has called on Correctional Service Canada (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 re-entry and reintegration experiences of Black people are also heavily influenced by factors in the community. Through its work on the *Reduction of Recidivism Framework Act*, 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.

## Conclusion

It is clear that much work needs to be done to address the experiences and overrepresentation of Black people in Canada’s CJS and to ensure our equal protection under the law. In addition to acting upon the

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<sup>3</sup> 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).

recommendations for change advanced by various parties, it is also imperative that we continue to build upon the promising initiatives currently in place:

- to work with Black communities and organizations to significantly reform policing and end the practice of racial profiling;
- to continue and expand sentencing reform to make conditional sentences more widely available, increase the use and availability of restorative justice and diversion measures, and reduce the number of mandatory minimum sentences; and
- to see greater representation of Black people amongst justice system actors and better training on anti-Black racism for all criminal justice system actors, particularly for the police, the judiciary and Corrections staff.

Other important recommendations include:

- the continuation and expansion of federal funding for Impact of Race and Culture assessment (IRCAs) reports to be used in the sentencing of African-Canadian accused, and of Legal Aid funding;
- the reduction of instances in which non-citizens may be removed from Canada for criminality;
- the introduction of automatic record suspensions/pardons;
- the development of legislation to address the impact of hate speech and discrimination against African-Canadians; and
- the consideration of reparations and accountability for Canada's role in the enslavement of Black people.

## What We Don't Know

Our understanding of how Black people experience criminal justice in Canada is hampered by a lack of readily available data that is disaggregated by race. With several notable exceptions, Canadian criminal justice institutions do not systematically collect and publicly report this data. As such, much is left unknown. Key data gaps are presented below:

- Disaggregated data on stop and search practices, arrest and charge decisions and outcomes;
- Disaggregated data on police use of force;
- Disaggregated data from criminal courts on guilty pleas and remand decisions;
- Data on the use of IRCAs in provinces and territories;
- Disaggregated data on people admitted to provincial and territorial correctional services;
- Data on complaints of discrimination, violence, racism from criminal justice employees;
- Disaggregated data on school suspensions, unaddressed learning disabilities of young people who come into contact with the Youth CJS; and

- Disaggregated data on the racial identity of individuals appointed to the judiciary.

## **Pillars of Canada's Black Justice Strategy**

The Strategy centres on five key pillars, or themes, relevant to Black experiences with the CJS. The pillars are consistent themes that inform Black people's experiences with the CJS. The pillars are as follows:

- The social determinants of justice (income, employment, stable housing, education, and health);
- Policing;
- Courts;
- Corrections; and
- Parole, re-entry and reintegration.

These pillars are the Strategy's priority areas for reform and improvement, and they follow the stages of an individual's involvement with the criminal justice system. The social determinants are the factors that impact an individual's life before they come into contact with the justice system and that influence how they come into contact with it. We will be exploring ways in which crime, and therefore individual people's involvement in the justice system, can be reduced by addressing inequalities elsewhere in society.

The pillar of policing refers both to over-policing and over-surveillance of Black communities which brings an individual to the attention of police, and leads to the detention and arrest of those suspected of criminal activity.

The Courts pillar will examine what happens once an individual stands trial, from the accessibility of legal representation, to the way judges are selected and trained, to the nature of the laws an accused is alleged to have broken. It will also address sentencing options and resources should the person be convicted. It will include recommendations for appropriate legislative changes and developments.

The Corrections pillar is concerned with the treatment of sentenced inmates in custodial institutions: the selection and training of correctional officers, the policies that govern daily life behind bars, and mechanisms for addressing complaints.

Since virtually all prisoners are eventually released once they have served their sentences, the pillar of parole, re-entry and integration will also look at the way parole is granted or withheld, the resources available for offenders once they are released into the community, and initiatives to reduce recidivism.

We expect that within each pillar, we will hear about diverse experiences specific to particular groups such as newcomers, youth, women, and others, and that we will hear from people in a range of roles,

from justice system professionals to those who have been in conflict with the law to their loved ones and supporters.

## Key Existing Recommendations

Please see **Appendix A** for a list of key areas of previous recommendations proposed to address the overrepresentation of Black people in the CJS and to improve their experiences within the system.

