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# CANADIAN BLACK POLICY NETWORK

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Spring 2021 Policy Brief

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## Criminal Justice & Black Communities

JUNE 21, 2021

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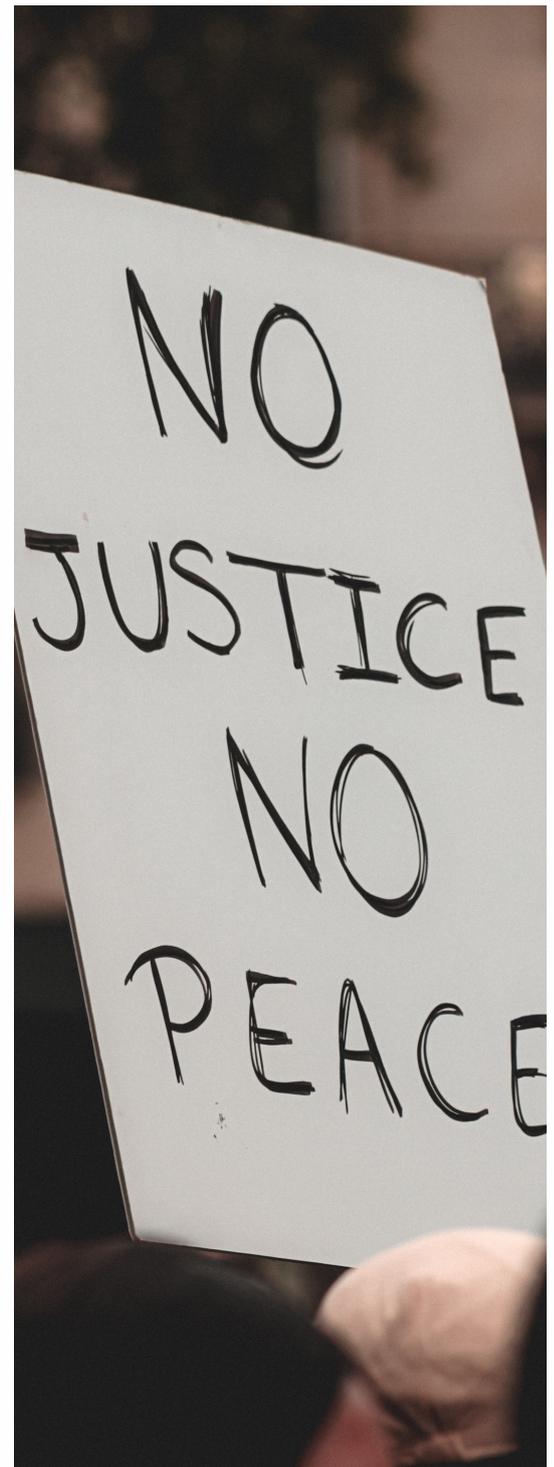
Last summer felt like progress. With an increased acknowledgement of the existence of anti-Black racism worldwide and efforts towards transformative action in the wake of George Floyd, all of us were hopeful for the future. This spring, when we received a guilty verdict for George Floyd's murderer, some called it justice. Others questioned how there can be any justice in a fundamentally unjust system.

A recent (2021) report by the Canadian Association of Black Lawyers showed that racism and racial bias exists in the criminal justice system, and little has been done to correct it in the last 25 years. [1] At the same time, the 2021 Canadian Federal Budget made commitments to address racism in the criminal justice system through a number of initiatives. [2]

An important question emerged: How can we ensure this funding, and this moment, truly results in meaningful change to Canada's criminal justice system?

In light of this, CBPN's second quarterly policy report focuses on the impact of Canada's justice system on Black communities, including exploring systemic discrimination against the Black population in policing, the judiciary, and correctional services in Canada. [3]

Our approach is to provide an overview of what it means to be Black in Canada, while navigating the justice system and provide evidence-driven policy recommendations.



[1] <https://cabl.ca/race-and-criminal-injustice-new-report-from-cabl-ryersons-faculty-of-law-and-the-university-of-toronto-confirms-significant-racial-differences-in-perceptions-and-experiences-with-the-ontari/>

[2] <https://www.justice.gc.ca/eng/abt-apd/budget.html>

[3] <https://torontoist.com/2016/04/african-canadian-prison-population/>

# Research Summary

An understanding of disproportionalities in the experiences of Black Canadians in our criminal justice system cannot be advanced without discussing intersectionality. Intersectionality looks at the impact of anti-Black racism and other social identities and associated processes that perpetuate injustices against Black communities in Canada.

