**Black
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A Restorative Framework For Canada's Black Justice Strategy

Abstract

The Black Opportunity Fund's National Criminal Justice Working Group offers the Federal Government of Canada's Black Justice Strategy a framework to delivering both reparatory and restorative justice for Black Communities within the Canadian context

**The Black Opportunity Fund
June 2023**

Introduction

The Black Opportunity Fund National Justice Working Group (BOFJWG) is pleased to present our recommendations for consideration by the steering committee of the Black Justice Strategy. We are a coalition of grassroots organizations, scholars, Elders, cultural keepers, policy specialists, youth, and members of Black communities across Canada, working in various ways in myriad disciplines, to address systemic and structural inequities in the justice system.

Our families and the communities we come from represent the broad diversity of Black people in Canada and the varied important intersectionalities of identity and we see the fallout from an inequitable and unjust system in our communities that has been shown to disproportionately impact Black Canadians. As a group, we have been convening through the Black Opportunity Fund Criminal Justice Working Group, to discuss policy solutions which might improve the outcomes for Black people who come into contact with Canada's justice system.

Over the last two years, we have seen significant commitments made by the Government of Canada to drive important institutional reforms critical to the health and well-being of Black people in Canada. We are pleased to see the commitment of the Government to the development of a justice strategy focused on Black communities. If implemented, our enclosed recommendations, based on our considerable expertise and experiences, will help mitigate some of the long-standing impacts of systemic and structural anti-Black racism.

On September 21st, 2022, the Black Opportunity Fund Criminal Justice Working Group delivered a formal letter to the Honourable David Lametti, P.C., M.P., Minister of Justice and Attorney General of Canada, in which we highlighted the following key urgent issues:

A. Black people, especially Black youth, have received harsher penalties for cannabis-related offences;

B. Culturally safe and responsive rehabilitation support for incarcerated persons, including culturally responsive and robust therapeutic and mental health supports, are few or non-existent;

C. There is a dearth of community-responsive alternatives to parole and incarceration;

D. Initiatives to ensure that the administrators of the criminal justice system (ie. prosecutors, parole board members, judges, etc.) better reflect Black communities, are in short supply;

E. There is no funding to develop and implement aggressive and culturally safe social reintegration programmes for Black Canadians who are released from incarceration;

F. There is a need for coordination with other relevant departments in order to ensure a multi-faceted, comprehensive policy approach toward the development of a Black Justice strategy.

G. Include mandatory Impact of Race and Culture Assessment Reports as part of pre-sentencing hearings for Black people found guilty of committing crimes;

H. A Reparatory Justice Plan, with the goal of providing recompense to Black people for harm caused due to well-documented systemic and structural injustices within the criminal justice system. Recompense can be in the form of financial contributions, and therapeutic healing from historical trauma, needs to be incorporated into policy decisions;

I. There is a lack of data collection standards to guide the gathering of race-based data in federal institutions which would enable effective measurement of outcomes.

The following individuals from across Canada have participated in and/or provided insight to the **Black Opportunity Fund Justice Working Group (BOFWG)**:

Paul Bailey, Executive Director, Black Health Alliance

Dr. Akwasi Owusu-Bempah, Ph.D., Associate professor, Dept. of Sociology, University of Toronto

Renate Betts, Manager, Mobilization, Engagement and Support · Le Dépôt | The Depot Community Food Centre

Jacqueline Edwards, President, A.B.L.E. (Association of Black Law Enforcers)

Dr. Myrna Lashley Ph.D., Associate professor in the Dept. of Psychiatry of McGill University, researcher and project leader at the Lady Davis Institute for Medical Research of the Jewish General Hospital

Razan Mohamed, National Chair, Black Law Students Association of Canada

Anthony Morgan, Manager, Confronting anti-Black Racism Unit, City of Toronto

Fo Niemi, Executive Director, the Center for Research-Action on Race Relations (CRARR)

Dunia Nur, President, African Canadian Civic Engagement Council (ACCEC)

Dr. Tanya Sharpe, Ph.D., Associate Professor, University of Toronto, Factor-Inwentash Chair in Social Work in the Global Community, founder and director of the Centre for Research and Innovation for Black Survivors of Homicide Victims (The CRIB)

DeRico Symonds, Community Advocate & Co-founder of Game Changers902, and Executive Advisor to the Deputy Minister with the Province of Nova Scotia in the Office of Equity and Anti-Racism;

Kerry-Ann Cornwall, Chair of the Black Law Students' Association of Canada

Danielle Dowdy, Senior Advisor, Strategic Policy & Stakeholder Relations at Toronto Police Services;

Audrey Campbell, A Royal Canadian Mounted Police Management Advisory Board Member**;**

Alexandre Bien-Aime Bastien, Justice of the Superior Court of Quebec**;**

The Process

We have since engaged with members of the Justice Department who are leading this important initiative. Significantly, two members of our collective–Anthony Morgan and Professor Akwasi Owusu-Bempah–have been named to the Black Justice Strategy Steering Committee tasked with conducting public consultations and developing recommendations for the Strategy. Therefore, this document is the follow up to our initial letter and discussions by BOF Executive Director, Craig Wellington with members of the Justice Department Team tasked with leading this initiative. This contains our recommendations to the Steering Committee of the Black Justice Strategy.

