



WHAT WE HEARD TRANSFORMING CANADA'S CRIMINAL JUSTICE SYSTEM

A report on Provincial and Territorial
Stakeholder Consultations

Criminal Justice System Review

March 2018



#CdnJusReform

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Message from the Minister

When I was appointed Minister of Justice and Attorney General of Canada, my mandate letter from Prime Minister Trudeau instructed me to conduct a review of the changes to our criminal justice system and sentencing reforms over the past decade.

I have been asked to assess these changes to ensure that our communities are safer and that we are getting good value for our money. In addition, I have been asked to address gaps and ensure that the current provisions align with the objectives of the criminal justice system.

While this is a daunting task, it is also an extraordinary opportunity.

The Criminal Justice System Review is an opportunity to create a criminal justice system that is just, compassionate, and timely—one that reflects the needs and expectations of all Canadians.

Careful and open dialogue is fundamental to this review. I see this as the start of a national conversation about the criminal justice system in Canada.

This conversation began a year and a half ago with a series of roundtables with justice system partners and interested parties from across Canada. The goal of these roundtables was to gather people from different vantage points across the system to discuss their local practices and their suggestions for improving the system.

This report summarizes the views we heard during these roundtables. A few consistent themes and messages emerged. We heard that linking data and information across the justice sectors and various social systems is critical to driving action. These systems include health, housing, mental health, education and child welfare.

We heard that vulnerable people are most affected by the system so we must look at where and how they come into contact with the criminal justice system. We have also received suggestions for more immediate action and for both discrete and comprehensive legislative change as part of any solution.

There is no question that a review of the criminal justice system is necessary and long overdue. Systemic change cannot be completed in one mandate, but I am convinced this review can provide the foundation for addressing some of the most challenging issues facing the criminal justice system today.

I would like to thank everyone who has taken the time to share their views on the review of the criminal justice system.

Overview

In November 2015, Prime Minister Justin Trudeau outlined each cabinet member's mandate in writing. The [mandate letter](#) to the Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, outlined several tasks. One important task was to review and assess changes in the criminal justice system over the past decade, including sentencing reforms. Some areas under review are co-led with the Minister of Public Safety and Emergency Preparedness, as set out in his [mandate letter](#).

The review was also to ensure “that we are increasing the safety of our communities, getting value for money, addressing gaps and ensuring that current provisions are aligned with the objectives of the criminal justice system.” The mandate letter also directed her to increase the use of restorative justice processes in Canada. The Minister has taken a broad interpretation of her mandate. Having heard from stakeholders and partners across the country, the Minister has shifted this initiative from one of review to one of transformation of the criminal justice system. This will not be accomplished in one mandate.

To that end, the Minister of Justice or her Parliamentary Secretary have held roundtable discussions with people who work in the criminal justice system and interested parties across Canada since May 2016. Participants included Crown prosecutors, defence lawyers, academics, victim advocates, restorative justice proponents, representatives of front-line community support systems, and importantly, representatives from areas such as health and mental health, housing, and other social support systems.

In these meetings, participants raised pressing issues about the criminal justice system. They also learned of local justice initiatives that are working well, and spent time discussing why certain approaches were showing success.

This report summarizes discussions held during the roundtables. It highlights best practices, challenges and suggested improvements.

This report does not necessarily reflect the views of the Government of Canada.

Highlights of Findings

Almost all roundtable participants stressed the same major concern. They said that most people who come in contact with the criminal justice system are vulnerable or marginalized individuals. They are struggling with mental health and addiction issues, poverty, homelessness, and prior victimization. Most felt the criminal justice system is not equipped to address the issues that cause criminal behaviour in these groups, nor should it be. Participants felt these issues are worsened by an over-reliance on incarceration.

They felt the system should promote public safety and respect for the law, and deal with crime in a just, fair, efficient, and compassionate manner. While Canada's criminal justice system works well in some areas, it isn't meeting its intended objectives for most people who come in contact with it. Many participants said that changes in legislation over the past decade have not contributed to these goals. In fact, they thought these changes had further stressed the system and worsened existing issues.

However, there are many examples from across the country of programs that are successfully helping both victims and offenders get the services they need. These programs deliver restorative justice services and community-based collaborative approaches. Participants urged the Minister to look at those examples for inspiration and use them as a roadmap.

The cross-Canada roundtables focused on the following five broad themes:

- **concerns with Canada's criminal justice system:**
 - The system must be made fair, efficient and compassionate, using evidence and sound information. Changes must be based on sound evidence,
- the need for different approaches for people with **mental illness and addictions**, as well as the overly high numbers of vulnerable and marginalized people in the criminal justice system,
- a call for **collaborative approaches** that partner with social systems, the private sector and others in the criminal justice system,
- the need to increase opportunities for and the use of **restorative justice**, and
- addressing **victims' issues** with compassion and fairness, allowing survivors of crime to be heard.

#

Concerns with Canada's criminal justice system

Canada's criminal justice system is facing many complex issues that affect its ability to deliver just, fair, compassionate results efficiently. Participants outlined some simple short-term fixes but also noted that the system needs major reforms. Some questioned the principles that underpin our system. The solutions they offered included minor *Criminal Code* amendments, programming enhancements, and calls for a fundamental and philosophical shift in the system's principles and delivery of justice. Participants acknowledged that administering the justice system is complicated, given that each is carried out by the provinces and territories, so many called for federal leadership in reforms.

Many participants felt Canada's criminal justice system is too quick to criminalize the symptoms of vulnerable and marginalized people. They felt this was especially true for people with addictions and mental health issues. They said the system lacks understanding and compassion for offenders and victims of crime. They also said the justice system isn't well integrated with the other social support systems.

Many called for an approach that tries to solve problems instead of looking only at facts and guilt. These participants felt the system is overburdened with vulnerable and marginalized people, which it is not intended to treat. As well, they felt the system is burdened with a large number of lower level offences that are not a public safety concern.

They said the system does a good job of determining guilt in many cases, but its efficiency is undermined by sheer volume. The treatment of victims and offenders was a common theme through all of these issues. Participants outlined many long-standing issues for victims and survivors of crime. They felt some issues could be addressed with minor tweaks but others would require systemic change.

Many of these issues are not new, but participants widely viewed this review as an opportunity to finally address them in a meaningful and transformative way. They felt the review, and any resulting changes to the law and policy, must be based on sound evidence. They also noted a need to address the lack of information on many aspects of the system. They said policies and those who administer them must be culturally informed, especially as they apply to Indigenous people. Finally, they said that communities need to play a major role.

