

# Racial discrimination in the criminal justice system | essay



**Abstract**

The importance of recognizing the fundamental concepts of issues in the Canadian criminal justice system is critical in the illustration of justice to minorities predominately Blacks and Aboriginal. Blacks and Aboriginals have been challenged socially, economically and politically. In examining the Canadian criminal justice system, it can be concluded there are many complications in attempting to justify the outcome of a case. It is imperative to recognize if the Canadian judicial system is simply responsible for the over representation of Blacks and Aboriginals in the justice system. This paper will further examine and critically analyze the flaws of the justice system. The processes of prosecuting an offender sometimes rely on the jurors. The importance of selecting jury needs to be further addressed. Thus, this paper will examine different aspects of the Canadian criminal justice system in relation to the existence of racial discrimination.

The foundation of Canada was formed by the Aboriginals continuing to the colonial revolution to become a multicultural country. However the diverse races that are existent in Canada have been in conflict. Racism has lingered for countless years wherein complete abolishment will be unsuccessful providing marginalization and stereotypes are existent in society. It is noteworthy to recognize the race-related injustice minorities experience within the criminal justice system. Though the different systems and procedures in the criminal justice system are designed to protect society, minorities are often challenged with stigmatization. Evidence from the Canadian society indicates an over representation of minorities within the criminal justice system to the extent that there are concerns regarding

wrongful convictions such as Donald Marshall, Jr. Prevalent oppression of these races lead to the failure of the justice system to be a reliable source of integrity to citizens, failing to build confidence.

This paper will discuss the importance of fair and equal treatment in the justice system. The failure to recognize the injustice minorities encounter often results in the constant practice of systemic discrimination.

Discriminatory practices such as racial discrimination and racial profiling are still prevalent within the Canadian Criminal Justice System. The significance of addressing this issue is having an impartial mindset in the judicial system when a minority is convicted. This issue can be addressed as systemic discrimination leading to the over representation of Black and Aboriginal in prisons in Canada. The key areas I will focus on are: the white dominated jury selection in trials involving minorities. I will examine if the criminal cases are a result of systemic discriminatory practices or if it is the complications within those cases. In addition I will also analyze the reason why there is an over representation of Blacks and Aboriginals within the Criminal Justice System and if Canada violates the legislated human rights identified under the Charter of Rights and Freedoms and possibly the Criminal Code.

This paper will consist of various studies conducted to examine whether racial discrimination is existent in society. Many studies have been conducted to determine if racial prejudice is present through arrests and court systems resulting in the over population of the prisons. In this paper I will analyze various sources of literature review, reports, articles, cases, theories and studies to enhance my arguments and persuade the reader to

implement solutions to help reduce the partial treatment in all levels of the criminal justice system.

By addressing the fundamental issue in society it raises awareness of the possible solutions that can be addressed. This is a topic of interest as I can relate as a minority. I hope to limit the partial practices in the Criminal Justice System. The analysis of criminal court cases such as R. v. Williams (1998), R. v. Khan (2004), R. v. Marshall (1971) will support my arguments regarding existing mistreatment of ethnic minorities with the Canadian criminal justice system. I will also discuss that stigmatization of blacks and Aboriginals are still prominent in today's society in the arrest and court processes. In this paper, I will explore why such injustice is still occurring and what actions can be taken to minimize stigmatization. I will draw attention to the various forms of injustice within the Canadian criminal justice system. Through analysis of particular cases I will draw attention to the types of discriminatory practice that exist. I will also make recommendation on how to better address the existing racism problems within the current justice system as addressing such mal practices are vital in improving the justice system.

### **Historical Concepts of Race:**

It is vital to consider the historical background of the racial backgrounds that will be focused on in this paper. It determines the fundamental cause of the problem today that affects many lives. It is imperative to recognize the aspects that will facilitate for a better understanding of the outcomes of cases. In addition this will confirm the challenges minorities have faced are still present today. Mosher (1998) has proven, " The analysis of racial  
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inequality in diverse historical contexts allows us to establish a perspective from which to view contemporary problems” (p. 28).