Note – *as Anthony Morgan and Professor Akwasi Owusu-Bempah were named as members of the Steering Committee of the Black Justice Strategy in 2023, while they were engaged in the discussions in 2022 which helped inform our original letter to the Justice Minister, to avoid perceived conflict of interest, they were not engaged in the development of these final recommendations to the steering committee.*

Consequently, in the Spring of 2023, the members of BOFJWG created 18 points of legal references that it wished to explore and examine as relevant elements to be included in the Black Justice Strategy's framework and design. Those elements, or "buckets" as they were nicknamed, include:

1. Economic and Social Development Impediments
2. Social Determinants of Health
3. Over Policing & Racial Profiling
4. Inequitable Sentencing
5. Over Incarceration
6. Post Incarceration & Re-Integration
7. Rehabilitation & Support for Incarcerated
8. Public Engagement & Consultation
9. Data Collection
10. Awareness
11. DEI Strategies to Address Inequities in the legal sector
12. The *Under Protection* of Law
13. System Change & Coordination
14. Government Funding to Address Historical Legal Injustices
15. Youth & Justice Matters
16. Gender & Gender Identity & Justice Matters
17. Black Communities & Civil Law
18. Addressing the Treatment of Black Employees within Legal Sectors

With the aid of Google Documents, contributors were invited to review the chart and insert their comments and questions. Then, we invited the members of the group to a meeting to discuss and review the elements and to discuss their relationships with each other. Following the group discussion were one-on-one discussions with each of the contributors. The conversation tended to last 1 to 2.5 hours.

Although each conversation with every participant was unique, each one followed a basic structure which began with a broad discussion of what restorative Justice means. For example, some contributors advocated a restorative model that encompasses the broadest inclusion of social determinants of health within an overall reparatory Justice Plan. Others focused on the impact institutionalized racism was having on Black staff. Those conversations have shaped the framework that this report captures.

The Framework

The contributors of the BOFJWG recommend a holistic approach to restoring *justice* in the justice system for Black Canadians. Thus, they advocate for a framework that is:

Data-driven: Collecting data to identify and measure the damage and injustices that have done to Black Canadian's ability to access justice and the key social determinants of health. The analysis of the data will provide an understanding of the requirements needed to bring about systemic change within the legal sector.

Targeted and intentional: Addressing the harm injustices have specifically cost Black communities in Canada–paying close attention to the impacts as Blackness intersects with gender, accessibility, mental health, age, class etc.

Collaborative: Allowing Black Canadian voices to be fully heard and directive. Black Individuals and communities *must* be co-designers in the solution-creation process–enabling grassroots input and buy-in that can ultimately lead to greater healing.

Public: Ensuring both Black Canadians and Canadians at large are educated and aware of the historical impacts that anti-Black racism has had on both Black Canadian's ability to access justice as well as its negative impact on the integrity of the Canadian legal systems as a whole. Hence, an awareness campaign to expose just how detrimental the justice system has been to Black Canadians is required for accountability and transparency.

What Does Being Black In Canada Mean?

To start with, to have a *Black* Justice Strategy we will need to define what *Black* is. In other words, the Black Justice Strategy must be a targeted mission that intentionally restores justice for members of Canada's Black communities. Therefore, what is Blackness in Canada will need to be explored:

- What and Who is Black In Canada?

- What damages have they faced due to anti-Black racism?

- And, what activities can be carried out to meaningfully address and prevent damages caused by anti-Black racism?

Is Blackness a unique society of private individuals who share internal and independently crafted language, customs, and beliefs? Or, Is Blackness based on external public projections and perceptions that then, in turn, create a shared reality for those *bodies* that have been commonly labelled Black? That

latter has been the standard practice. The Toronto Police Service's Race-Based Data Collection on the Use of Force was based solely on how police officers "perceived" individuals to be. Thus, Blackness implicitly was accepted to be an external label.

While such externalization of Blackness can be seen as practical, it comes with the risk that the very agents of anti-Black racism could be given the power to dictate what Blackness is, who is Black–and when. In such a world, what prevents a police officer from knowingly labelling a lighter-skinned Black person a white Mediterranean person in order to "game" or contaminate the data collection process? On the other hand, if we move to a system that relies solely on self-identification, what prevents that white Mediterranean person from labelling his/herself Black whenever it is convenient?

Creating a distinctly Canadian model and/or definition of Blackness that combines and includes public perceptions and shared trauma of racism, the localized history of slavery, and the direct link to British and French colonialism/slavery to guide the definition of what is and is not Black is necessary. The Canadian model of Blackness must include the unique and long history of the Black Nova Scotian that intersects yet diverges from Black Caribbean Canada and The Black Canadian from continental Africa. In addition, the model should also include hybridity such as the admixture of indigenous and Black individuals.

Moreover, Canada itself has a complex and dynamic history of its own. In fact, one participant questions if a national restorative legal framework for Black communities could withstand Quebec's designation as a distinct and unique society. The current debate regarding Quebec Bill 96 seems to validate that concern. Furthermore, throughout Canada, there are still antiquated legal texts that identify Black Canadians as less than a second class **that must be removed**.[1] All such realities point to the fundamental questions of *What does it mean to be Black in Canada–nationally, provincially, and locally?* And, *What is and has been the legal impact of being Black in Canada?*

What is Restorative Justice for Black Communities?

What ought a restorative justice model to encompass? BOFWG Contributors hold that for any notion of restorative justice to be truly impactful, it must address the damages anti-Black racism–as expressed throughout the legal system has done to Black communities. Once the extent of the damage has been assessed through quantitative and qualitative means, the appropriate scope of a reparatory justice plan, which may involve monetary compensation, can be determined.

The ultimate goal of restorative justice is to address the underlying causes of harm, promote healing, and prevent future offences against Black Canadians. By emphasizing accountability, communication, and community involvement, restorative justice seeks to create a more inclusive and just society.
The key principles of restorative justice include:

- **Accountability**: Encouraging individuals and institutions to take responsibility for their actions and understand the impact on Black communities and individuals.

- **Inclusion:** Involving all affected parties, including victims, offenders, and the community, in the decision-making and resolution processes. Using codesign methodologies would therefore be an excellent vehicle to achieve greater inclusivity.