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# Appendix A

## Key Existing Recommendations

Many studies and reports have made recommendations on how to address the overrepresentation of Black people in the criminal justice system, and on what legislative and socioeconomic reforms are required to ensure the equal protection of the law. Some of the key areas of those recommendations are set out below.

### Social Determinants of Justice

1. Address racial disparities in education:
  - Implement anti-racism education, training, and curricula to challenge stereotypes and promote understanding.
  - Increase representation of Black educators and staff in schools.
  - Collect disaggregated race-based data in education services to identify trends and disparities.
  - Monitor and evaluate the effectiveness of programs and interventions aimed at improving Black students' educational outcomes.
2. Improve access to economic opportunities:
  - Develop targeted employment and entrepreneurship programs for Black communities to reduce socioeconomic disparities.
  - Address barriers to employment and career advancement for Black individuals, such as discrimination in hiring practices.
  - Encourage diversity and inclusion initiatives in the workplace.
  - Provide financial support and resources for Black-owned businesses and social enterprises.
3. Enhance access to mental health services:
  - Increase funding and support for culturally sensitive mental health services tailored to the needs of Black communities.
  - Encourage collaboration between mental health service providers and Black community organizations.
4. Strengthen community-based support and social services:

- Invest in community-based programs that address the root causes of crime, such as poverty, housing, and education.
  - Support youth development programs that build leadership skills and resilience among Black youth.
  - Fund community initiatives that promote social cohesion and address community-specific challenges.
5. Address systemic racism in child welfare services:
- Implement anti-racism training and education for child welfare staff and service providers.
  - Apply a racial equity lens to child welfare policies and practices.
  - Regularly review and revise child welfare policies to ensure they are equitable and do not disproportionately impact Black families.
  - Collaborate with Black community organizations to develop and deliver culturally appropriate child welfare services.
  - Collect disaggregated race-based data in child welfare services to identify trends and disparities.
  - Monitor and evaluate the effectiveness of programs and interventions aimed at reducing the over-representation of Black children in child welfare services.
  - Prioritize family preservation and reunification by providing support and resources to help Black families stay together whenever possible.
6. Address the needs of Black immigrants and newcomers:
- Develop tailored settlement and integration programs that specifically address the unique challenges faced by Black immigrants and newcomers.
  - Provide language and job training services that are culturally sensitive and responsive to the needs of Black communities.
  - Enhance access to legal and social services for Black immigrants and newcomers to help them navigate the Canadian legal system.

## Policing

1. Enhance data collection and transparency:
- Collect disaggregated race-based data on police interactions to identify trends and target improvements.
  - Make data on police stops, searches, arrests, charges, use of force, and other police interactions publicly available.

2. Increase funding to keep individuals out of the criminal justice system through prevention and diversion programs:
  - Develop and expand crisis intervention teams that include mental health professionals to respond to mental health-related calls.
  - Reallocate police funding to invest in community-based violence prevention programs, such as youth mentoring and restorative justice initiatives.
3. Increase diversity and cultural competence in police forces:
  - Encourage the recruitment of officers from diverse backgrounds and professional experiences to better represent the communities they serve.
  - Offer scholarships and incentives for underrepresented individuals to pursue careers in law enforcement.
  - Establish mentorship programs to support the professional development and retention of diverse officers.
4. Enhance training and education:
  - Integrate anti-racism and cultural competency training into the police curriculum.
  - Provide ongoing professional development opportunities for officers to deepen their understanding of systemic racism and cultural competence.
  - Ensure minimum standard of competency for trainees.
5. Enhance community-based policing models:
  - Establish neighborhood policing teams that build relationships with residents and local organizations.
  - Create opportunities for community members to participate in advisory boards or forums that inform policing policies and practices.
6. Strengthen accountability and oversight mechanisms:
  - Ensure that civilian oversight bodies have the power to conduct independent investigations and recommend disciplinary action.
  - Create a national database of police misconduct to prevent officers with a history of racist behavior from being rehired by other departments.
  - Implement clear standards and consequences for racist behavior by police officers.