Best practices

Roundtable participants pointed out that the criminal justice system needs to be improved. They also highlighted achievements that contribute to community safety and foster wellness among victims and offenders. Most often mentioned was the youth justice system, where imprisonment rates across Canada have declined over the past twenty years. Many participants felt the successful approaches in the youth justice system could also apply to the adult criminal justice system.

The decline in youth imprisonment rates started eight years before Canada introduced the *Youth Criminal Justice Act* in 2003. The drop was steepest in British Columbia. Its government began funding better community-based alternatives to custody. The number of youth in custody fell, so custody centres closed. That freed up money for better programming, which led to lower caseloads for community staff.

New Brunswick and Alberta have also made successful improvements to their systems. New Brunswick streamlined its system with "pre-charge screening." Crown prosecutors now review and approve charges before they are laid. This has resulted in a low charge withdrawal rate and increased the number of guilty pleas. In addition, low-risk remand offenders are being placed, when compatible, in units with sentenced

offenders. Doing so provides access to programming and visitation which are not available in remand facilities. Meanwhile, Alberta has modernized its system via court case managing and e-filing which has improved the system's efficiency.

Challenges

Canada's Criminal Code: Among many who work primarily in interpreting and applying the law, there were various calls for changes to the Code. Some called for a complete overhaul and re-write. Many said the *Criminal Code* is now a patchwork of legislation that is hard to follow. Many sections are outdated and other sections have been struck down by the courts but remain on the books. Some said the Code fails to reflect major social reforms and often unfairly affects the vulnerable, including women, those with addictions and Indigenous people.

Administration of justice offences: Participants called for changes to administration of justice offences. Most of these offences result when a person doesn't follow bail or sentence orders. They can include breach of probation, failure to appear in court, and failure to comply with conditions set by a court. These cases make up a large portion of criminal offences and participants felt they are contributing to backlogs in the court system. They noted many problems with the way these cases are handled and felt the current culture in the criminal justice system was to blame. In particular, they cited "condition creep," where excessive conditions are placed on an accused person in the name of public safety. Participants said that many of these conditions do not contribute to public safety and can set people up to fail, resulting in longer criminal records. For example, if a court orders an alcoholic not to consume alcohol but the person doesn't get the community support they need to stop drinking, they could end up breaching more than one condition.

In addition, participants argued that courts sometimes place conditions on people who don't have the mental capacity to understand and follow them. They said that judges, Crown counsel, and defence lawyers need information about the accused to determine an appropriate sentence. Participants felt there was a way to balance both individual needs and circumstances with public safety, but this would require a shift in culture.

Bail and remand: Many participants felt that the bail system also needs an overhaul. They said people accused of a crime have few options at the bail stage and may end up in remand for long periods while awaiting trial or sentencing. ("Remand" is when an accused person is held in custody before their first court appearance. They could also be awaiting trial or sentencing.)

The bail regime faces many issues. Participants pointed out that accused held in remand have a higher likelihood of later being sentenced to jail or prison than those released on bail. They also said the bail system unfairly affects vulnerable and marginalized groups.

In addition, they noted that conditions in remand facilities are poor. Although accused persons can be kept in remand for long periods, they are not entitled to the same programming options as sentenced offenders. These conditions can often make people worse off. They noted it is common for accused people to plead guilty to avoid having to wait in custody for a trial. They felt this increased the risk of someone confessing to a crime they didn't commit.

In New Brunswick, roundtable participants brought up the issue of weekend remand. Those charged on a Friday evening have no chance of appearing in court until Monday. This has serious consequences for

people who are already vulnerable, such as those who require medication to maintain their mental stability.

Sentencing: Participants felt that judges, police, and prosecutors were using less and less discretion in sentencing. They said that the introduction of mandatory minimum penalties reduced the court's ability to apply fair sanctions. Participants called for legislative changes that would put discretion back into the hands of the people working in the criminal justice system. They also wanted to see a culture change in the way offenders are sentenced.

Many called for sentencing decisions that consider the root causes of the criminal behaviour in each case. While everyone agreed that public safety is the main concern, there was a call for less reliance on incarceration, and a concerted move towards alternatives. They felt that getting people the help they need to lead law-abiding lives would reduce their chances of offending and harming others.

Moreover, participants said that incarceration and stricter penalties were not improving public safety in most cases. Many pointed to the so-called "revolving door" effect where a person's first contact with the criminal justice system triggers a series of ongoing interactions. They said this is especially true for vulnerable and marginalized people.

Participants pointed out that changes to the way offenders are sentenced is not a panacea. Judges and others working in the justice system need to have information about the person before them. One participant noted that an offender's 30-day jail sentence seemed fair and reasonable until he found out the person had lost his public housing because the agency didn't know where he was.

Participants said people with mental health and substance abuse issues need supports in place whether they are serving their sentences in custody or in the community. These supports help rehabilitate them and "get [them] on their feet." To realize these goals, participants called for the justice system to work more closely with other systems to share information about available services. They felt this would help ensure that offenders receive the services they need.

Mandatory minimum penalties: Several participants said that changes to criminal law over the past decade have made the system less fair, less efficient, and less compassionate. In particular, they pointed to the increased number of offences that carry mandatory minimum penalties. A mandatory minimum penalty is a sentence that a court must impose on a person convicted of a certain offence. Many felt mandatory minimum penalties strip judges of their ability to fit a sentence to the individual circumstances of the case.

They felt that punishments in many cases have been inappropriate and overly harsh, and have sometimes violated a person's Charter rights. They also noted that vulnerable people, like those with mental illness and addictions, are often the ones most unfairly affected. In addition, participants argued that mandatory minimum penalties have made the system less efficient. When faced with the possibility of being found guilty of a crime for which they will certainly face jail time, fewer accused enter guilty pleas and more cases go to trial.

Participants felt that while these changes were clearly meant to tilt the scales in favour of public safety, they have not had the intended effect. Most participants argued that the emphasis on stricter punishment over rehabilitation does not make communities safer.

Rehabilitation, release, and continuing care: Participants called for a united effort in rehabilitating offenders. But they said to realize this objective, access to services must be made available both in custody and in the community. They noted that services for those in critical need are not an option so it is imperative that the criminal justice system collaborate, or integrate systematically, with the health and mental health sectors and other social support systems.