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[1] https://www.washingtonpost.com/news/post-nation/wp/2017/11/09/the-waitress-who-works-in-the-diner-needs-to-know-that-the-issue-of-sexual-harassment-is-about-her-too/

- **Healing and Support**: Leadership from within offending institutions must address the needs of affected individuals and communities by providing support, and facilitating a healing process.

- **Open Dialogue and Communication**: This calls for the promotion of open and honest communication between all parties involved, enabling them to express their feelings, concerns, and perspectives.

While normally seen as an alternative to criminal justice systems' emphasis on punishment and imprisonment, restorative justice aims to create opportunities for dialogue, understanding, and accountability, making it an excellent guiding conceptual framework for not only addressing young and non-violent offenders but how we view repairing the judicial system itself.

Beyond the criminal justice system, the contributors agreed that a Black Justice Strategy must address the harm done to Black communities and individuals with civil law to ensure that Black individuals are properly compensated for bodily harm (that occurs in such instances as car accidents), property damages, and labour-related compensations and any other related harm that may fall under civil law.

While the injustices within the criminal justice system have been highlighted publicly, civil losses have largely gone untold along with its impacts on Black communities' access to health and financial resources. Therefore, any Black Justice Strategy framework must include addressing the inequities Black communities face in accessing justice within civil law.

The inclusion of civil law into the discussion also plays another important psychological role. It helps to dismantle any notion that the only interaction Black communities have with the Canadian legal system is criminal. The hyper-association of Black communities with the criminal system while ignoring the injustice they face in civil law as well, can in and of itself be harmful to Black communities–connecting them to crime–not justice–in the minds of Canadians. The narrative of civil law will be further explored within this document on page 15.

Youth

Contributors were clear that they did not want to see yet another generation having their education be a pathway to incarceration. For many Black youths, schools have become a pipeline not to university but to prison as racial profiling within schools especially those with School Resource Officer (SRO) programs has led to the over-policing of Black youths inside the education system. This then allowed the criminalization of minor disciplinary issues by issuing citations or making arrests for non-violent incidents that could be better addressed through alternative means, such as counselling or restorative justice practices.

Unfortunately, once the formal criminalization process has occurred the negative sequence of over-policing leading to inequitable penalizations and sentences, and then to over-incarceration is set in motion–ensuring yet another generation being unravelled by anti-Black racism. Ample resources must be allocated to dismantling this reality to ensure that Black Youth access the opportunities necessary to advance as healthy productive adults. As stated earlier the intersectionality of Black and Youth needs to be thoroughly explored and addressed within a Black Justice Strategy.

Accessibility & Mental Health Needs

The intersectionalities of accessibility and mental health with Blackness must be addressed within the Black Justice Strategy. Black community members, especially those who live with disabilities, neuro-diverse individuals, and those living with mental health challenges, must be invited to participate in consultations where their lived experiences and insights can help co-design targeted programs which take into account their specific needs and experiences, including *diversion* programs that ensure that health professionals– not police officers–respond and care for unarmed individuals that are experiencing a mental crisis.

Gender & Gender Identity

Paradoxically, anti-Black racism has led to over-policing on one hand, and on the other hand, it has also led to "under-protection of the law" for Black communities.   The American #MeToo[2] movement brought attention to the fact that sexual assaults of Black and Latina women were going largely ignored. Can the same be said here in Canada? We must ask: Are transgressions such as sexual assault against Black members of the Canadian society pursued and addressed and brought to justice at the same rate as their counterparts? And how does the intersectionality of race and gender impact one's access to justice in Canada?

In addition to "traditional" gender perspectives, the emergence of transgender voices and narratives has made the intersection between law and gender even more complex. In recent years, Canada has seen significant legal reforms aimed at increasing legal protections for trans, Two-Spirit, and non-binary people, in recognition of well-documented incidents of systemic and structural harm experienced by these communities. Notably, Indigenous, Black, and racialized persons who also do not conform to "traditional" gender roles, face additional layers of discrimination from their multiple, intersecting identities, and report frequent, recurring, and harmful encounters with law enforcement. Trans, Two-Spirit, and non-binary people also face additional hardships within detention and carceral centers which are designed based on a dual-gendered system.

This further emphasizes that it is imperative when exploring the design of a restorative justice framework for Black Canadians, that an intersectional lens is utilized, which takes into account the various intersecting identities, including race, gender, gender identity, ethnicity, religion, immigration status, nationality, etc., which comprise the fulness of Canada's Black communities.

The Need for High-Quality Data Collection

As mentioned above, defining Blackness is a key data point for the development of a Black Justice Strategy. Yet, accessing the full meaning of that data point requires an extensive ongoing data collection campaign. Many members of Black communities know that racism generates a qualitative impact on their lives without having extensive quantitative data to validate their understanding**.**

To obtain the required data one may point to the need for an identification process that starts early in life such as one's health card and is correlated with key aspects of life such as housing, health care, employment, education and contact with law enforcement. Currently, health care is the domain of the

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[2]https://www.washingtonpost.com/news/post-nation/wp/2017/11/09/the-waitress-who-works-in-the-diner-needs-to-know-that-the-issue-of-sexual-harassment-is-about-her-too/

province, so if healthcare were to be used to collect disaggregated data in a standardized way throughout Canada, that would be designed and mandated at the federal level in a manner that ensures that each province complies by employing strong legal language such as "thou must" as opposed to "thou may" to ensure action and impact.

Data collection, data management, and data analysis are extremely important to identify how and when discrimination occurs. The more defined the data set the more precise insights will be revealed. Independent oversight will be required to ensure greater objectivity and accountability. Such independent oversight should include a racially and ethnically diverse team of data scientists and analysts.