## **Blacks in Canada**

As a result of colonialism, Canada has attracted immigrants from all over the world including blacks. In 2006, data collected through surveys concluded the black population increased to over three quarters of a million approximate 783, 000 (Wortley & Owusu-Bempah, 2010). Though the population increased significantly from the earlier years, the representation of blacks within the Canadian population remains at 2. 5%. The black population in Canada fails to be equally scatter in population distribution, as a result only concentrated in specific cities. The migration of the black population is diversified from the country of origin with different composition of cultures, values and beliefs. The survey concluded Canada’s black population suffers from economic and social disadvantage (Wortley & Owusu-Bempah, 2010).

The progress of multiculturalism in Canada through the colonial revolution significantly affected the black population. Historically dated, the prominent severe practice of slavery of black individuals was practiced in the United Stated and the Caribbean. Nonetheless, Canada also had some sort of involvement. It has been evident in the ownership of slaves by six legislators of Upper Canada’s first parliament (Wortley & Owusu-Bempah, 2010). This illustrates the foundation of collectively placing the black population in social disparity from the beginning. Thus, the impact of disadvantage continues to the present day.

The poor treatment of white elites towards the black population often denied the basic rights of individuals. The stigmatization of blacks led to segregation in school as well as public life along with limitations of owning properties (Winks, 2008). The hostile treatment of the white population towards blacks was very explicit in comparison to today's society. Although issues of racial discrimination have been addressed it is still implicitly prominent today.

### **Stereotypical views**

The historical perspective of the blacks in Canada can further illustrate the root of the problem of society today. The beliefs and stereotypes that have been the first perspective of whites towards the black population have been instilled in individuals continuing to carry those set of beliefs. According to a recent survey, results have shown one third of the Canadian population report "being at least slightly racist" (Leger, 2007). The mentality that has been created about the black population being socially and economically underprivileged has found a way to make members of society believe they are continually being stigmatized. On the earlier years, whites have always had the upper hand in contrast to blacks, this has implicitly continued by examining the members of the criminal justice system from the police system to the members of the judiciary. As racial discrimination has formed in various ways from the beginning, it has had adverse affects on the black population of today's society and the law. Thus, the mentality from the slavery days have evolved and integrated into the justice system, affecting the method of serving justice to blacks.

The issue of racial discrimination in Canada is a controversial topic. In

contrast, the most common explicit evidence of racial discrimination is racial  
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profiling evident through anecdotal accounts. The debate in Canada consists of the scepticism of the general public with focus on systemic discrimination that exists in the justice system and if there is equal access to services offered within the Canadian criminal justice system (Wortley, 2003). Canada in comparison to the United States lacks the resources for empirical evidence to further assess the amount of racial discrimination in the justice system. However, the minimal research conducted has evidently illustrated the prevalence of discrimination within the black and First Nation group of minorities.

## **Indigenous**

First Nations suffered through a devastating history however one may not assume it has been completely stopped. Surprisingly, in the present day the mistreatment of police forces or other authoritative figures have not simply justified fair and equal treatment. Many scholars have attempted to study the relationship of the treatments of the criminal justice system through the communication processes (Roberts, & Doob, 1997).

Historically, Aboriginals were seen as a barrier to colonization and progress, as an outcome they were subject to unjust treatment and were forced to assimilate into Canadian life. They were also subject to convert from 'red men' to 'white' this was accomplished by forcing them into residential schools where they suffered a tremendous amount of torture (Dickson-Gilmore, 2005). During this process, First nations have been stripped away of culture: they were forced to surrender land and degraded to the reserves while they were prohibited to have an Aboriginal model of family, social life and spirituality (Dickson-Gilmore, 2005). As Indigenous have been rejected  
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culturally, socially and politically it is a contributing factor to why society has stereotypical views. As the mandatory placement of Aboriginals on reserves, it has resulted in the constant use of drugs and alcohol as they are excluded from the rest of society.