In British Columbia, participants claimed that 90 percent of the worst offenders have severe trauma, and struggle with mental health and addiction issues. They felt most could be successfully treated.

Participants also raised some issues they felt were alarming. For example, there are times when high-risk accused with mental illness and addictions, unable to look after themselves, are released to communities without supervision.

Others said that prisons rely too much on solitary confinement, also known as administrative segregation. They thought this practice is often damaging to offenders, especially those who are mentally ill. While some participants noted this practice is often used to keep the offender safe, many others called for an end to the practice or for strict regulations on its use.

Participants noted that rehabilitation shouldn't always end when a person is released from custody. They called for ongoing community support to provide services for those who need them. In particular, the lack of available services in northern and remote communities was seen as an obstacle. They felt that communities across the country need to be able to provide ongoing services.

Criminal records and pardons: Participants called for changes to the pardon process. They noted that criminal records can impede a person's ability to reintegrate in society. They also said a criminal record can affect all aspects of a person's life, making it difficult to find a job, take care of family, volunteer, or travel. They felt a criminal record can make successful and stable reintegration into society difficult.

Some participants said that a record can even tip the balance in a person's life towards ongoing criminal behaviour. They pointed out that it isn't easy to get a pardon and the cost to apply can make it too expensive for many low-income or poor offenders. In addition, it can take a long time to get a pardon.

Treatment of women in the criminal justice system: Many participants described a strong need to address the treatment of women in the justice system. They expressed that women often feel their experiences are not believed and have therefore lost confidence in the justice system. Some participants noted that the justice system is systemically sexist and that it must better address the needs of women. This was stressed especially in relation to the treatment of women as victims and Indigenous women. Participants said that women do not feel supported by the justice system, but rather criminalized. Specifically for Indigenous women, participants explained that approaches that consider the historical and oppressive contexts are needed to better support this population. It was also mentioned that there is a lack of data that reflects specific gendered experiences. Participants described more women entering the system as offenders and victims and suggested that data collection through a gendered lens would be beneficial).

Sex trade laws: Some participants in the roundtable on the 2014 criminal law reforms related to the sex trade supported the current approach to sex trade laws (i.e., Canada's version of the Nordic Model, which aims to reduce the demand for sexual services), while others called for its repeal, noting that the new laws make persons involved in the sex trade less safe. Both groups, however, support the repeal of offences that criminalize those who sell their own sexual services.

Public relations: Participants stated that Canada’s criminal justice system has a “major public relations problem.” They felt the public wasn’t aware of the issues facing the system, particularly the many vulnerable and marginalized people caught in it. They also felt Canadians don’t have the facts and mainly learn about the system through media reports and American television. They noted confidence in the system can vary depending on media reports and that most Canadians are not interested in knowing about how the system works until they come in contact with it.

Participants said this review should look at ways to better engage Canadians and inform them of the complicated issues facing the justice system. They felt Canadians needed the facts about criminal justice policy and practice, as well as research and information on best practices in the field. They said that public confidence in the system is based on ill-informed perceptions. They also thought that inviting Canadians into discussions about the system could help transform it for the better.

Funding and resources: The need for adequate funding was routinely identified as a requirement for successful and sustainable reform. In particular, participants called for stable and ongoing funding for justice programs that are showing success. They also said that while some initiatives will require new money from government sources, money could also be shifted from existing initiatives towards new approaches. For example, incarceration was often cited as one approach that is inordinately expensive, yet doesn’t produce the results Canadians expect.

Participants also called for innovative funding models, such as public-private sponsorship. Some said there is an economic argument to keeping people out of prisons and in the labour market.

Participants called on the federal government to allow for innovation and flexibility in finding models for criminal justice programming. In particular, they noted cases where program dollars would overlap with funding for health and other social initiatives, like treatment options for offenders with mental health or addiction issues.

In Nunavut, for example, participants called on Justice Canada to fund alcohol addiction services through the Drug Treatment Court Funding Program. They felt this was important because alcoholism often precedes criminal activity in the territory.

In addition, they noted that long-term funding is not guaranteed for some criminal justice programs. They felt this limits the success of these programs, which are weighed down with reporting requirements and find it hard to keep staff because they can’t guarantee ongoing employment. They also noted that funding for other programs has been reduced. In one province, two programs run by the local Indigenous council have had their funds reduced even though their caseload has doubled.

The importance of empirical research and the need for a more direct link to the allocation of funds was also cited by participants.

Suggested improvements

Over the course of the roundtable conversations, participants raised a number of suggestions for reform. These suggestions ranged from specific and technical to more philosophical.

- Changes to the ***Criminal Code***
 - Re-write the *Criminal Code* to remove outdated and unconstitutional provisions and ensure that laws are consistent with the Charter.
 - Amend the *Criminal Code* less often and ensure the law reflects community standards.

- Changes to criminal law should be made with collaborative advice.
- Extend the Gladue provisions to other vulnerable population.
- Review the impact of the 2014 criminal law reforms related to the sex trade.
- Have the **Crown approve charges**.
 - Participants said that pre-charge screening in New Brunswick has led to a low charge withdrawal rate and an increase in guilty pleas, as well as fewer bail and remand issues. They felt the federal government should legislate this practice across the country.
- Give judges and others working in the criminal justice system the **discretion** they need to make decisions based on a person's circumstances.
 - Immediately repeal **mandatory minimum penalties** for *Criminal Code* offences or at least look at the effects of these sentences.
 - Apply mandatory minimum penalties to only the most serious crimes, perhaps only murder. Use guidelines, or "presumptive sentencing," as an alternative.
 - Deal with the restrictions on conditional sentences that mandatory minimum penalties create. Conditional sentences should be used more often but are usually unavailable for more serious offences.
 - Let original **bail or sentencing conditions** be altered as an offender's circumstances change.
 - Require police, judges, and prosecutors to take into account the underlying factors contributing to offending and victimization.
 - Proportional sentencing relies on integrated responses and good information. Promote information sharing among various agencies to equip decision makers with the information they need to tailor bail conditions and sentences. Without proper information, results run the risk of being unfair and counterproductive.
- Revamp the **bail and remand regime**, and address **administration of justice offence** issues.
 - Ensure judges don't issue too many conditions, or conditions that are poorly understood or that are poorly supported. Where possible, promote release without conditions.
 - Give police capacity to modify certain bail conditions for matters unrelated to public safety.
 - Handle a breach of condition without laying a new charge by returning the accused to court under section 524 of the *Criminal Code*. The court could cancel the accused's release, returning them to custody, or adjusting their bail conditions, if appropriate.
 - Teach justice officials about the realities of harm reduction when it comes to bail conditions. Offenders need more customized, creative responses to help them.
 - Better coordinate bail and reintegration.
 - Have the Government of Canada collect best practices regarding bail across Canada and share at federal-provincial-territorial meetings.
 - Examine the use of court liaison officers in New Brunswick. These are civilian members who represent police in court as an efficiency measure.
- Eliminate, or greatly restrict **solitary confinement**.
 - Prohibit the use of solitary confinement for those with mental health problems.
 - Regulate the use of solitary confinement to no more than 15 days.