The need for open access to critical race-based data could be seen throughout The Toronto Service's (TPS) presentation of its race-based data collection that was correlated to the use of force and strip searches. The presentation discussed broad outcomes that while revealing that there is indeed an asymmetrical distribution of interactions, strip search and use of force along racial lines perceived by officers, it does not drill down to identify what types of police interactions tend to most likely lead to strip searches or use of force. If that data exists, the institution does not make it readily accessible to the public. Furthermore, the data TPS presented does not identify the racial makeup of the police officers that engaged in interactions nor was the racial makeup of those who came in contact with the police confirmed by those individuals. *(See graph below.)*
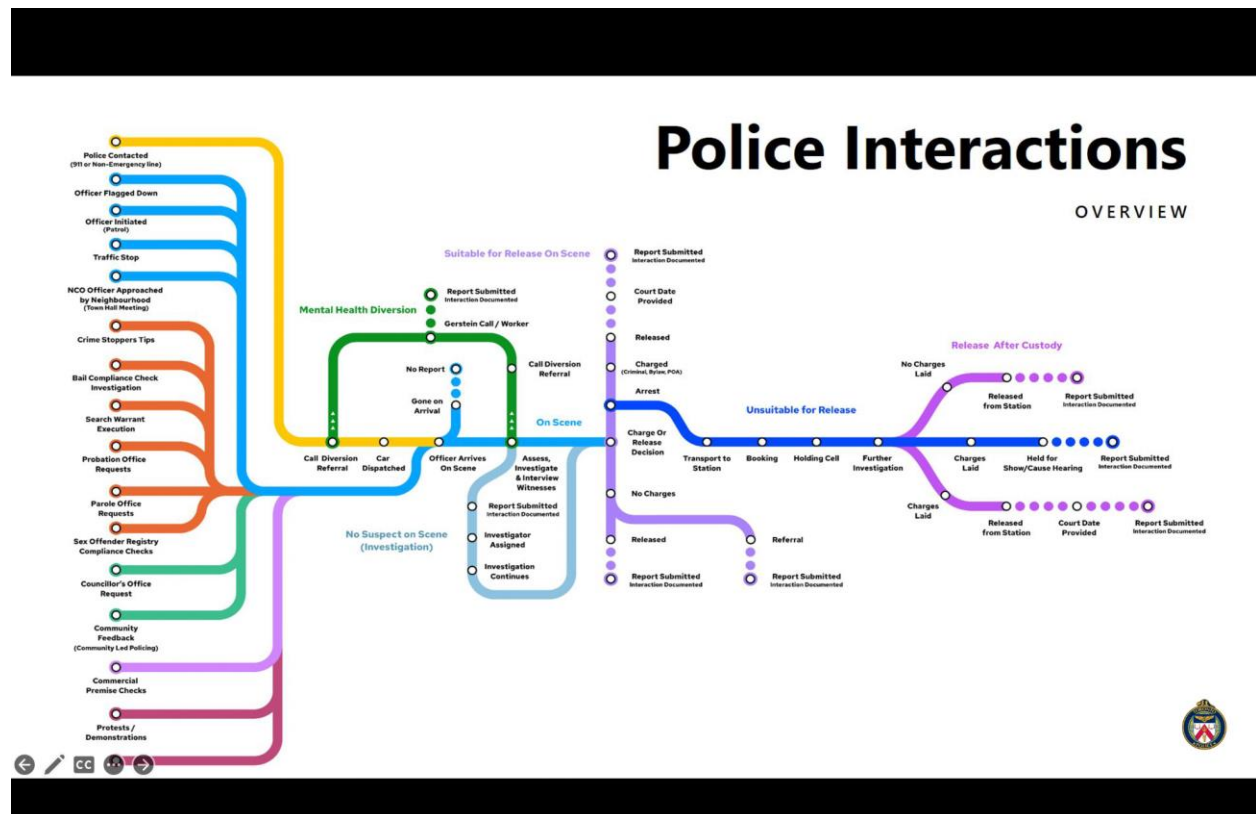
(Toronto Police Service's Interaction Map Distributed Throughout Its Race-Based Data Collection on Use of Force Townhall 2022-2023)

Furthermore, the public has no idea if 10% of the police officers were responsible for 80% of the asymmetrical distribution of use of force or if the practice was more evenly spread among law enforcers. The public has no idea if those perceived by the officer to be Black were, in fact, Black or the identity assumed by the individual. Furthermore, the racial identities of the officers were not shared. In short, the public is confronted with large data gaps making it difficult to get a full understanding of what is truly driving anti-Black racism on the frontlines of our society. All existing laws and regulations that prevent access to such data should be identified, challenged and overturned if possible.

Thus, detailed data collection and data management will be extremely important. Even more so as our society begins to dash into the AI race. "Unchecked" data created by racist environments can lead to disastrous outcomes as the racism inherent in the dataset is magnified by AI and Machine learning. An example of such a disastrous outcome is well documented during the early days of facial recognition initiatives that delivered horrible results for Black individuals.

However, as the technology develops and matures, there could become new tools to visually identify racial groups and individuals with the use of AI-empowered tools such as computer vision[3] and expert systems.[4] This process would then run parallel to the human identification processes providing an alternative method of analyzing human behaviour and situational outcomes. This alternative data source could provide new insights into understanding the nature and the triggers of the human decision-making process that led to the discrimination Black individuals face.

The power of linking data collection and new technologies to address anti-Black racism needs to be extensively explored and examined. It must be noted that while data collection can be extremely useful, data gathered, processed and used incorrectly will be extremely dangerous.[5] So clean data is required. But, defining what 'clean' data means and how to obtain it is quite tricky.