Aboriginals have suffered through a disadvantaged past from being stripped of all kinds of identity and being put aside into the reserves. It is very easy to stereotypically judge an individual. Players in the criminal justice system are also humans and are aware of the historically disadvantaged past of the First Nations. The assumption all Aboriginals are the same can affect the outcome of cases wherein an Aboriginal is involved. The stigmatization that has been established about the Indigenous continues to prevail in society today as it is evident in the criminal justice system.

## **Media**

The media has become a significant influence on the general public. From the television shows, movies and news it has managed to instil certain information, perceptions in the heads of its viewers and/or listeners.

Prominently, the media will portray all the negative characteristics of a certain race which leads to the creation of stereotypes. Studies have shown the biasness of the Canadian media and the unfairness of media representations (Mahtani, 2001). Considerably, the media is a powerful medium to deliver knowledge to the public, selecting certain images of minorities to govern the public's perspective (Fleras and Kunz, 2001). As a result, pessimistic representation of minorities includes stereotypes and beliefs such as: threatening, deviant, and irrelevant to the construction of the nation. The negative traits of minorities depicted in the media  
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automatically become the everyday perception of the public. It is rare to see minorities on a television show, however if they are featured on a show they are depicted as criminals or deviant (Mahtani, 2001). Thus, the images or the actions/role of a minority depicted in the media is considered "one sided portrayals or articles" become reality in the minds of Canadians (Fleras and Kunz, 2001) in addition to confirmation of the stereotypes already created.

The media often creates a picture of poor black men involved in drugs or violence. Chances of a successful black man being featured in a news broadcast have decreased in the likelihood. The media generates a subliminal message of stereotyping black men. Focusing on a particular race stories emphasizing certain characteristics and eventually transfers those characteristics into a social norm (Fleras and Kunz, 2001). In addition, Aboriginals who have claimed the land of Canada primarily are also portrayed as alcoholics and violent individuals facilitating in the general stereotypes. These stereotypes are consumed in individual beliefs including the police and judicial system.

According to Scot Wortley and Akwasi Owusu-Bempah (2010) media analyses have depicted Black people in Canada have a heightened chance of being portrayed as criminal offenders rather than victims. The Black population have often complained regarding the news media and other forms of popular culture (film, music, etc.) about the portrayal often enhancing the stereotypes that already exists. This depiction of the particular race usually places a strain on the treatment of the members of the criminal justice system. Scot Worley (2002) has performed extensive research within the Toronto star. In his findings, he discovered almost half of <https://assignbuster.com/racial-discrimination-in-the-criminal-justice-system-essay/>

all stories depicting Black people are related to crime and violence, in comparison to 14% of its counterparts of white victims. In addition to the results, he also found that white victims received more media coverage than Black victims. These biases of large mediums affect an individual's sub consciousness.

## **Treatments of minorities**

According to Nelson (2004), extensive research of the differential treatment of Aboriginals has been ongoing historically to present. A summarization of the results consists of similar cases of confrontations between first nations and the police due to harassment, racism or aggressiveness through force to restrain the fighting of Aboriginal groups for treaty rights and land claims. Government has imposed solutions in an attempt to reduce incarceration rates for First Nations. The method of restorative justice is encouraged to decrease the over representation of Aboriginals in the entire Criminal Justice System (Nelson, 2004).

In addition, scholars have also studied the perception of police and interactions with the black community. Henry Hastings (1996) has conducted a research of how criminal activities are racialized resulting in the confirmation of negative perceptions affecting the treatment of blacks in the criminal justice system.