- Improve court-based solutions, **rehabilitation and continuing care** for offenders after release.¹
 - Offer enough structured and supervised programming to keep former inmates safely in communities. Most offenders on probation cannot follow conditions without help. They may have medical problems that affect their memory or ability to make decisions.
 - Federal, provincial, territorial, and municipal governments, as well as non-governmental and Indigenous organizations should work as a team to create a coordinated framework focused on individuals. This would allow courts to direct people to appropriate services.
 - Focus on repeat offenders and provide walk-in services for everybody.

- Revamp the **pardon** regime
 - Create a graduated system for pardons or make pardons automatic.
 - Reduce the costs and administrative burden of applying for pardons.

- Improve **public awareness** of how the criminal justice system operates, providing strong research and evidence. This will boost confidence in the system.
 - Meaningfully, respectfully, and fully involve all Canadians, especially the most vulnerable and marginalized. We must identify successes and positive local initiatives that already exist within the system and copy them widely.
 - Provide legal education and information. This will draw the public in, help them better understand criminal justice issues, and show them how the justice system interacts with other systems.
 - Openly provide complete and factual information. Be clear that many people who repeatedly come in contact with the criminal justice system suffer from mental illness and addictions.
 - Explain that federal, provincial, territorial and Indigenous governments are examining the criminal justice system. Outline the expected results.
 - Use clear federal messaging that refers to “justice with a broader social perspective.”
 - Use strategic engagement.
 - Let front-line workers explain how programs like restorative justice work.
 - Adopt an ongoing review of the criminal justice system. Ask for constant feedback from interested groups.
 - An ongoing review will build trust and ensure the system keeps pace with change.
 - Many good models exist across Canada outside the justice system.

- Train **justice workers to be culturally informed**.
 - This means teaching them to recognize the role culture plays in a person’s response to the justice system.
 - Train justice workers in historic trauma, as recommended by the Truth and Reconciliation Commission of Canada.
 - Promote resources and tools for people working in the justice system.
 - Provide more education for members of the Bar on alternative approaches.

- Greatly reduce the reliance on **incarceration** and increase the availability of alternative options to the criminal justice system.
 - Make alternatives to incarceration more widely available.
 - Make the goal of sentencing rehabilitation.

¹ A Gladue report is a type of pre-sentencing and bail hearing report that a Canadian court can request when considering sentencing an offender of Indigenous descent under section 718.2(e) of the criminal code. Gladue was the first case to challenge section 718.2(e) of the Criminal Code.

- The path to better results should stretch beyond the traditional criminal justice system to innovative, culturally appropriate, and targeted responses. There needs to be a move to place successful community programs into the mainstream response. There needs to be a conscious move away from one-offs, pilot projects, or patchwork approaches to criminal justice in Canada.
 - Make sure that people working in the criminal justice system know about the alternative programs available so they can refer people to them.
 - Return to the principles of the *Correctional Law Review*. Design a corrections system that is based on the Charter, not “Charter-proofed.”
- Apply successful **youth justice approaches** to the adult system.
 - Participants emphasized the youth justice system as a foundation on which to model positive changes for all Canadians. Moving towards more positive outcomes for youth in the criminal justice system would present ripple effects in the adult system.
 - Promote and use alternatives to the criminal justice system.
 - Provide more support services to break the cycle of crime. Making more funds and resources available for alternatives to jail promotes creativity, problem-solving and collaboration.
 - Offer more alternatives to custody, especially for Indigenous people.
 - Improve **youth justice** further.
 - Include young adults in the youth category. Start with special needs and Indigenous youth.
 - Promote existing tools that help youth, like youth justice committees.
 - Provide **more funding and resources** for criminal justice programs.
 - When successful programs are financially vulnerable they remain on the fringes of the traditional criminal justice system. This does not help them succeed.
 - Improve justice, particularly for vulnerable and marginalized groups.
 - Simplify reporting requirements for federal funding.

Mental illness, addictions and the criminal justice system

Almost all participants agreed that the criminal justice system needs to better address mental illness and addictions. They said that roughly 70 percent of those who come in contact with the system have a mental health or substance abuse problem. Often people have other issues that make them more vulnerable, such as homelessness, poverty, or previous trauma. Sometimes, these challenges can translate into anti-social or criminal behaviour.

Participants identified the high number of accused in this group as one of the greatest issues facing the system. They also felt this area had the most potential to offer significant change. They noted that keeping justice, health and social services separate was considerably impeding effective responses.

Further, participants felt that the usual approach to criminal justice would continue to have a negative effect on the system's efficiency, on individual results, and on public safety. Therefore, they called for a very different approach to the mainstream justice system.

Best practices

Participants noted that some very promising work has been done across the country to coordinate and target the way the justice system responds to these groups. For example, in British Columbia, where large numbers of people with mental illness and addictions live on the streets of Vancouver's Downtown East Side, the province has developed several coordinated initiatives to treat them. The province has also created a research and evidence base to support effective and coordinated approaches to groups.

- Vancouver's Drug Treatment Court: A specialized, therapeutic approach to treating the root causes of criminal behaviour. This approach halves the risk of recidivism, whether or not people complete the program, and is particularly effective for women and indigenous people.
- First Nations Health Council: This council's priority is treating mental health and substance abuse. It is working well in five regions of the province.
- Vancouver Intensive Supervision Unit: This unit coordinates case management for high-needs clients who go back and forth between the justice system and community mental health services.
- The opinion that "life trumps privacy," was shared and this view has helped make it clear when information can and must be shared.