Once we recognize that datasets created by over-policing may inherently contain biases, cleaning the datasets is a complex and nuanced task. It requires a commitment to addressing systemic issues, involving diverse perspectives, and ongoing vigilance to ensure fair and unbiased outcomes. Here are some recommended steps to mitigate bias in datasets:

- Seek to gather data from a variety of sources beyond law enforcement agencies. Include community organizations, social services, public health institutions, and other relevant stakeholders to obtain a more comprehensive and balanced representation of the community.

- Remove or encrypt *personally identifiable information* (PII) from the dataset to protect the privacy of individuals. This helps ensure that biases associated with specific individuals or communities are not perpetuated.

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[3] Computer vision enables machines to understand and interpret visual information from images or videos. It involves tasks such as image recognition, object detection, facial recognition, and image generation. Create a more in-depth discussion regarding computer vision

[4] Expert Systems, also known as knowledge-based systems, are computer programs designed to mimic the decision-making capabilities of human experts in a specific domain. These systems utilize artificial intelligence (AI) techniques to capture and apply the knowledge and expertise of human specialists. Expert systems consist of two main components: a knowledge base and an inference engine.

[5]https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/

- Normalize the dataset by ensuring proportional representation across demographics and communities. Adjust for underrepresented groups by oversampling or augmenting the dataset, if feasible and ethical.

- Be cautious of biases that may arise during data labelling. Provide clear guidelines and instructions to data annotators to minimize subjective interpretations and prejudices. Regularly audit the labelling process to identify and rectify any biases.

- Apply fairness-aware techniques that include the highest data management standards that are influenced by DEI practices during the modelling process to mitigate bias. This may involve adjusting decision thresholds, introducing fairness constraints, or leveraging techniques like adversarial debiasing or reweighting the dataset to address bias.

- Involve domain experts, ethicists, social scientists, and community stakeholders in the development and evaluation of models. Their insights can provide valuable perspectives on identifying and mitigating biases.

- Establish ongoing monitoring and evaluation processes to identify and address biases that may emerge as the model is deployed and used. Regularly update the dataset and models to incorporate new knowledge and insights.

- Insist transparency in the data collection and model development process.

Assessing The Damages

While the contributors' discussions touch upon the 18 judicial narratives, five of those narratives repetitively emerge as especially damaging:

1. Racial Profiling
2. Over Policing
3. Inequitable Sentencing
4. Over Incarceration
5. Under compensation

Racial profiling– the practice of law enforcement targeting individuals based on their race, ethnicity, national origin, or perceived racial characteristics, rather than on reasonable suspicion or evidence of criminal activity. It involves using race or ethnic background as a primary factor in deciding to initiate an interaction, such as a stop, search, or questioning, with an individual. **Racial profiling** has led to over-policing, **inequitable sentences**, and therefore over-incarceration of Black individuals. This problematic sequence has undermined both Black communities and the Black individual's full access to legal and social justice in Canada.

All the contributors agreed that addressing racial profiling that leads to over-policing requires a multi-faceted approach involving systemic reforms, policy changes, community engagement, and a

commitment to addressing underlying issues. Here are some strategies that can be employed to address over-policing by:

- Implementing robust mechanisms for police accountability and oversight is crucial. This can include independent civilian oversight bodies, transparent complaint processes, and the use of body cameras to increase accountability and deter inappropriate behaviour.

- Providing comprehensive training to law enforcement agencies on topics such as implicit bias, cultural competency, de-escalation techniques, and community-oriented policing can help reduce over-policing. Emphasizing the importance of respectful and unbiased interactions with all members of the community is essential.

- Reassessing and reforming policing strategies can help reduce over-policing. Shifting focus from a purely punitive approach to one that emphasizes community engagement, problem-solving, and addressing root causes of crime can lead to more effective and equitable outcomes.

- Establishing diversion programs and alternative responses to non-violent offences can help reduce unnecessary arrests and interactions with the criminal justice system. This can involve implementing restorative justice practices, mental health crisis response teams, and specialized community-based programs.

- Building trust and fostering positive relationships between law enforcement agencies and the communities they serve is vital. Encouraging community input, dialogue, and collaboration through initiatives such as community policing forums, town hall meetings, and community advisory boards can help address concerns and shape policing practices.

- Recognizing that over-policing often stems from broader social and economic inequalities is crucial. Addressing these underlying factors, such as poverty, lack of access to education and healthcare, and systemic racism, can help reduce the need for policing interventions and promote safer communities.

- Advocating for policy and legislative reforms that address policing is essential. This can involve reviewing and revising laws, such as drug laws, to prioritize public health approaches rather than punitive measures. It may also include implementing policies that discourage racial profiling and promote fair and unbiased policing practices.

Therefore, the strategic responses to racial profiling and **over-policing ought** to include:

- **Police Body Cameras:** Many police departments have adopted the use of body-worn cameras. These cameras record interactions between police officers and the public, providing an objective record that can enhance transparency and accountability as well as deter misconduct.

- **Implicit Bias Training:** Police agencies have implemented training programs to address implicit bias and promote fair and unbiased policing. Such training aims to raise awareness among officers about unconscious biases and provide strategies for overcoming them during interactions with the community.

- **Community Policing Programs:** Community policing initiatives involve developing closer relationships between law enforcement agencies and the communities they serve. This can include assigning officers to specific neighbourhoods, organizing community events, establishing neighbourhood watch programs, and engaging in regular dialogue with community members.

- **Crisis Intervention Teams:** Many jurisdictions have implemented specialized crisis intervention teams (CITs) composed of police officers and mental health professionals. These teams are trained to respond to calls involving individuals in mental health crises, aiming to de-escalate situations and connect individuals with appropriate resources instead of relying solely on law enforcement interventions.