## Courts

1. Collect and analyze race-based data in criminal courts:

- Systematically collect, analyze and publish race-based data to identify and address racial disparities in the courts.
2. Increase diversity within the judiciary:
    - Implement strategies to increase the representation of Black lawyers, judges, and court staff.
  3. Enhance legal representation for Black individuals:
    - Increase funding for legal aid services to ensure equitable access to legal representation for Black communities.
  4. Improve cultural competence and awareness among lawyers, judges, and court staff:
    - Provide mandatory anti-racism and cultural sensitivity training for judges, lawyers, and court staff, with a focus on understanding the unique experiences and challenges faced by Black individuals.
  5. Implement restorative justice programs and alternatives to incarceration:
    - Expand the use of restorative justice programs for Black offenders, which focus on healing and reintegration rather than punishment.
  6. Expand the application of the *Youth Criminal Justice Act* (YCJA) to youth aged 12-24.
  7. Repeal all mandatory minimums for all controlled substances and weapons offences.
  8. Add “Black offenders” to section 718.2(e) of the *Criminal Code* regarding sentencing principles, in recognition of the over-incarceration and systemic racism of Black persons.
  9. Enhance availability of Impact of Race and Culture Assessments (IRCAs) in court proceedings:
    - Expand the use of race and culture assessments for Black individuals to help judges and legal professionals better understand the impact of systemic racism on the accused's life, and to inform sentencing and other decisions.

## Corrections

1. Collect and analyze race-based correctional data:
  - Publish annual reports on race-based data, including patterns of incarceration, use of force, and access to programming.

- Use data analysis to inform the development of targeted interventions and policies to address racial disparities in the correctional system.
2. Address racial bias in security classification:
    - Review and revise security classification procedures to ensure they are free from racial bias and do not disproportionately affect Black prisoners.
    - Develop guidelines that address potential racial bias in the assessment of risk factors.
    - Provide training for staff involved in the classification process to recognize and mitigate the impact of unconscious bias.
  3. Re-evaluate gang labeling practices:
    - Implement transparent and fair criteria for gang labeling and provide an accessible process for prisoners to challenge gang labels.
    - Regularly review gang affiliation criteria to ensure their accuracy and prevent over-labeling.
    - Establish an independent review process to evaluate the accuracy and fairness of gang labeling decisions.
  4. Examine involuntary transfer policies:
    - Ensure that involuntary transfer decisions are based on objective criteria and not influenced by racial bias.
    - Implement regular reviews of transfer decisions to ensure compliance with guidelines and to identify potential issues of bias.
  5. Improve access to programming for Black prisoners:
    - Prioritize equitable access to education, vocational training, and other programming for Black prisoners to support successful reintegration into the community.
    - Allocate resources to support the development and implementation of culturally appropriate programs.
    - Establish partnerships with community organizations that can offer specialized services and support to Black prisoners.
  6. Address racial disparities in institutional discipline:
    - 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.

- Provide training for staff on the impact of racial bias in disciplinary decision-making and strategies to mitigate its influence.
7. Limit the use of segregation for Black prisoners:
    - Develop alternatives to segregation and ensure that decisions regarding its use for Black prisoners are free from racial bias.
    - Implement regular reviews of segregation decisions to identify potential patterns of racial bias.
    - Provide training for staff on the impact of racial bias in segregation decision-making and strategies to mitigate its influence.
  8. Improve the complaints process for Black prisoners including grievances regarding the use of Structured Intervention Units in federal institutions:
    - Establish a transparent and accessible complaint process, with appropriate oversight, to ensure that the concerns of Black prisoners are addressed fairly.
    - Implement regular reviews of segregation decisions to identify potential patterns of racial bias.
    - Provide training for staff on the impact of racial bias in segregation decision-making and strategies to mitigate its influence.
  9. Address racial bias in the use of force:
    - Review and revise use-of-force policies and training to ensure that correctional staff interactions with Black prisoners are free from racial bias.
    - Provide ongoing training for correctional staff on de-escalation techniques and alternative methods to the use of force.
    - Implement regular audits of use-of-force incidents to identify potential patterns of racial bias.
  10. Promote equitable access to temporary absences and parole for Black prisoners:
    - Ensure that decisions regarding temporary absences and parole are based on objective criteria and not influenced by racial bias.
    - Provide ongoing training for correctional staff on de-escalation techniques and alternative methods to the use of force.
    - Implement regular audits of use-of-force incidents to identify potential patterns of racial bias.