In the Yukon, participants noted the success of the territory's 2014-15 prevalence study of Fetal Alcohol Spectrum Disorder (FASD). This study determined roughly how many inmates had FASD, mental health and addictions problems. Over 90 percent of inmates had trouble with thinking skills, as well as mental health and substance abuse problems. Almost one-third had, or likely had, FASD. Knowing more about these groups improves responses. Many participants made the point that success in this area is only possible with the help of research and evaluation.

Challenges

Participants thought the system should focus less on guilt or innocence and more on helping to rehabilitate and reintegrate people with mental illness and addiction. For example, participants cited the overrepresentation of Indigenous people in courts and jails. They felt this showed the need for specialized courts or a justice system that takes the social, economic, and cultural factors at the root of criminal behaviour into account. They favoured a transition from a fact-finding approach to one centred on healing.

Participants noted that while prosecutors or judges don't want to criminalize the mentally ill, criminal justice policy over the past decade has focused on increased use of prison sentences and has reduced the courts' discretion in sentencing.

They felt a shift to alternative approaches would be so fundamental that the federal government should take the lead. They thought a strong signal from the federal government would allow the provinces and territories to align their resources, legislation and discretion. They said the provinces and territories cannot act alone because prosecutors are required to work within the criminal justice system.

They also felt the system does not currently leave enough room for judicial discretion. Real change would require an approach that allows the courts to take an accused person's history into account. For example, participants noted that the courts should be free to apply the principles the Supreme Court of Canada outlined in the *Gladue* and *Ipeelee* cases. These principles instruct the courts to consider the unique circumstances of Indigenous offenders at sentencing.

In British Columbia, some participants felt that the links between the civil and forensic mental health systems and the justice system are poor. They said the continuing care that is critical to keeping people from landing back in jail is lacking. They said that the longer people are in jail, the more their physical and mental health declines.

In Nunavut, some participants noted that every inmate at the local correctional centre is living with trauma. They felt these inmates needed a whole-of-community approach to be rehabilitated, reintegrated and stabilized in their communities.

Suggested improvements

- Take **preventive measures** to ensure that the homeless or mentally ill are not trapped in a cycle of arrest, release and re-arrest while underlying conditions remain unaddressed.
 - Avoid imposing conditions that criminalize behaviour that is not criminal.
 - Greater use of available mental health supports. For example, have police take the accused to services that offer effective treatment. Addressing mental illness will take pressure off the criminal justice system.
 - Move people who pose no danger away from the formal system.
 - Create partnerships between the mental health and justice systems. Success here frees up funds and time to remedy issues such as housing and food security issues.
 - Integrate mental health and criminal justice decision-making more often. Start with police at the street level. Check back in at various points as an individual goes through the system.
 - Identify a central person or office to help individuals navigate the system and to make connections to the available support systems.

- Transform the system by making **alternative measures** and **therapeutic approaches the new norm**.
 - Therapeutic approaches and alternatives to formal entry into the criminal justice system were strongly called for, particularly for vulnerable and marginalized people. In current practice, these approaches come in the form of specialized, problem-solving courts, such as drug treatment courts, healing to wellness courts, or community courts. However, they remain on the edges of the mainstream criminal justice system, referred to as "alternatives." As long as

these approaches remain on the margins of normal practice, their benefits will not be widely accessible.

- **Connecting with communities** is an essential element of any response
 - People in recovery need to feel they belong. Communities should be consulted to learn how to do this well and respectfully.
- There is a need to **recognize trauma** as a factor in many negative behaviours
 - Many people with mental health or substance abuse issues suffer from the effects of childhood trauma, whether as witnesses or victims of violence, sexual abuse, or emotional abuse.
- We need to **examine privacy law and privacy practice** to find ways to improve the **sharing of important information**
 - Privacy law often prevents effective integrated responses. This is commonly seen and requires leadership. Collaborative approaches require information about the person and their circumstances.
- **Housing is important in helping provide stability**, but requires effective partnerships with municipalities
 - Supportive housing promotes good health and stability, and can therefore significantly help break the cycle of offending and crime. But housing isn't the end result, it's the means to the end. The approach should be "housing first," not "housing alone."
- **Indigenous women** are particularly at risk, and should be central to any strategy to improve continuity of care and decriminalize the mentally ill
 - Indigenous women are particularly vulnerable, and this is an area where we must therefore make a special effort to address their needs. The Supreme Court in *Gladue* and *Ipeelee* clarified that we must address the way Indigenous persons are sentenced.
- **Legal aid plans** have strong client knowledge that the federal government should use.
 - Legal aid plans know their clients well and support therapeutic court approaches. The federal government could work with legal aid plans and see about innovative solutions.
- Improve **rehabilitation for inmates**.
 - Increase the number of therapeutic beds in prisons.
 - Set up more harm reduction programs in prison, like methadone programs.

Collaborative approaches

Participants across the country stated that the path to meaningful change in the criminal justice system needs collaboration and integration across social support systems. They called for various levels of government, local practitioners, and communities to share their efforts, knowledge, and information. They also said collaborative approaches were necessary to address the root causes of crime and create effective and targeted responses.

They noted that making connections and driving action at the local level is fundamental and this cannot be done through government bureaucracy. They said collaborative approaches need to be shaped by the realities on the ground. These are sometimes called “wrap-around approaches,” where a service like the drug treatment court surrounds the client with the supports and services needed for a crime-free path. This can include housing, a recovery centre, and mental and physical health supports.

Best practices

Participants across the country frequently cited the “Hub” model. This collaborative model brings together relevant service providers, information sharing, and awareness of available services. A best practice in Saskatchewan, this model is being used elsewhere across the country.

In Prince Edward Island, the Bridge Model brings various service providers together in one room. They discuss how to help high-risk people before police are needed. The service providers help individuals or families at risk of homelessness, mental health problems, violence or abuse. Participants said that this program is a great example of collaboration that could be used elsewhere.

The Thunderwing Hub Support Teams project in Manitoba is another example of success. The Block by Block Community Safety and Wellbeing Initiative runs this project, which is helping make two of Winnipeg’s North End neighbourhoods safer. Neighbourhood teams tell families about the resources they can use to prevent or settle a family crisis. Early engagement and awareness raising at the local level drive action.

Yukon’s Community Wellness Court was established in 2007 and was the first of its kind in Canada. A Justice Wellness Centre created in 2010 provides additional services. Participants said that both the court and centre have helped offenders tremendously. Treatment is based on each person’s circumstances.