Intersectionality in the criminal justice system has been neglected in exploring and understanding why these disparities occur and how it impacts Black communities in Canada. Coined by Dr. Kimberle Crenshaw, intersectionality, in relation to the criminal justice system, refers to the compound systemic and social marginalization experienced by Black people and its contribution to criminalization and overrepresentation in all aspects of the criminal justice system. [4] Therefore, anti-Black racism intersects with social identities including gender, religion, class, postal code/area of residence, socioeconomic status, and age among others, to contribute to the overrepresentation of Black communities in the criminal justice system. This inequality is cyclical across generations and has a rippling effect from an individual level to a community level, devastating lives and could lead to chronic social exclusion.

In Canada, reliable data points out the existence of anti-Black racism in the police and judiciary system since the 1980s and between 2003 to 2013, there was a nearly 90% increase in incarceration rates of Black inmates in federal prisons in comparison to a 3% decrease in White inmates. [5] This highlights the importance of unveiling the unjust overrepresentation of Black people in all components of the justice system.

The following section will provide an overview of key disproportionalities across each component of the justice system.



[4] <https://www.sydneycriminallawyers.com.au/blog/intersectional-oppression-in-the-criminal-justice-system/>

[5] <https://policyoptions.irpp.org/magazines/april-2018/doing-justice-by-black-canadians/>

## Judiciary: Lack of Diversity in the Judiciary and Impacts on Black Communities

Canada's judiciary has become more diverse, [6] with more women, visible minorities, LGBTQ2+ and Indigenous people on the bench, but the number of Black judges remains low compared to other demographic groups. Additionally, the Supreme Court of Canada bench has no representation of racialized judges. [7] Since 2016, 3% of federal judicial appointments have been Indigenous and 8% visible minorities. [8] Statistics on members of the judiciary that are Black is unavailable.

When judges lack first-hand knowledge and experience of the racism and systemic challenges faced by Black Canadians, the consequences can include:

- Higher incarceration rates;
- Disproportionalities in sentencing; specifically harsher sentences, related to reinforcing stereotypes; [9] and
- A lack of confidence in all legal outcomes within Black communities. [10]

A more racially diverse judiciary would have more credibility among members of equity-deserving communities and Canadians at large.

## Corrections: Disparities in Federal and Provincial Incarceration Rates

Although not consistent, some racially disaggregated data as far back as the late 19th century suggest disparities in federal prisons in Canada, with Black people being disproportionately represented. [11] As evidenced from 2018/2019 data from Canada's federal correctional agency, despite making up only about 3.5% of Canada's population, an estimated 7.2% of federal offenders were Black people. [12, 13]

Currently, approximately 70% more Black people have been incarcerated than in the past decade. [14] There is inadequate provincial data on incarceration rates; however, available 2010-2011 data from Nova Scotia and Ontario confirm disparities in provincial corrections admittance with Black people being overrepresented. [15] Not only are there disparities in incarceration rates, but also in the types of incarceration placements. In 2016, the United Nations Working Group on People of African Descent learned that as many as 40% of inmates in segregation at the Toronto South Detention Centre were Black.

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*In Federal prisons, Black Canadians are 3.5% of Canada's population but 7.2% of federal prisoners. [16]*

*In Nova Scotia, Black Canadians are 2% of the population but 14% of the jail population. [17]*

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[6] <https://www.sydneycriminallawyers.com.au/blog/intersectional-oppression-in-the-criminal-justice-system/>

[7] <https://policyoptions.irpp.org/magazines/april-2018/doing-justice-by-black-canadians/>

[8] <https://www.cbc.ca/news/politics/judiciary-diversity-appointments-1.5074102>

[9] <https://www.scc-csc.ca/judges-juges/index-eng.aspx>

[10] <https://www.cbc.ca/news/politics/stefanovich-diversity-justice-system-1.5625586>

[11] <https://dc.etsu.edu/cgi/viewcontent.cgi?article=3922&context=etd>

[12] <https://www.lawtimesnews.com/archive/speakers-corner-why-judicial-diversity-matters>

[13] Mosher, C. (1998). Discrimination and denial: Systemic racism in Ontario's legal and criminal justice systems, 1892-1961. University of Toronto Press.

[14] Public Safety Canada . (2020). 2019 Corrections and conditional release statistical overview. Public Safety Canada.