## Community Reintegration

1. Monitor and evaluate reintegration outcomes:

- Collect, analyze, and publish data on reintegration outcomes for Black individuals to inform the development of targeted interventions and policies that promote successful reintegration.
2. Enhance culturally appropriate programming and supports:
    - Develop and implement culturally appropriate reintegration programs tailored to the specific needs and experiences of Black people.
  3. Strengthen community partnerships:
    - Establish partnerships with community-based organizations that have expertise in addressing the unique challenges faced by Black individuals during reintegration.
  4. Improve access to education and employment opportunities:
    - Prioritize access to education and vocational training programs for Black people, both within correctional institutions and upon release, to increase their employability and facilitate successful reintegration.
  5. Provide comprehensive mental health support:
    - Ensure access to mental health services tailored to the specific needs and experiences of Black individuals, both during incarceration and upon release.
  6. Facilitate stable housing:
    - Collaborate with community-based organizations and housing providers to secure safe and stable housing options for Black individuals upon release.
  7. Strengthen family connections and support networks:
    - Promote and facilitate family visitation and communication during incarceration, and provide resources and support to help Black individuals reconnect with their families and communities upon release.
  8. Implement mentorship programs:
    - Develop mentorship programs that connect Black individuals with successful community members who can provide guidance and support during the reintegration process.

# Appendix B

## Glossary

**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 (CSO):** This is 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 non-dangerous 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.).

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

**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.

**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).

**Diversion:** Diversion refers to 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 FASD 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.

**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 IRCAs 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.

**Mandatory minimums:** Mandatory minimum sentences are 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:** Refers to 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.

**Pre-trial detention:** 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.

**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:** 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:** In Canada, 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:** This refers to 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.

**Restorative justice:** Restorative justice is 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>).

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

**Stay of proceedings or withdrawal of charges:** This 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.

**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).

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# Appendix C: Consultative Framework

In working with community partners, it is imperative that consultations are accessible to as many people as possible, and that we are hearing from a representative cross-section of the big and diverse Black population in this country. To that end, the following are important:

- In-person consultations in major urban centres;
- Remote participation options for those in smaller centres or those unable to attend in person;
- Based on principles of Afrocentrism (a worldview that is centred in, by and for Black communities in Canada);
- Based on principles of mutual aid (direct action, cooperation and solidarity amongst members of a community);
- Trauma-informed (recognize signs of trauma in participants and its impact, provide assistance, and avoid re-traumatization);
- A continued focus on intersectional/interlocking identities and gender-based analysis (a consideration of how race interacts with other social identities such as gender, gender identity, sexuality, disability, age, socio-economic factors, and others, and how belonging to more than one marginalized group may increase the oppression a person or community faces);
- Ground rules must be established for the sessions that emphasize mutual respect between facilitators/presenters and participants, and ensure that speaking and listening happen in an orderly and organized fashion;
- Participants be assured that their confidentiality will be protected and their participation voluntary. Explicit consent to participate in the consultations must be given by participants or their legal guardians;
- Consultation timing should be varied (i.e., Weekdays during the day, weekday evenings, weekends) in order to accommodate different work and school schedules, childcare responsibilities, etc.;
- The sessions include breaking of bread (refreshments);
- As local custom requires, the sessions to include prayers/meditation;
- Possible childcare to be provided, if the budget allows;
- Language translators/interpreters;
- On-site legal resources;
- Mental health supports be made available onsite or easily accessible to participants;
- Report authors and/or other steering committee members should attend where possible;
- Consultations to be as broad as possible and to include people with a diverse and varied range of experiences within the justice system.

Proposed groups to consult are:

- Individuals who have had involvement with the criminal justice system, whether as an accused in the court system, victim, or an individual interacting with police;
- Family members and loved ones of the above;
- Justice system actors (lawyers, clerks, court workers etc.);
- Community members/groups who work with individuals in efforts to avoid the justice system, and/or work with individuals after release from incarceration.