Chart above (Wortley & Owusu,-Bempah, 2009, Unequal before the law: Immigrant and Racial Minority Perceptions of the Canadian Criminal Justice system: <http://www.springerlink.com/content/03676811221r238m//fulltext>.

html#Fig2): Percent of respondents who believe that a black person would receive a harsher sentence than a white person convicted of the same crime

The chart above is a depiction of the confidence of the general public in the justice system. As previously mentioned, the perceptions of society towards the Black population have not changed. As a result a survey has been conducted based on perception of three major ethnicities: White, Chinese and Black. The public beliefs of mistreating Blacks had forced the police enforcement to implement the idea of designing strategies to eliminate or reduce the belief of targeting racial minorities. An action plan of recruiting minority groups in the police force has been implemented. Evidentially, these anti-racism programs have not been well examined, due to the significant amount of increase still prevalent in this survey. Stenning (2003) has stated, " if such efforts are effective, perceptions of racial bias in policing and the courts should have decreased significantly over the past 10 to 15 years.

## **Racial Profiling**

A prominent form of racial discrimination is racial profiling. Evidence of surveys conducted still find racial profiling to be a common problem. An academic literature definition of racial profiling is defined as: " significant racial differences in police stop and search practices, significant racial differences in Customs search and interrogation practice and particular under or sting operation which target specific racial/ethnic communities" (Wortley & Owusu-Bempah, 2010, p. 17). Various studies conducted in the United States, Great Britain and Canada have all concluded that Black people have an increased chance of being stopped, questioned and search by the <https://assignbuster.com/racial-discrimination-in-the-criminal-justice-system-essay/>

police (Tanovich, 2006). This issue has been brought to the attention of the Ontario Human Rights Commission in 2003 with a compilation of detailed testimonial from over 800 individuals in Ontario with a majority composition of black felt they have been a victim of racial profiling. If racial profiling exists it is evident that racial discrimination also exists and is somewhat visible in the justice system. Racial profiling within in the society by police, at every level of the justice system influences the statistical information of minorities in the Canadian criminal justice system.

## **Players in the Criminal Justice System**

The explanation of the over representations of black and Aboriginals in the criminal justice system can simply be explained through the thorough analysis of the judicial system. Canada was originally established in a Eurocentric focus presently continuing justifying the flaws of the criminal justice system and the ignorance towards minorities. The limited representation of minority in the judiciary contributes to the factor of the lack of recognition of minority needs. Essentially, it is vital to implement affirmative action in the courts to avoid stigmatization of race (Crenshaw, Gotanda, & Peller, 1995). In addition, in the event of final decisions in court, majority of jurors selected are of a white decent while the criminal offender is often black or Aboriginal with programmed stereotypes. As a result, jury decisions often incarcerate blacks and Aboriginals creating the over representations in prisons.

By examining the judicial system it is easy to conclude the racial consistency is prominently white males. This reflects not only the European colonization in early years but the current patriarchal society. According to Hamalengwa <https://assignbuster.com/racial-discrimination-in-the-criminal-justice-system-essay/>

(2003), a white lawyer had stated, “ bringing the racial animus in a criminal case will alienate the judge, police, prosecutors and the jury, all of whom are most likely White and will likely ensure a conviction” (p. 9). The credibility of this statement is accurate as it is a primary source. When the issue of race is raised in the court systems, it is often denied the attention and action for equal justice of minority groups such as Aboriginals and Blacks

### **Police**

According to Parker et al (2005), there has been sufficient evidence to conclude police have an increased likelihood of making arrests in cases involving whites compared to non white victims as well as scenarios with a white victim and a black offender. These results show that whites are much more favourable within the justice system emphasizing on the higher value placed on them in comparison to blacks. Further analytical examinations of police biasness of whites during arrests have been studied. In Toronto during the period of 1996 throughout 2001 there have been 10, 000 arrests involving drug possessions which was composed of 38% of black suspects and 23% whites. All accused persons were taken to the police station for report processes. However accused white individuals were likely to be discharged in contrast to black individuals who were most likely to be detained overnight for a bail hearing.