In Manitoba, two Crown prosecutors have set up an informal community court in Winnipeg with help from partners in and outside the criminal justice system. A judge leads the hearings. They can include community members like Elders, homeless shelter staff and mental health practitioners. Everyone must agree to the approach and the court will try to solve problems on the spot. The court has no formal jurisdiction but the prosecutors are looking at ways to make the process official.

In Ontario, Toronto’s Gladue Court at the Old City Hall Courthouse has helped Indigenous accused obtain sentences that don’t involve jail time. This stems from a 1996 change to the *Criminal Code* that directs courts to consider all reasonable alternatives to jail when sentencing. In particular, courts must pay special attention to the circumstances of Indigenous offenders. The first court case to employ that change was *R v. Gladue*.

Today, Toronto has several Gladue Courts, which deal only with Indigenous people. These courts hear bail applications and sentence Indigenous people who plead guilty to charges. Alternative sentencing allows offenders to stay in community treatment centres.

Participants said that an offender is less likely to reoffend after establishing ties to a community. A lack of treatment beds was also cited as a need to address.

New Brunswick's Elsipogtog Healing to Wellness Court, launched in 2012, has both a conventional judicial stream and a "healing to wellness" stream. The latter treats underlying causes of crime in youth and adults, including addictions, FASD and mental health issues. Treatment is tailored to clients and combines intensive monitoring with a culturally sensitive approach. Staff work on prevention, reducing harm, and building relationships. The program can be completed in six to eighteen months for youth and up to three years for adults.

British Columbia runs several collaborative initiatives that participants highlighted as best practices.

- Victoria Integrated Court: Defendants in this court have complex disorders and must agree to share information in advance. Integrated teams develop privacy protocols across participating health and justice agencies based on informed consent.
- Downtown Community Court: This Vancouver court's case management team prioritizes cases and makes recommendations to the court. The team also helps make plans for people so that they can follow required or court-ordered supports.
- Interagency case assessment teams: Fifty teams address domestic and sexual violence, leading to less re-offending, less lethal violence and fewer child removals.
- British Columbia's justice summits: These summits bring together justice and public safety sector leaders, along with key stakeholders and community representatives. They consider ways that the justice and mental health systems can coordinate responses to people with mental illness and addictions.

Challenges

Participants pointed out that, by nature, staff in justice, health and social services work in "silos." That is, the services do not share information with other. Participants said this has been an obstacle to effective responses and change. They said collaborative approaches can keep people out of the criminal justice system by referring them to services before their situation leads them to crime, but staff from the various sectors would need to work together.

For example, they noted that police, as first responders, need options when they are called for service. They said police need to be aware of options and those options need to be accessible and available – often, only hospitals and police stations are open twenty-four hours a day.

In the Northwest Territories, participants said that crime arises from substance abuse and trauma, which are made worse when people are poor and have little education. Programs that address these factors include:

- restorative justice initiatives, operated by community justice committees
- specialized courts including domestic violence courts, and
- culturally appropriate programming for those in custody.

Participants also noted that isolated communities like those in the Northwest Territories and Nunavut face unique challenges. Yellowknife roundtable participants mentioned that it's hard to separate the offender and the victim in small communities. They said that male partners are often the sole breadwinners so the

victims, usually women, can lose their family, friends and financial security by reporting the crime. In Iqaluit, participants said that offenders are choosing court and jail rather than facing community members through restorative justice. They said offenders wanted to avoid taking responsibility for their actions and repairing the damage they caused.

Suggested improvements

- **Partner with other agencies** to address root causes of crime together through social responses.
 - Bring together interested parties and organizations to help develop reforms and publicly support them. A justice coordination conference could include representatives from health, child welfare, and economic development systems, plus liquor control boards. It could also include people from other cultures, service users and experts from other levels of government.
 - Build a team that gives an offender support services for mental health, addictions and rehabilitation issues.
 - Invest early in social systems and identify criminal behaviour before police need to step in. Non-governmental organizations can see early warning signs in their clients. Make sure that all agencies' objectives line up.
 - Regularly partner with municipalities, especially to ensure housing.
 - Partner with Canada's active justice policy community. Draw from the work of bodies like the National Criminal Justice Symposium and Public Safety Canada's National Crime Prevention Centre. British Columbia's justice summits and other forums can help, too.
 - Train correctional officers on cultural diversity.
- Get the **community and private sector** involved. Back community support and capacity building. Build healthier and safer communities. Acknowledge local success stories.
 - Ask the private sector to provide jobs and other programs, like community court, that could help former prisoners.
 - Communicate with the public to assure them there will be a community approach.
- There is a need to **share information** across systems and sectors. Judges, crown attorneys and others need information on the people before them so they can make fair and effective decisions.
 - Examine privacy laws and practices to find ways to better share important information.
 - Broaden the definition of "caregiver" to allow more details to be shared. Health professionals are not permitted to give non-health workers certain information.
- **Train justice staff further on Gladue provisions.**
 - Consider the different stages of criminal justice system involvement and look for chances to work with the community. This could be when the police make an arrest, when a case is before the courts, or when an offender is sent to jail.

Gladue reports could also be used for other marginalized groups, like African Canadians.

- Create a **culturally appropriate justice system and programming.**
 - Saskatoon roundtable participants said their first preference is to see a First Nations justice system that follows First Nations governance and law established.
 - Appoint more Indigenous judges to provincial, territorial and federal courts.
 - Invest in justice programs proven to work, deciding on cost-sharing agreements first.
 - Encourage program results that produce data. Having data to analyze helps communities.
 - Focus on prevention to reduce crime.

- Have community justice forums carry out restorative justice.
- **Involve Indigenous communities and provincial and territorial parties** when rethinking approaches.
 - Be open to Indigenous approaches and justice traditions, and incorporate Indigenous cultural elements when designing services for offenders.
 - Address how Indigenous people are sentenced (women are particularly at risk). Women should be key to strategies that improve continuing care and decriminalize the mentally ill.

Restorative justice

Many participants called for increased use of restorative justice practices. Restorative justice focuses on repairing the harm caused by crime while holding offenders responsible for their actions. It gives the parties directly affected by a crime the chance to identify and address their needs in the aftermath of a crime. It helps the victim (or victims), the offender and the community find a resolution that promotes restoration, reparation and reintegration and prevents future harm.