## Information for Participants

Thank you for participating in this consultative session. Your input will be used to help develop Canada's Black Justice Strategy. This is a community-led process that will provide the government with recommendations to reduce the involvement of Black people in the criminal justice system and eliminate anti-Black racism and discrimination in Canadian policing, courts and correctional systems.

Your ideas and suggestions will be provided to Canada's Black Justice Strategy Steering Group, a collection of Black people from across Canada who have experience working in or with the criminal justice system. The Steering Group will produce a report to the Minister of Justice, anticipated to be made public in the spring of 2024, that will include a summary of the ideas and suggestions received, and will provide recommendations. Your name and identifying information will be kept confidential and will not appear in the report.

We will begin by gathering background information that will be kept confidential, but is important for the Steering Group to have in order to understand the circumstances of Black people in Canada. While it is voluntary for you to provide this information, our communities are very diverse, and we want to make sure that that diversity is reflected in the report.

Can you please provide the following:

- Age
- Gender identity
- Sexual orientation
- Place of birth
- Place of residence
- Other places lived
- Occupation
- Income
- Marital/family status

- Who do you live with
- Level of education
- Health conditions/prescriptions etc. including mental health
- Mother tongue
- Other languages spoken
- Facility with English/French
- Citizenship
- Status in Canada
- When came to Canada if not born here
- Religion
- Ethnicity
- Sub-groups within Black/African i.e. Country/countries of origin/ancestry, mixed-race-broader groups – African-Canadian, African-American, Afro-Caribbean, Latin American, West African, East African, North African, South African, Middle Eastern, Afro-Indigenous, etc.

## **Your involvement with the criminal justice system**

- Have you or a loved one had contact with the justice system in any of these ways:
- Interaction with police/law enforcement
- Being charged with a crime
- Being convicted of a crime
- Going to jail or prison
- Dealing with immigration authorities because of committing a criminal offence
- Being the victim of a crime
- Being a witness in court
- Experiencing a hate crime
- Working in the justice system (as a lawyer, police officer, correctional officer, sheriff, court staff etc.)
- Attempting to work in the justice system (by applying to or attending a program to study law, law enforcement, criminal justice etc., and/or applying unsuccessfully for employment in the justice system)
- Working in social services or front-line services that support and assist those who have been or may become involved in the criminal justice system.

Can you tell us about your experiences, and/or the experiences of your family members or friends?

Having had, or learned of, those experiences, what is your opinion of the justice system as it relates to Black people?

## Themes/Pillars

The consultation questions align with the Pillars of Canada's Black Justice Strategy. These are:

- The social determinants of justice (the factors that cause people to become involved in the criminal justice system)
- Policing
- Courts
- Corrections
- Parole, re-entry and reintegration.

## The social determinants of justice

**Question 1:** Many things have impacted a person's life by the time they interact with the criminal justice system. We know that while there are many successful Black people in Canada, African-Canadians as a whole are disadvantaged in comparison to most other Canadians when it comes to things such as income, health status including mental health, and educational outcomes and opportunities. Previous reports and studies have identified a number of social factors that increase the interactions Black people have with the justice system.

For yourself, or a loved one who has experienced conflict with the law, what factors do you think contributed to bringing you into contact with police and/or before the courts?

**Question 2:** There have been a number of recommendations made to address these social factors in order to reduce the involvement of Black people in the criminal justice system. These recommendations include (Note to facilitator, please refer to **Appendix A** of the Framework for more specific recommendations to address the social determinants of justice):

1. Addressing racial disparities in education.
2. Improving access to economic opportunities.
3. Enhancing access to mental health services.
4. Strengthening community-based support and social services.
5. Addressing systemic racism in child welfare services.
6. Addressing the needs of Black immigrants and newcomers.
7. Increasing housing stability for Black people in Canada.

Do you think these recommendations will help to reduce the involvement of Black people in the justice system?

If so, what are your ideas as to how they should be put into action?

Do you have any other recommendations to make?