- **Diversion and Restorative Justice Programs**: Diversion programs offer alternatives to traditional arrest and prosecution for non-violent offenders. These programs can include drug courts, mental health courts, and restorative justice practices, which focus on repairing the harm caused by offences through dialogue, restitution, and community involvement.

- **Reviewing Use-of-Force Policies:** Police departments, such as the Toronto Police Services and The Peel Regional Police, have reviewed and revised their use-of-force policies to ensure they align with best practices and prioritize de-escalation techniques. This can involve restrictions on certain types of force, promoting a proportional response, and emphasizing the preservation of life.

- **Independent Civilian Oversight:** Establishing independent civilian oversight bodies with the authority to investigate complaints against police officers can help ensure transparency and accountability. These bodies play a crucial role in reviewing and adjudicating complaints, making recommendations for policy changes, and building trust between the community and law enforcement. **This independent civilian oversight must include data collection and analysis.**

Another damaging source in our criminal justice system is "**Inequitable Sentencing**". Inequitable sentencing refers to the phenomenon where individuals convicted of similar offences receive different or unfair sentences based on factors such as their race, ethnicity, socioeconomic status, or other personal characteristics, rather than solely based on the severity of the crime and individual circumstances. It signifies a disparity in the application of punishment within the criminal justice system, resulting in unequal treatment for similarly situated individuals. Addressing inequitable sentencing requires comprehensive reforms within the criminal justice system, including:

- Developing and implementing clear and comprehensive sentencing guidelines can promote consistency and fairness in sentencing decisions. These guidelines should account for relevant factors such as mitigating and aggravating circumstances, the individual's circumstances, the collateral consequences and of course any sentencing disparities to minimize the potential for bias and ensuring proportionality in punishment.

- Implementing reforms to sentencing policies and guidelines can help promote fairness and reduce disparities. This may involve revising mandatory minimum sentences, providing judges with more discretion, and developing evidence-based sentencing practices that consider individual circumstances.

- Evaluating and reforming mandatory minimum sentencing laws to ensure they do not contribute to inequitable outcomes and considering alternative sentencing approaches that prioritize rehabilitation and proportionality.

- Establishing commissions or committees tasked with reviewing and recommending reforms to sentencing policies and practices can lead to more equitable sentencing outcomes. These bodies typically involve experts, community representatives, and stakeholders to assess the impact of existing policies and propose changes.

Bias in the judicial system directly related to sentencing must be tackled using tools by:

- Providing training to judges, prosecutors, defense attorneys, and other criminal justice professionals on implicit biases can help increase awareness and reduce the influence of biases in sentencing decisions. Training programs should focus on recognizing and mitigating the impact of biases on judgments. Such initiatives must be more extensive and comprehensive than any module programs on implicit bias and cultural competency they may now be required to participate in.

- Establishing mechanisms for judicial accountability and oversight, such as independent review bodies, can help ensure that sentencing decisions are fair and consistent. Regular audits, evaluations, and feedback processes can help identify and address disparities in judicial practices.

- Implementing mechanisms to monitor and hold judges accountable for their sentencing decisions can help address inequities. For instance, oversight bodies may review sentencing decisions for potential biases and provide feedback or recommendations to ensure fairness.

- Emphasizing procedural justice principles, such as transparency, fairness, and respect, can help promote equitable sentencing practices. Ensuring that individuals have a voice in the process, are treated with dignity, and understand the rationale behind sentencing decisions can enhance perceptions of fairness.

The inclusion of Black communities and Black legal advocates in the sentencing process is also encouraged. Such inclusion could be achieved by:

- Engaging Black communities, advocacy groups, and stakeholders in the criminal justice system is essential. Collaborating with community organizations can help identify systemic issues, provide insights into community needs, and foster trust and accountability.

- Implementing community courts and alternative sentencing programs that prioritize restorative justice approaches can help address inequitable sentencing for nonviolent offences. These programs focus on rehabilitation, community involvement, and addressing the root causes of criminal behaviour, such as the social determinants of health, rather than solely punitive measures.

The plague of over-sentencing could also be addressed by including a holistic lens to criminal offences by:

- Adding **racial impact assessments** for proposed legislative or policy changes can help identify potential disparities and inform decision-making. These assessments can help mitigate unintended consequences and ensure that reforms do not perpetuate inequities.

- Recognizing the influence of socioeconomic factors on sentencing outcomes and implementing initiatives that address social inequalities, such as access to legal representation, can contribute to more equitable sentencing.

Once again data acquisition is key. Collecting and analyzing comprehensive data on sentencing outcomes, disaggregated by race, ethnicity, socioeconomic status, and other relevant factors, is crucial. Monitoring and evaluating disparities over time can help identify areas of concern, track progress, and inform targeted interventions. Data acquisition will allow for data-driven sentencing reforms. In the United States, the U.S. Sentencing Commission has implemented data-driven approaches to reduce disparities in federal sentencing, including adjusting sentencing guidelines based on empirical research and analysis.

In addition, personal data collected in the context of and related to antiquated laws such as charges, sentences and records connected to the use and sale of cannabis, should be thoroughly scrubbed from all data sets. In fact, the fees of related pardons should be waived. Moreover, to the extent that Black individuals were disproportionately overcharged and sentenced under such laws, corrective initiatives ought to be established to ensure that Black communities are able to equitably participate in employment and entrepreneurial opportunities which have been denied to them due to the criminal records associated with these, now legal offenses. There should also be research to quantify and remedy the socio-economic impacts of the harms caused by this disproportionate criminalization.

Until solutions such as these are fully implemented in Canada, Black Canadians are at risk of being sentenced to prison, not just at a higher rate, but for longer periods of time. Both realities will naturally lead to the **over-incarceration** of members of the Black communities.

Examining Our Civil Law

While we need to address our current Canadian criminal system that has racially profiled, over-policed, and given unequal sentencing to members of the Black communities leading to them being over-incarceration, the Canadian civil law system might be just as problematic.