[15] <https://johnhoward.ca/blog/race-crime-justice-canada/>

[16] <https://torontoist.com/2016/04/african-canadian-prison-population/>

[17] <https://doi.org/10.4324/9781315686400>

**Policing: Racial Profiling and Brutality**

The Ontario Human Rights Commission defines racial profiling as “any act or omission related to actual or claimed reasons of safety, security or public protection, by an organization or individual in a position of authority, that results in greater scrutiny, lesser scrutiny or other negative treatment based on race, colour, ethnic origin, ancestry, religion, place of origin or related stereotypes.” [18]

Among other manifestations of racial profiling, Black youth have complained of being frequently stopped, questioned, and primarily searched for Driving While Being Black Violations (DWBBs). [19]

These disparate interactions with police can have fatal consequences. Current data point out the existence of anti-Black racism in police and judiciary components of the criminal justice system to at least the 1980s. [20] The Ontario Human Rights Commission (OHRC) indicates that “between 2013 to 2017, a Black person was nearly 20 times more likely than a white person to be a victim of fatal shooting by the Toronto Police Service.” [21] The OHRC report on Toronto Police Service inquiry shows that while Black people make up only 8.8% of the population of Toronto, they also represent almost 30% of the use of force incidents by the police, resulting in serious injury or death. In comparison with other communities, Black people in Toronto constitute 60% of lethal encounters with the Toronto Police and 70% of fatal police shootings. [22]



*Black youth are more likely to be charged by police and less likely to be cautioned than White youth and youth from other racial backgrounds. [23]*

[18] [http://www.ohrc.on.ca/en/policy-eliminating-racial-profiling-law-enforcement#\\_Toc17977392](http://www.ohrc.on.ca/en/policy-eliminating-racial-profiling-law-enforcement#_Toc17977392)

[19] <https://journals.openedition.org/cyberge0/26165>

[20] <https://policyoptions.irpp.org/magazines/april-2018/doing-justice-by-black-canadians/>

[21] <http://www.ohrc.on.ca/en/public-interest-inquiry-racial-profiling-and-discrimination-toronto-police-service/collective-impact-interim-report-inquiry-racial-profiling-and-racial-discrimination-black>

[22] [http://www.ohrc.on.ca/en/news\\_centre/ohrc-interim-report-toronto-police-service-inquiry-shows-disturbing-results](http://www.ohrc.on.ca/en/news_centre/ohrc-interim-report-toronto-police-service-inquiry-shows-disturbing-results)

[23] <https://journals.sagepub.com/doi/abs/10.1177/2153368719889093>

# What is Working? Approaches to Justice System Transformation

The following initiatives are intended to address the overrepresentation of Black communities in the criminal justice system at various points in the system (i.e. policing, judiciary and corrections):

- **Prevention & Policing** - The Black Legal Action Centre (BLAC) in Toronto launched a province wide initiative in March 2021 aimed at working with Black communities and school boards to address the “school-to-prison” pipeline. [24]
- **System Navigation in the Judiciary** - At Delta Family Resource Centre (Delta Family) in Toronto, the new Ounce of Prevention program (or OZ) is aimed at helping Black youth and their families navigate the court system. [25]
- **Supports in Corrections** - The Afrikan Canadian Prisoner Advocacy Coalition (ACPAC) is an alliance of concerned Afrikan Canadian individuals and organizations that have come together to engage the Canadian Human Rights Commission (CHRC) on issues related to the overrepresentation of Afrikan Canadians in the federal prison system and the shortfall in the mental-health care they receive. [26]



**Dr. Tanya L. Sharpe, Founder of the CRIB**

## SPOTLIGHT ON COMMUNITY HEALING & ADVOCACY

**The Centre for Research & Innovation for Black Survivors of Homicide Victims (The CRIB)** is a multidisciplinary initiative designed to advance research, policy and practice **FOR** and **WITH** Black survivors of homicide victims across our global communities. The CRIB is grounded in a principle commitment to adopt culturally responsive approaches that create sustainable opportunities for Black communities to thrive in the face of adversity and traumatic tragedy as a result of experiences with homicide violence. Visit The CRIB [online](#) and on [IG](#) to learn more.

[24] <https://toronto.citynews.ca/2021/03/03/new-initiative-aims-to-tackle-school-to-prison-pipeline-black-students-face-in-ontario/>

[25] <https://newcanadianmedia.ca/oz-program-helps-keep-black-youths-out-of-criminal-justice-system/>

[26] <https://www.theglobeandmail.com/news/national/use-of-solitary-confinement-in-federal-prisons-has-increased-over-last-10-years/article24661862/>

# Policy Recommendations

In 2016, the United Nations Working Group of Experts on People of African Descent was invited by the government of Canada to review our criminal justice system. Following their review they released a set of recommendations for the government to undertake to address anti-Black racism in the criminal justice system. Using these recommendations as a guide, we have focused on immediate policy changes to bridge the gap in support for Black communities, and longer-term policy solutions to support true transformation of the justice system.