## Policing

**Question 1:** Studies and research show that Black people are more likely to be stopped by police and are more likely to have a negative view of police. Evidence also suggests that Black people are more likely to be victims of violence by police.

What interactions have you and/or your loved ones had with police?

What have those interactions been like?

**Question 2:** Many recommendations have been made for changes to policing that would reduce or eliminate anti-Black bias. Some of these include:

- Increasing diversity and cultural competency in police forces.
- Integrating anti-racism and cultural competency training into the police curriculum.
- Establishing neighborhood policing teams that build relationships with residents and local organizations.
- Implementing clear standards and consequences for racist behavior by police officers.
- Developing and expanding crisis intervention teams that include mental health professionals to respond to mental health-related calls.
- Reallocating police funding to invest in community-based violence prevention programs, such as youth mentoring and restorative justice initiatives.

Do you think these recommendations will help to reduce negative interactions between Black people and police?

If so, what are your ideas as to how they should be put into action?

Do you have any other recommendations to make regarding Black people and policing?

## Courts

**Question 1:** We have evidence that Black people often have negative experiences in the criminal courts. Black people accused of crimes go to court for bail hearings, to plead guilty or to have a trial, and to be sentenced if they are found guilty or admit their guilt. Black people may also come to court as witnesses

in a trial, as supporters of an accused person, or as victims of crime. Studies show that Black people are more likely than others to be denied judicial interim release (bail) and to receive harsher sentences. Black justice professionals work in the courts every day, and may experience anti-Black racism while doing their jobs.

What experiences have you had in the courts?

**Question 2:** Have you, or someone you know, received a criminal sentence from the courts?

Do you have professional experience with sentencing?

If yes to either of the above, do you have any concerns about anti-Black bias in sentencing while plea bargaining or in the sentence/s that the judge gave?

**Question 3:** Recommendations have been made to reduce incarceration of Black people by removing anti-Black racism from the sentencing process and increasing representation of Black people among justice system professionals. Some of these recommendations include:

#### Sentencing

- Repeal all mandatory minimums for all controlled substances and weapons offences.
- Add “Black offenders” to section 718.2(e) of the *Criminal Code* regarding sentencing principles, in recognition of the over-incarceration and systemic racism of Black persons. This means that the judge would be required to consider how systemic racism has contributed to a Black person coming before the court to be sentenced.
- Expand the use of and funding for Impact of Race and Culture Assessments for Black individuals to help judges better understand the impact of systemic racism on the accused's life when making sentencing decisions.
- Expand the application of the *Youth Criminal Justice Act* (YCJA) to youth aged 12-24.
- Increase the availability of conditional sentence orders (house arrest).
- Implement restorative justice programs and alternatives to incarceration.

#### Justice professionals

- Provide mandatory anti-racism and cultural sensitivity training for judges, lawyers, and court staff, with a focus on understanding the unique experiences and challenges faced by Black individuals.
- Implement strategies to increase the representation of Black lawyers, judges, and court staff.
- Increase funding for Legal Aid services to ensure equitable access to quality legal representation for Black communities.

Do you think these recommendations will help to reduce the over-incarceration of Black people?

If so, what are your ideas as to how they should be put into action?

Do you have any other recommendations to make regarding Black people and the courts?

## Corrections

**Question 1:** Studies show that Black people are one of the fastest-growing groups among people incarcerated in penitentiaries, and are overrepresented in provincial jails as well. The evidence shows that Black inmates are more likely to receive negative treatment and be classified at higher risk levels.

Have you or a loved one served a sentence in a federal or provincial correctional institution?

Do you have professional experience with correctional institutions?

What was your experience like?

Have you observed or experienced anti-Black racism in a correctional institution?

**Question 2:** Recommendations have been made to ensure that correctional institutions are a fair environment for Black inmates. They include:

- Review and revise security classification procedures and gang labeling procedures to ensure they are free from racial bias and do not disproportionately affect Black prisoners, and provide training for staff involved in the classification process to recognize and mitigate the impact of unconscious bias.
- Prioritize equitable access to education, vocational training, and other programming for Black prisoners to support successful reintegration into the community, and establish partnerships with community organizations that can offer specialized services and support to Black prisoners.
- Regularly review disciplinary practices to identify and address any racial disparities or bias in the treatment of Black prisoners.
- Ensure that involuntary transfer decisions are based on objective criteria and not influenced by racial bias.
- Develop alternatives to segregation and ensure that decisions regarding its use for Black prisoners are free from racial bias.