Civil law refers to a legal system based on a comprehensive set of laws that govern private rights and relationships between individuals or organizations. It is concerned with the resolution of disputes and conflicts between parties seeking compensation or specific remedies, rather than dealing with criminal offenses. Civil law encompasses a wide range of legal matters, including contracts, property rights, torts (personal injury), family law, inheritance, and commercial law. Therefore, it is here under civil law that the narrative of **under-compensation** is acute.

In civil law, disputes are resolved through a civil court process, where parties involved present their case and evidence before a judge or panel of judges. The judge applies the relevant laws and regulations to determine liability, allocate damages, and provide appropriate remedies. Civil law proceedings focus on compensating the injured party or restoring them to the position they were in before the dispute occurred.

Civil law systems are characterized by the principle of legal certainty, where legal rules are clearly defined and interpreted by judges according to the law. Therefore, one might believe that the civil law system in Canada is relatively impartial compared to the criminal system, however, it has not escaped the impact of historical discrimination. After all, how can a society that has long expressed explicitly resentment to Black ownership as seen–as mentioned earlier–in antiquated and racist language within land title documents could ever simultaneously truly offer Black individuals equal private property rights? It cannot.

We must explore and examine the extent to which discrimination penetrated civil law. To do so, key questions must be asked:

Has it Limited Black Communities Access to Justice? Bias can also arise from barriers to accessing justice, such as financial constraints, lack of legal representation, or language barriers. These obstacles can disproportionately affect certain groups, limiting their ability to effectively assert their rights within the civil law system.

Has Racial Profiling in Civil Litigation Occurred? Racial profiling, which involves the unjust targeting or treatment of individuals based on their race or ethnicity, can influence civil law proceedings. For example, there have been cases where individuals from racialized communities have been subjected to heightened scrutiny or unfairly targeted in civil litigation, leading to unequal treatment or biased outcomes.

Has Discrimination in Employment and Housing Law Occurred? Racial bias can also manifest in cases involving employment discrimination or housing discrimination. Are there reports that have highlighted instances where Black Canadians have faced obstacles in accessing housing or employment opportunities due to discriminatory practices or biased decision-making within civil law?

Have Disparities in Family Law Proceedings Disproportionately Negatively Impact Black Communities Access to Equal Compensation? Racial bias can impact family law proceedings, such as divorce, child custody, or child support cases. Are there studies that show that Black Canadians face unequal treatment or biased outcomes in family law disputes, including decisions related to custody arrangements, visitation rights, or spousal support?

Are Black Individuals Facing Unequal Access to Legal Representation? Racial bias can manifest in the form of unequal access to legal representation, which can affect the outcomes of civil law cases. For example, Black individuals may disproportionately face barriers in obtaining quality legal representation, leading to unequal power dynamics and potential biases in the courtroom. The Black Justice Strategy committee will need to identify to what extent such a reality is true for Black Canadians.

Furthermore, to thoroughly assess how discrimination in civil law has impacted Black Canadians, one must again explore how such discrimination expresses itself through the various intersectionalities between race and age, gender, histories and localities of the Black individual and/or Black communities.

Again, extensive research, data collection and analysis will be required to identify all the areas and ways discrimination has penetrated the Canadian civil law system to negatively impact Black Canadians in quantitative terms.

Supporting The Full Black Professional Ecosystem Within Our Legal System

This document, for clarity, has largely placed Black communities and the legal system in nearly adversary positions to one another. However, nothing is ever really that cut and dry. In fact, many Black individuals work within the very legal system that is under critique. Yet, as mentioned above, the contributors have stressed that the legal institutions themselves are havens of anti-Black racism. The current action suit against the Human Rights Commission by its Black employees—highlights this point.

Therefore, it is important to address such discrimination at its root. For if we allow discrimination to run rampant within Canadian legal institutions, then we can only expect such discrimination to be amplified outside of those institutions. Within law enforcement, such a reality is exceptionally problematic.
How can we protect the Black professionals within such organizations and empower them to name and challenge the anti-Black racism they face at their workplaces?

One suggestion is to establish an independent and recognized entity that will serve as a support system for Black legal professionals. This entity would then provide psychological and legal support for those who face anti-Black racism within the workplace and/or their careers. Such professionals include, but may not limited to:

Appellate Attorneys	**Crime Scene Investigators**	**Forensic Pathologists**	**Legal Administrators**
Arbitrators		**Forensic Psychologists**	**Legal Aid Attorneys**
Bailiffs	**Defence Attorneys**		**Legal Consultants**
	DNA Analysts	**Gang Investigators**	
Civil Attorneys/Lawyers	**Document Reviewers**	**Intellectual Property Specialists**	**Legal Ethics Advisors**
			Legal Interpreters
Civil Interpreters	**Environmental Consultants**	**Judges**	**Legal Investigators**
Correctional Officers			**Legal Mediators**
	Expert Witnesses	**Jury**	
Court Administrators			**Legal Researchers**
Court Clerks	**Foreclosure Mediators**	**Juvenile Justice Professionals**	**Legal Secretaries**
Court Reporters	**Forensic Accountants**	**Lab Technicians**	**Mediators**
Crime Analysts	**Forensic Engineers**	**Land Use Planners**	

Paralegals	Polygraph Examiners	Prosecutors	Victim Impact Specialists
Patent Attorneys	Probation and Parole Officers	Title Examiners	
Police Officers		Victim Advocates	

Traditionally, labour laws see those in high positions of authority as having more power within the workplace. However, it is important to note that anti-Black racism can in fact rearrange traditional office dynamics. In many cases, Black professionals in higher positions of authority are subjected to higher levels of anti-Black racism where "subordinates' are empowered by system racism both within and outside the institutions to be insubordinate to Black authority figures, without penalty. Thus, making them vulnerable at almost every turn. Clearly, Black professionals within the legal sector need safe spaces and support systems.