As there is an overwhelming over representation of Aboriginal people in the criminal justice system, over and under policing contribute to these statistics (Rudin, 2005). Over policing refers “ to the practice of policing targeting people of particular ethnic or racial backgrounds or people who live in particular neighbourhoods” (Rudin, 2005, p. 1). This results in the police

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structuring a different approach towards Aboriginals with the assumption they are violent, dangerous and more likely to be involved in criminal activity. In contrast to the over policing, Aboriginals are underrepresented to being victims by police. This a reflection of the government who often disregard the Aboriginal rights claims and ignore the suffering they continue to experience (Rudin, 2005).

Though there have been collective efforts to strategically reduce racial bias in the justice system, it is still questionable whether it is actually effective. One of the approaches that has been recently been put in effect is minority recruitment. It is the idea of hiring minorities to diversify policing and the other sectors of the justice system (Stenning, 2003). Results of this strategy have improved in diversifying the police. In 1994, the police force was composed of 6% minority members compared to the significant increase in 2009 to 19% (Wortley & McCalla, 2008). Diversity has evidentially been proven to exist as the two out of the four Deputy Chiefs are black as well as the September 2009 graduates reported to have been the most multicultural class of recruits (Wortley & Owusu-Bempah, 2010).

As the police are creating a racially diversified environment there is no guarantee that minority members are free of racial discrimination in the work force. The problem of racial discrimination will be difficult to completely eradicate, considering the historical aspects of Canada and the existence continuing into the workforce. Police are a vital variable to consider when dealing with the racial background of one of the primary source for arrests and convictions. As mentioned previously, the police force had been

historically composed of a majority of white racial background until recently creating bias to those minorities from internalized beliefs.

### **Jurors**

Critical Race Theory was created in the 1970's acknowledging racism adopting the ideology from the United States. It is a socially constructed concept attempting to show the structure of law including antidiscrimination law accommodating and facilitating racism (Aylward, 1999). The implication of the Critical Race Theory intensifies the application of power within the criminal justice system. Initially, the aims and objectives of the Critical Race Theory emphasizes on race and power. It fundamentally deconstructs society by categorizing racial hierarchies. However, the recognition of racism reproduces inequality, further minimizing minority rights. The concept deconstructs position of minorities while reconstructing juror bias (Aylward, 1999). In the Canadian context critical race theory is often applied to the races that are more prominent to racial discrimination, Blacks and First Nations.

### **Jury Selection**

In addition, the jury selection process is most likely to reflect the judiciary representation. National Law Journal conducted a study containing a sample of 800 jurors, 42% were White jurors in contrast to the 25% of Black jurors teaming up with the police officers rather than defendant present in the case (Hamalengwa, 2003). In circumstances of cases wherein race is involved, it is often a minority attempting to indict a representative of the criminal justice system such as the police with an all white jury. The study observed that jurors are more biased by empathizing with victims of their own race and

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lenient of defendants of the same racial background (Hamalengwa, 2003). Thus, to achieve an equal administration of justice it is essential to select a racially mixed jury.

In the case of *R. v. Williams* jury selection depicted the flaws of the criminal justice system. Victor Daniel Williams, an Aboriginal accused of a robbery charge denied accusations. At the primary trial, the judge permitted questions posed to potential jurors. As a result of this, the Crown had applied for a mistrial on the basis of procedural errors and the “unfortunate publicity” of the jury selection process (*R. v. Williams*, 1998). At the second trial the judge had dismissed any motion from the accused. In conclusion of this trial the court had admitted to the widespread of discrimination against First Nations within the community.