## [1] IMMEDIATE POLICY CHANGES/RECOMMENDATIONS

### **Increase Diversity of the Judiciary, Corrections and Policing**

In 2016, the Federal government changed the appointment process for Federal judges in hopes of encouraging a more diverse bench. However as the data demonstrates, these changes have not led to a more diverse bench. In fact, the Canadian Bar Association and other organizations have called on the Federal government to undertake a targeted recruitment strategy for Federal judges. [27]

### **Increase Availability of Disaggregated Race-Based Data**

There is a significant lack of disaggregated race-based data and research to measure disproportionalities across the justice system, from charges laid, to sentencing, to experiences in correctional facilities. This cross-system measurement can help shed light on the entire experiences of Black Canadians in the criminal justice system. It is worth noting that some progress to this end is being made. For example, a total of \$6.7 million has been allocated to Justice Canada to advance the collection and use of demographic data over the next five years and calls from political leaders to collect disaggregated race-based data in the justice system. [28]

## [2] LONG TERM SYSTEMIC CHANGE: AFRICENTRIC RESTORATIVE JUSTICE

One of the recommendations from the UN working group is to “develop and implement an African Canadian Justice Strategy to address the anti-Black racism and discrimination within the criminal justice system.” [29] But what would such a strategy look like? One source of inspiration is restorative justice.

In 2002, the United Nations Office of Drugs and Crime released a resolution on the Declaration of Basic Principles on the use of Restorative Justice Programmes in Criminal Matters. In this declaration the restorative justice process is defined by the United Nations as “any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.” [30]

[27] <https://www.cba.org/News-Media/Press-Releases/2020/September/CBA-joins-national-call-for-more-diversity-in-judiciary#:~:text=Quick%20facts%3A,appointees%20identified%20as%20visible%20minorities>

[28] <https://www.nanaimobulletin.com/news/opposition-leaders-want-juror-demographic-data-to-help-fight-canadas-systemic-biases/>

[29] <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20736&LangID=E>

[30]: [https://www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](https://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf)

In Canada, restorative justice programs are diverse, targeted to youth and adult offenders, often delivered by community organizations and all bound by the “belief that the existing justice system is not working for their community.” [31] Restorative justice initiatives, such as sentencing circles, have been used across Canada in Indigenous communities since the 1970s; however, work is still emerging in Restorative Justice initiatives for Black communities. For example, on the Federal Department of Justice website, there were only seven restorative justice initiatives that were for non-Indigenous people, and none explicitly mentioned serving Black communities. [32]

In 2019, prolific criminal justice researcher and advocate Anthony Morgan posited the idea of an Africentric approach to restorative justice called “Sankofa.” [33] Morgan describes Sankofa as “a principle of restorative justice decision-making meant to remedy historic and persistent systemic disparities faced by Black Canadians.” In order to achieve equal outcomes for Black Canadians in the justice system, Black Canadians require unequal treatment. This concept of unequal treatment implies that despite being equal and deserving of justice, we are unique and have varied experiences/compound identities that must be considered for a treatment that is non-uniform yet appropriate. Rather than dedicated programs at each stage of the criminal justice system’s process, the Sankofa principle asks for “a careful assessment of the degree(s) to which socio-systemic expressions of anti-Black racism have affected the life chances and choices of the person.” This assessment should then influence all decisions made throughout the criminal justice process.

Examples of questions that could be asked through the Sankofa process are:

- Did the individual live in or was he or she arrested in a highly policed community?
- Was he or she streamed in school toward less academically rigorous programs? Was he or she ever suspended or expelled from school, or did he or she ultimately decide to drop out?
- Has the individual or any of his or her primary caregivers experienced serious mental health challenges?
- Did he or she experience child poverty or come from a family reliant on social assistance?
- Was he or she ever a Crown ward within the child welfare system?
- Does the individual have an incarcerated or absentee parent?
- Did the individual or his or her family arrive in Canada as refugees or through some form of forced displacement?

Embedding questions like these, in the form of an assessment for Black communities throughout the justice system are intended to help administrators of justice become attuned to the root causes of Black communities involvement in criminal justice, underpinned by the impacts of anti-Black racism.

When the Federal Government considers justice strategies for Black communities, restorative justice presents a transformative, policy-based solution that goes beyond the band-aids of individual, community-specific programming and seeks long-term system transformation.

[31] <https://www.justice.gc.ca/eng/rp-pr/jr/rjilt-jrtja/rjilt-jrtja.pdf>

[32] <https://www.justice.gc.ca/eng/cj-jp/rj-jr/sch-rch.aspx>

[33] <https://policyoptions.irpp.org/magazines/april-2019/an-africentric-principle-could-right-some-wrongs/>

# Conclusion

The challenges within our criminal justice system are varied, deep and have tendrils that extend into almost every aspect of Black Canadian life in Canada. As a result, it felt difficult to discuss this issue in the form of a short-brief. That said, our hope is that this brief will help inspire future conversations around long-term systemic change.

As we continue to push for progress in an era following judgement on the George Floyd case, the goal of justice system transformation needs to continue to be at the centre of this work.

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