Along with supporting Black professionals within the legal system, The Black Justice Strategy must also include initiatives that promote more inclusion of Black Individuals entering into every aspect of the Canadian legal ecosystem.

Public Engagement

Throughout this document, the call for both quantitative and qualitative insights has been made. One of the quantitative activities requires extensive research and data collection and in some cases the establishment of new policies and laws to make accessing the needed data possible. On the qualitative side of the equation, we will need to engage Black communities that include members who have and have not directly been involved with the legal system as well those who are subject matter experts and operational stakeholders to discover and explore their insight regarding Canada's legal system–both criminal and civil. To obtain such insights thorough and meaningful public engagements and consultations will be needed.

To achieve this, the adaptation of codesign methodologies into the Black Justice Strategy steering committee's public engagements is highly recommended. Committed to the mantra *Nothing About Us Without Us,* codesign, also known as co-creation or participatory design, is an approach that involves the active participation and collaboration of stakeholders in the design and decision-making processes. It recognizes that the expertise, perspectives, and experiences of those affected by a particular issue or system are valuable in shaping effective and inclusive solutions.

In codesign, diverse stakeholders, such as end-users, community members, experts, and relevant professionals, come together to collectively define problems, explore possibilities, and develop solutions. The process typically involves collaborative workshops, meetings, or iterative engagements aimed at fostering dialogue, creativity, and shared decision-making. The key principles of codesign include:

Inclusion: to emphasize the participation of individuals from diverse backgrounds, communities, and perspectives, ensuring that their voices are heard and valued throughout the process.

Collaboration: to promote partnerships among stakeholders, encouraging the sharing of knowledge, skills, and experiences. It recognizes that collective intelligence can lead to more innovative and effective solutions.

Empowerment: by involving grassroots voices and those directly impacted by a 'reality' or an initiative in the decision-making and problem-solving processes. It acknowledges the expertise and insights they bring, fostering a sense of ownership and responsibility.

Iteration: to allow for continuous feedback, learning, and adaptation. It encourages flexibility and openness to refine ideas and approaches based on ongoing input and evaluation.

Using codesign methodologies to shape public consultation will allow for a diverse range of stakeholders to participate in the decision-making process, particularly those affected by a specific issue, policy, or project. These sessions facilitate a collaborative and inclusive approach to gathering public input, ideas, and feedback. Here's how public consultation sessions led by codesign typically unfold:

Planning and Preparation: The codesign team, which may consist of facilitators, designers, subject matter experts, community leaders, and community engagement specialists, starts by clarifying the purpose, scope, and goals of the consultation. They identify the target audience and determine the appropriate methods and formats for engagement.

Invitation and Outreach: Various strategies are employed to invite and inform the public about the consultation sessions. This may include public announcements, advertisements, social media campaigns, targeted outreach to community organizations, and direct invitations to stakeholders who are likely to be affected by the topic at hand.

Session Design: Co-designers carefully design the format and structure of the consultation sessions to encourage active participation and collaboration. They may employ techniques such as group discussions, interactive workshops, brainstorming activities, visual aids, and other tools that foster engagement and inclusive dialogue.

Facilitation: Skilled facilitators lead the consultation sessions, ensuring that everyone has an opportunity to contribute their ideas and perspectives. They create a supportive and respectful environment that encourages open dialogue, active listening, and constructive interactions among participants.

Co-creation Activities: Codesign sessions often involve interactive activities that allow participants to actively contribute their insights, experiences, and suggestions. These activities can include small group discussions, design exercises, scenario planning, prioritization exercises, and visualization techniques to capture ideas and feedback effectively.

Documentation and Visual Representation: During the consultation sessions, visual documentation techniques such as capturing key ideas on whiteboards, using sticky notes, or visual mapping are employed to make participants' contributions visible and tangible. This helps participants see how their input is being recorded and encourages a sense of ownership and transparency in the process.

Reflection and Iteration: Co-designers facilitate reflection exercises, allowing participants to review and discuss the ideas and feedback shared during the consultation. This process may include identifying common themes, exploring divergent perspectives, and seeking clarification or additional input to ensure a comprehensive understanding of the issues at hand.

Synthesis and Reporting: The insights and feedback gathered during the codesign sessions are compiled and synthesized into a report or summary document. This document captures the key findings, recommendations, and themes that emerged from the consultation process, ensuring that stakeholders' perspectives are accurately represented.

Feedback Loop and Next Steps: Co-designers establish mechanisms to provide feedback and updates to participants, ensuring that their contributions are considered and informing them of how their input influenced decision-making. This feedback loop promotes transparency and accountability, fostering a sense of trust and continued engagement.

In short, public consultation sessions led by codesign would be inclusive, participatory, and collaborative, allowing for a meaningful exchange of ideas and perspectives. By involving the public in decision-making processes, codesign facilitates more informed, inclusive, and contextually relevant outcomes that address the needs and aspirations of Black communities.

Finally, in addition to public consultation, the Black Justice Strategy requires **a nationwide awareness campaign** to inform the greater Canadian public of the damages that discrimination has done to Black communities and to the integrity of the Canadian legal system. Hopefully, the awareness campaign could also discuss key relevant and impactful l steps being taken to dismantle anti-Black racism within Canada's legal system.

In Closing

The BOFJWG offers the recommendations outlined in this document to the Federal Government's Black Justice Strategy Steering Committee in the hopes that their recommendations will be adapted into the Committee's own strategy to in turn affect meaningful change in Canada's legal system to then finally offer Black communities in Canada the full reparations and restorative justice then are entitled to.