Restorative justice programs can take many forms and may be available at different stages of the criminal justice process, for designated offences. The criteria and availability differ widely depending on the program and the jurisdiction.

Many participants called on the Minister of Justice to increase the use of this approach in Canada. They wanted to see a philosophical shift in the way criminal justice is addressed in this country – one built on the foundation of restorative justice principles – accountability, responsibility, respect for all parties, as well as trauma and culturally-informed. Proponents saw this review as an important opportunity to rebuild Canada’s criminal justice system on a foundation of restorative justice principles.

Best practices

Restorative justice is practiced across Canada, but its availability and use varies greatly. Nova Scotia is seen as a leader in restorative justice in Canada. The Nova Scotia Restorative Justice Program began in 1999 and is one of the largest and most comprehensive programs of its kind in the country. The program is available to youth aged twelve and older and recently expanded to include adults. There are four ways, also called entry points, that clients enter a restorative justice program in Nova Scotia. They can be referred by:

- police before being charged,
- a Crown prosecutor after a charge is laid,
- the court before sentencing, and
- corrections officials after receiving a sentence.

Participants at the roundtable dedicated to restorative justice learned a great deal from Nova Scotia’s experience creating and administering those programs. Participants shared best practices and lessons learned from their experiences.

They said a willingness among senior decision makers to take risks has been key to bringing restorative justice practices into the system. They stressed that willingness is necessary to turn a “far out” idea into action. Community partnerships, capacity, and will must exist first.

They noted that communities must first be empowered to try new practices and given the resources to deliver them because programs cannot rely on agreements alone. They must be well-resourced – these programs cannot be seen as the cheaper alternative to the mainstream system. They also made clear that programs will not succeed unless they are developed and applied with cultural awareness and appropriateness in mind.

Furthermore, participants in Nova Scotia pointed out that legislative amendments were not needed for the program’s success. They said the *Criminal Code* is already a “flexible tool,” given that sections of the *Youth Criminal Justice Act* allow for alternative measures. In Nova Scotia, that means restorative justice. However, others across the country called for legislative changes.

Some participants noted Nova Scotia's smaller size compared to other provinces, both geographically and in terms of population and felt this may have made a difference.

The program's success has spawned a "restorative approach" used across the province to resolve and support healing in non-legal scenarios. Schools, workplaces and even formal inquiries have used restorative practices.

Challenges

Participants said that restorative justice initiatives across the country have been very successful. The most common challenge identified was that there are not enough of them in Canada. Participants also noted that there is little public understanding or awareness of restorative justice. They felt there is a perception among the public that it is a "soft-on-crime" approach. But as some participants pointed out, the philosophy is based in part on personal accountability and responsibility.

While Nova Scotia's successes in this field have been unparalleled, participants noted some challenges to its success. For instance, there is a moratorium on its use in sexual assault matters, a fact that some considered a lost opportunity.

Across the country, restorative justice is often only available for certain lower level and non-violent offences. Participants saw this as a missed opportunity, given that restorative justice is said to work best for interpersonal violence and relationship breakdown.

In addition, participants said the success of the restorative justice program to date has relied on a select group of critically placed proponents, rather than keeping up with training. They felt this was not sustainable and called for ongoing training.

Many agreed that restorative justice programs needed more funding and greater capacity. There was agreement that programs need assured financing to succeed.

Suggested improvements

- Integrate **restorative justice into the mainstream justice system**. Re-draft the *Criminal Code's* Purpose and Principles of Sentencing to include restorative justice principles.
- **Inform and educate the public** about restorative justice and its principles.
- Apply **restorative justice earlier and to more serious cases**.
 - Look into ending the moratorium on restorative justice for domestic violence and sexual assault cases. Research shows that restorative justice works best in relationship breakdowns.
 - Presently, restorative justice is often used for very low-risk cases that wouldn't head to court anyway. The *Criminal Code* would have to mandate any change in practice.
- **Fund and administer restorative justice** initiatives well and use data to track results.
 - Training is imperative to successful results.
 - Restorative justice should not be seen as a cheaper alternative to the mainstream system. The process is often resource intensive, but participants said that research and evaluation

have shown both victims and offenders report higher levels of satisfaction, as well as lower rates of reoffending.

Victims and survivors of crime

In 2015, the *Canadian Victims Bill of Rights* was launched and established statutory rights at the federal level for victims of crime. Despite this milestone, many participants felt much more should be done to aid victims and survivors of crime. They said the criminal justice system still doesn't always treat them with compassion and respect. Furthermore, victims continue to feel excluded from and re-victimized by the criminal justice system.

Best practices

Victims of crime are often the main or only witness providing evidence in a case, said participants. As such, if the criminal justice system were more focussed on the needs of victims of crime, victims would have greater confidence in the system, rates of reporting would increase, and the overall outcomes in criminal cases would be improved. Participants noted some best practices in responding to victim needs, such as the Philadelphia model for addressing low rates of reporting/high unfounded rates in sexual assault cases and restitution enforcement programs like those in Saskatchewan and Nova Scotia.

Roundtable members added that restorative justice is an exception. Many victims are more satisfied with this process than the traditional criminal justice process. That's because victims often feel that restorative justice offers them a more meaningful role and involves a more personable process. Restorative justice also allows victims to ask offenders questions. By getting the answers they need, victims and communities can heal. In this light, many participants agreed that restorative justice should be provided as an option to all victims of crime.

In addition, participants noted that restorative justice programs are most successful when they take a trauma-informed and victim-focussed approach. A victim-focussed restorative justice program, for example, would assess the offender beforehand to ensure that they are willing to take responsibility for the harm done, make sure that the victim's voluntary participation is central to the process, and allow the victim to choose how to communicate with the offender (such as in person or in writing) and how long to stay engaged.

Challenges

Participants identified a number of issues that negatively affect victims throughout the criminal justice process. A major problem, some participants stressed, is that victims get little information about investigations and court cases. Participants were also particularly concerned about the lack of timely, affordable supports for victims throughout the criminal justice process, and lack of access to affordable, long-term supports (such as counselling) after their case concludes in the system.

Another difficulty relates to delays in court cases and a backlog of cases. Roundtable members said that nobody talks to victims about scheduling legal proceedings, yet they still have to attend court. Justice system delays also have the negative impact of prolonged stress and anxiety for victims. Victims cannot find peace when offenders aren't held accountable, said some participants.

