

ANTI-INDIGENOUS RACISM IN THE CRIMINAL JUSTICE SYSTEM



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Anti-Indigenous racism is deeply embedded in Canada's criminal justice system. Indigenous people are overrepresented at every stage, from policing to courts to corrections. This disparity is tied to longstanding discrimination and the ongoing impacts of colonialism.

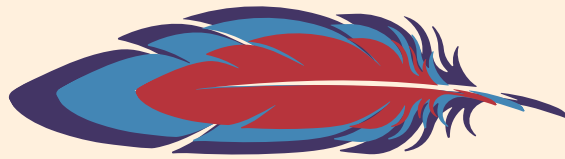
This spotlight explores the factors behind Indigenous overrepresentation and its effects across different age groups and genders, recognizing that the consequences are severe across all communities. It also draws on major reports, inquiries, and commissions that have documented the crisis and called for change.

Historically, the term "criminal justice system" has been used to refer to systems (police, courts, and corrections) that are the main branches of the legal system. While we refer to this term in our report for ease of understanding, we acknowledge that for many, particularly Indigenous, Black and racialized people, there has never been anything "just" about this system.



Colonialism's Ongoing Impact

Overrepresentation of Indigenous people in the criminal justice system is a worsening crisis and a direct consequence of colonialism. For many Indigenous people, colonialism is not simply part of the past but an ongoing force that continues to shape their lives and contributes to high rates of incarceration.¹



Colonialism has taken many forms, including the suppression of Indigenous cultural practices, such as the historic ban and criminalization of the Potlatch. It has also involved the forced removal of Indigenous people from their lands and efforts to undermine Indigenous communities through forced assimilation.



The Truth and Reconciliation Commission of Canada (TRC)

The Truth and Reconciliation Commission of Canada was established to document the history and lasting impacts of residential schools and to advance reconciliation. It collected testimony from over 6,500 survivors and archived more than 5 million records. It also issued 94 Calls to Action addressing the lasting impact of residential schools. The Commission found that residential schools were a government-sponsored attempt to destroy Indigenous cultures and languages and to assimilate Indigenous people. It characterized this as cultural genocide.²

That intergenerational trauma persists today. It has been compounded by the 60s Scoop and Millennium Scoop, two periods of mass apprehension of Indigenous children from their families and communities. These histories continue to affect how institutions respond to Indigenous people. It is reflected in higher rates of justice involvement, poverty, homelessness, and mental health and substance use challenges.



Despite this, Indigenous people continue to resist and persevere. The TRC found that efforts to erase Indigenous cultures through coercive government policy ultimately did not succeed. Indigenous traditions and languages continue to be practiced, with many proudly maintaining their identities.³





What Drives Indigenous Overrepresentation in the Criminal Justice System

Racial discrimination can come from individual behaviour, whether intentional or not. It can also be embedded in systems. This broader form is known as systemic discrimination, which includes policies or structures that create or perpetuate disadvantage for racialized people. It occurs throughout the criminal justice system, including in policing, courts, and corrections.⁴

The Supreme Court of Canada recognized this in *R. v. Gladue* (1999) and *R. v. Wells* (2000). The Court found widespread bias against Indigenous people in Canada, and that this bias contributes to systemic discrimination across the criminal justice system.⁵

The Court also concluded that the overrepresentation of Indigenous people in the justice system is a serious and urgent issue, and a national crisis.⁶





What Drives Indigenous Overrepresentation in the Criminal Justice System

- Indigenous people are both over-policed and under-policed. They are often targeted by police, and they are also neglected when assistance is needed.⁷
 - Indigenous people are about twice as likely as non-Indigenous people to mistrust police.⁸
 - Indigenous accused are denied bail more frequently and are held in pre-trial detention for longer periods than non-Indigenous accused.⁹
 - Indigenous people continue to be sentenced to custody in comparatively greater proportions than non-Indigenous people.¹⁰
 - *R. v. Gladue* requires courts to consider the systemic, historical, and personal circumstances of Indigenous people during sentencing and bail. This is meant to address overrepresentation and support alternatives to custody.¹¹
 - *R. v. Gladue* is an important decision, but it has been criticized for being applied inconsistently and for not reducing overrepresentation.¹²
 - Indigenous people in custody are classified as high-risk. As a result, they are subjected to more restrictive treatment.¹³
 - Indigenous women are more likely to be placed in segregation without their consent and for longer periods than non-Indigenous women. They make up 50% of people in federal segregation and account for 50% of those in maximum-security facilities.¹⁴
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Youth to Adulthood

In 2016 to 2017, Indigenous youth (ages 12 to 17) accounted for 8% of the population. Yet they accounted for 46% of youth admitted to the corrections system.¹⁵

Youth from the child welfare system are at much greater risk of becoming involved with the youth criminal justice system, a process referred to as the "child-welfare-to-prison pipeline."¹⁶

Indigenous children are similarly overrepresented among foster children in Canada. In 2021, Indigenous children accounted for 7.7% of all children under age 15 in the general population, but 53.8% of children in foster care.¹⁷



Indigenous Adults

Among adults, the gap is just as stark. In 2023 and 2024, Indigenous adults were incarcerated at a rate ten times higher than non-Indigenous adults relative to their respective shares of the population. Over the five-year period between 2019 and 2024, this overrepresentation increased each year.¹⁸

Indigenous adults made up 33.2% of the average daily count of the custodial population in federal and provincial facilities that year, despite representing only 4.3% of the overall adult population.¹⁹

The Cost for Indigenous Women and Girls

As of April 2022, Indigenous women accounted for 50% of all federally incarcerated women.²⁰

From 2019 to 2024, overrepresentation increased more among Indigenous women than among Indigenous men.