- Review and revise use-of-force policies and training to ensure that correctional staff interactions with Black prisoners are free from racial bias, and provide ongoing training for correctional staff on de-escalation techniques and alternative methods to the use of force.

Do you think these recommendations will help to reduce the over-representation of Black people in correctional institutions and to reduce anti-Black racism in correctional settings?

If so, what are your ideas as to how they should be put into action?

Do you have any other recommendations to make regarding Black people and correctional institutions/practices?

## Community Reintegration

**Question 1:** Studies show that Black prisoners are less likely to be granted parole and when they are released from custody, they face barriers reintegrating into society.

Have you or a loved one been released from a correctional institution into society?

Do you have professional experience with individuals being released from a correctional institution into society?

What was your experience like?

Have you observed or experienced anti-Black bias or race-based barriers in the reintegration process?

**Question 2:** The following recommendations were made to eliminate racial bias from reintegration decisions and improve the supports available to Black inmates being released into the community:

- Ensure that decisions regarding temporary absences and parole are based on objective criteria and not influenced by racial bias.
- Develop and implement culturally appropriate reintegration programs tailored to the specific needs and experiences of Black people, in partnership with community-based organizations that have expertise in addressing the unique challenges faced by Black individuals during reintegration.
- Prioritize access to education and vocational training programs for Black people, both within correctional institutions and upon release, to increase their employability and facilitate successful reintegration.
- Ensure access to mental health services tailored to the specific needs and experiences of Black individuals, both during incarceration and upon release.

- Collaborate with community-based organizations and housing providers to secure safe and stable housing options for Black individuals upon release.

Do you think these recommendations will help Black people successfully reintegrate into society?

If so, what are your ideas as to how they should be put into action?

Do you have any other recommendations to make regarding Black people and parole, re-entry and reintegration?

## Victims of crime

**Question 1:** Have you or someone you know been a victim of crime or a witness to a crime?

What was your or their experience like?

Did you or they receive adequate supports?

**Question 2:** What recommendations would you make to ensure that Black victims of or witnesses to crime are treated fairly by the criminal justice system?

## Immigration issues

**Question 1:** Have you or someone you know been in a situation where it was possible that you or they could be deported from Canada for being a non-citizen convicted of a crime?

What was your experience like?

**Question 2:** The following are some recommendations regarding Black people facing possible removal from Canada for being non-citizens convicted of offences:

- Relax the requirement that individuals waiting for an immigration situation to be resolved not work or go to school.
- Allow greater appeal procedures for those who receive removal orders based on criminal convictions.
- Reduce the number of offences and the circumstances that can lead to a non-citizen being removed from Canada for a criminal conviction.

Do you think these recommendations will help reduce the number of Black people facing immigration consequences in criminal law?

If so, what are your ideas as to how they should be put into action?

Do you have any other recommendations to make regarding Black people and the immigration consequences of criminal law?

## Data Collection

**Question 1:** There are many areas of the criminal justice system where data specifically relating to Black people is not routinely collected. Some areas where experts have said that it would be helpful to have specific race-based data include:

- To identify trends and disparities in education services.
- To identify trends and disparities in child welfare services.
- To identify trends and target improvement in police interactions such as stops, searches, arrests, charges, and use of force.
- To identify and address racial disparities in the courts such as bail and sentencing decisions.
- To identify trends and disparities in applications and appointments to the legal profession and the judiciary.
- To identify trends and disparities in correctional institutions such as patterns of incarceration, use of force, and access to programming.
- To identify reintegration outcomes for Black individuals to inform the development of targeted interventions and policies that promote successful reintegration.

Do you have any suggestions as to how this data can be collected and used?

Do you have any concerns about the collection and use of this data?

## Conclusion

Is there anything else you would like to share with us that you feel would help us to make recommendations to improve the experiences of Black people in Canada's criminal justice system?