Some participants were concerned about the use of restorative justice in particular cases. For example, in domestic violence and sexual assault cases where there is a significant power imbalance at play between the victim and the offender. In order for restorative justice to be successful in these cases, participants felt that the restorative justice program would need to take a trauma-informed and victim-focussed approach.

Suggested improvements

- **Improve information for, and about, victims.**
 - Amend the *Canadian Victims Bill of Rights* so that victims automatically receive information instead of having to request it.
 - Have justice staff work together better to help victims exercise their rights.
 - Give victims the option to participate in restorative justice and tell them that restorative justice doesn't require them to meet an offender face-to-face. For example, they could exchange letters.
 - Collect better data, especially on third-party records applications in sexual assault cases.
 - Highlight the needs of vulnerable and marginalized victims—victims who are elderly, Indigenous, female, children/youth, immigrants, or who have disabilities.
 - Educate justice professionals and the public about the impacts of certain types of crime on victims.
 - This includes cyber violence, sexual assault, impaired driving, corporate crime, and cases where the accused is found not criminally responsible on account of mental disorder.
- Provide more **funding and resources** to organizations that serve victims.
 - Give long-term core funding to ensure services like emergency shelters are always available.
 - Fund the cost of legal representation for victims of crime, especially victims of sexual assault.
 - Give police more staff to focus on victims' needs. This would build confidence in the system.
 - Victims would then report crimes more often and courts would prosecute more cases.
 - Provide more funds and education to improve victim-focussed restorative justice practices.
 - Fund more restitution enforcement programs like the ones in Saskatchewan and Nova Scotia.
 - Conduct a cost benefit analysis to assess cross-sectoral service issues and ensure that, where possible, victims have better access to more cost-effective victim services so they do not have to resort to more costly health care services.
 - Move toward a public health care approach to addressing victim needs, particularly so that services do not cease for victims once their case concludes in court.
- Select only impartial **expert witnesses** for criminal cases who speak to their area of expertise alone.
- Look to **other countries** to adopt best practices in responding to the needs of victims of crime.
 - Consider best practices in restorative justice based on:
 - The California Restorative Justice Unit model which boasts low rates of recidivism.
 - The European Directives on Restorative Justice which take a victim-focussed approach.
 - The French criminal justice model which ensures that victims are provided an opportunity to participate in restorative justice at every stage of the criminal justice process.
 - Consult the UK Code of Practice for Victims of Crime model for responding to victim needs throughout the criminal justice process.
 - Examine the Philadelphia model for addressing low rates of reporting and high rates of unfounded incidents in sexual assault cases.
 - Look at the Dutch model for addressing high rates of attrition.

Conclusion

The roundtable discussions held across Canada have uncovered many ideas for improving the criminal justice system.

Participants mentioned that many of these ideas are straightforward and cost-effective steps that could reduce the pressure on the system in the short term. For example, partnerships with social systems and the private sector could lead to the sharing of critical information that makes the system more efficient. Investing in restorative justice initiatives could prevent offenders from reoffending and reduce incarceration rates. Applying youth justice strategies to the adult criminal justice system could achieve the same results for adult offenders.

We still need to implement longer-term reforms to account for today's very different society.

The next steps for the criminal justice system review involve further study of the main themes identified, which were:

- **concerns with Canada's criminal justice system,**
- **mental illness, addictions** and the overly high numbers of vulnerable and marginalized people in the criminal justice system,
- **collaborative approaches** that partner with social systems, the private sector, and others in the criminal justice system,
- **restorative justice and alternative approaches,** and
- **victims' issues.**

The five themes identified here have become part of communications and more discussion sessions. Some of the themes are being added to the core outcomes of the criminal justice system review including:

- improving public awareness and understanding
- improving the database of evidence, and
- creating more opportunities to use diversion, restorative justice, and alternative and collaborative approaches.

These discussions have yielded invaluable insights. The Government of Canada wishes to thank the passionate partners, stakeholders and citizens who spoke during these engagements.

Appendix A

Since May 2016, the Government of Canada has been holding a series of roundtables with stakeholders across the country to discuss how we can transform the criminal justice system.

Participants included:

- representatives from non-governmental organizations representing victims, offenders, police, prosecutors, defense lawyers
- members of professional legal associations
- judges
- provincial and territorial government officials
- academics
- mental health professionals
- Indigenous leaders and communities

Completed to date:

Location	Date	Theme
Toronto, ON	May 19-20, 2016	<ul style="list-style-type: none">• Initial experts roundtable - national
Charlottetown, PE	August 8, 2016	<ul style="list-style-type: none">• General
Vancouver, BC	August 15, 2016	<ul style="list-style-type: none">• Mental health and the criminal justice system
Vancouver, BC	August 16, 2016	<ul style="list-style-type: none">• Lessons from the Youth System
Edmonton, AB	September 8, 2016	<ul style="list-style-type: none">• General• Promising practices in Alberta
Moncton, NB	October 11, 2016	<ul style="list-style-type: none">• Community wellness courts• Bail and remand• General
Halifax, NS	October 14, 2016	<ul style="list-style-type: none">• Restorative justice

Location	Date	Theme
Yellowknife, NT	December 5, 2016	<ul style="list-style-type: none"> • Social responses to crime • General
Winnipeg, MB	December 6, 2016	<ul style="list-style-type: none"> • Community courts in Winnipeg • General
Iqaluit, NU	January 25, 2017	<ul style="list-style-type: none"> • Wellness approach to justice • General
Saskatoon, SK	March 16, 2017	<ul style="list-style-type: none"> • Addressing gaps in services to Indigenous people in the criminal justice system
Whitehorse, YT	April 18, 2017	<ul style="list-style-type: none"> • Collaborative Justice • General
St. John's, NL	April 26, 2017	<ul style="list-style-type: none"> • Restorative Justice • General
Toronto, ON	May 26, 2017	<ul style="list-style-type: none"> • General
Ottawa, ON	June 1, 2017	<ul style="list-style-type: none"> • Issues Facing Victims and Survivors of Crime
Gatineau, QC	November 9, 2017	<ul style="list-style-type: none"> • General

Additional engagements

Halifax, NS	October 15, 2016	<ul style="list-style-type: none"> • Mi'kmaq – Nova Scotia – Canada Tripartite Forum – Justice Committee roundtable
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Toronto, ON

February 10, 2017

- Wrongful Convictions

Vancouver, BC

May 24, 2017

- Sex Trade laws