From 2022 to 2023, Indigenous female youth accounted for 55% of female youth custody admissions, while Indigenous male youth accounted for 44% of male youth admissions. Together, Indigenous youth comprised 40% of all youth admissions to provincial and territorial correctional services.²¹



Violence and Victimization

For Indigenous women, girls, and 2SLGBTQIA+ people, these harms are also tied to safety and protection. The same systems that contribute to over-incarceration or criminalization also influence whose safety is prioritized and how institutions respond when people need help.

Indigenous women are four times more likely than non-Indigenous women to be victims of violence. They make up 16% of all female homicide victims and 11% of missing women, yet Indigenous people make up only 4.3% of the population in Canada.²² Indigenous women are also more likely to experience physical and sexual assault than non-Indigenous women.²³



The National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG)



The Inquiry was established to examine the disproportionate victimization of Indigenous women, girls, and 2SLGBTQIA+ people. Its mandate included investigating cases of those who are missing or have been murdered, as well as links to the intergenerational impacts of residential schools.



The Inquiry's 2019 report, *Reclaiming Power and Place*, criticizes law enforcement for under-policing. It points to discrimination, indifference, poor communication with families and communities, and a lack of action in major cases involving Indigenous victims, including human trafficking.²⁴

A follow-up report by the Assembly of First Nations found that Indigenous women, girls, and 2SLGBTQIA+ people continue to face disproportionately high levels of violence.²⁵

Reconciliation and Justice

Reconciliation is a nation-to-nation process to renew relationships between the Crown and Indigenous people, based on recognizing rights, partnership, and respect. This includes addressing residential schools and implementing the United Nations (UN) Declaration on the Rights of Indigenous Peoples and the TRC's Calls to Action.²⁶



The TRC's mandate was to investigate and inform Canadians about residential schools. It made several Calls to Action to address the ongoing impacts of residential schools and advance reconciliation in Canada, including calls directed at federal, provincial, and territorial governments.²⁷

Ending the overrepresentation of Indigenous people in the criminal justice system is often framed as part of reconciliation. It requires governments and institutions to confront the ongoing impacts of colonialism and change the policies and practices that continue to create unequal outcomes.

Calls to Action

Indigenous overrepresentation in the criminal justice system is not accidental. It reflects generations of harmful practices rooted in colonialism and reinforced through institutional responses. For many, the systems meant to support them often become another barrier. This is well documented in the findings of courts, commissions, and inquiries, and in the lived realities of those affected.



The consequences are especially severe for Indigenous women and girls. They face higher rates of criminalization alongside disproportionate levels of violence and limited protection. Addressing this crisis requires a fundamental shift toward policies that support safety and respect Indigenous self-determination. Better outcomes are possible, and long overdue. Getting there will take all of us working together to ensure Indigenous communities have the resources they need to thrive.





Calls to Action

JHSO calls on all levels of government to take the following actions:

1. Recognize and implement Indigenous-led justice systems.
 2. Sustain funding for commissions, inquiries, and Indigenous justice initiatives, including the Indigenous Justice Strategy (IJS), which calls for fundamental changes to the criminal justice system guided by Indigenous self-determination and community control.
 3. Expand community-led correctional facilities such as healing lodges.²⁸
 4. Fund and implement realistic alternatives to prison. Evaluate community-based sanctions that provide meaningful alternatives for Indigenous people involved in the criminal justice system.
 5. Increase support for Indigenous justice programs, such as Indigenous-led bail programs and Gladue courts.
 6. Increase access to Gladue pre-sentence reports and ensure they are written and delivered in culturally responsive ways.
 7. Educate lawyers and decision-makers across the system to address systemic discrimination and anti-Indigenous racism. This includes those working in policing, charging, bail, sentencing, and corrections.
 8. Improve and publish statistical data on overrepresentation across the system, from policing and charging through to corrections.
 9. Implement the TRC Calls to Action that remain unanswered.²⁹
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About Us

For nearly 100 years, the John Howard Society of Ontario (JHSO) has worked to keep the humanity in justice. Through 18 local offices across Ontario, the JHSO delivers more than 80 evidence-based programs and services in support of those affected by the criminal justice system. In doing so, we help build safer, more resilient communities.

JHSO's Centre of Research & Policy specializes in bridging the gap between analysis and frontline service delivery. By collaborating closely with our local offices, the Centre's team develops policy positions that truly reflect the needs of each community, advances those positions to governments and other organizations, educates the public on the critical issues, and evaluates program efficacy to guide future work.

To learn more about us, visit johnhoward.on.ca.





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