In cases where the defendant believes the jury might have prejudiced towards the particular race such as Aboriginal, the prosecution and defence have the right to challenge potential jurors “for cause on the ground of partiality” (*R. v. Williams*, 1998). Questions the defendant may ask the potential jurors whether they have already possess a prejudice towards the racial group altogether if so, if it is possible for the jurors to make decisions without the bias they possess. The case was a lengthy process of arguing why the jurors were questioned as it is presumed that jurors will function without biasness. Counter arguments have stated it if the prejudice of society is widespread how are the jurors able to remove it for the trial defeating the purpose of section 638(1)(b) (*R. v. Williams*, 1998). As the case concluded, extensive bias continues to uphold against Aboriginals. In contrast, British



Columbia and the attending judge held the evidence was not sufficient to determine potential jurors prejudiced.

The R. v. Williams case has depicted the outcome of jury bias. However, this could be further prevented if the jury selection process was racially mixed with different backgrounds and a variety of perspectives. The outcome of the case would differ greatly. This case could be referred back to the stereotypes instilled in individuals. The general public assumes Aboriginals and prisons are constantly correlated. The implication of this stereotype can be further expanded to the uncivilized and lack social and moral order essential in society (R. v. Williams, 1998).

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### **Systemic Discrimination**

It is not surprising to see the prominent race in Canadian prisons consists of the minority groups that are often faced with obstacles. Both Blacks and Aboriginals have suffered through a disadvantaged history mirroring the result of how they function in society leading them to prison. However, as these groups are prone to committing more criminal activities in comparison to other races, the partial verdicts of judges and jurors are significantly influenced. Hence, it results in the over representation of Blacks and Aboriginals in Canadian prisons.

### **Canadian Prison System**

The table below illustrates statistics of the composition of the Canadian prison system. It can be concluded through examination of the charts that Aboriginals and Blacks have the greatest amount of incarceration into <https://assignbuster.com/racial-discrimination-in-the-criminal-justice-system-essay/>

prisons. The general population of Blacks and Aboriginals composed in society compared to the ratio that are incarcerated have significant differences and make up majority of incarcerated individuals. The over representations of these particular races in the prison system can cause the general population to question the justice system. Inevitably, factors to consider when analyzing this chart include the consideration of the actual crime committed or the injustice of the courts to properly provide justice to offenders due to racial bias or discrimination.

### **R. v. Marshall (1971)**

Donald Marshall was an average seventeen year old. As a youth, it is more likely to get in trouble with the law for petty crimes such as consumption of alcohol or smoking. He was the typical young man who would break the law and participate in underage drinking and smoking. He was walking down the street and coincidentally had an encounter with one of his friends whom was African Canadian. The two individuals were involved in a conversation until two other gentlemen from across the street decided to ask for a lighter. As youths it is also most likely individuals are more violent. As a result one of the two males had stabbed Marshall's friend resulting in his death the very next day (R. v. Marshall, 1971).

Marshall was not arrested long after the incident. Shortly, he was arrested and charged with murder with a three day trial. He was then acquitted as were the police in his arrest. The police had strongly believed Marshall was responsible for his own conviction and miscarriage of justice was visible. As years passed, the man who actually committed the crime was charged with manslaughter sentenced in prison for 3 years. A Royal Commission had <https://assignbuster.com/racial-discrimination-in-the-criminal-justice-system-essay/>

identified Marshall as a victim of wrongful convictions. Marshall was then compensated a total amount of \$700, 00. 00 upon his release for wrongful convictions (R. v. Marshall, 1971).

In this case of wrongful convictions, the integrity of police discretion can be questioned. There are many factors that have resulted in the wrongful conviction. Though everyone possesses internalized beliefs, the criminal justice system should attempt to avoid partial judgements. In careful investigation and examination of this case, there is a great possibility of avoiding the problem. It is imperative for the criminal justice system to reduce judgements based on colour. Lack of analysis in cases are leading to the over representations of minorities such as Blacks and First Nations in the prison system. Systemic discrimination exists in society and addressing the problem should facilitate in reducing the problem.

As the historical perceptions of social disparities of the black and indigenous population of Canada continue to be a factor in being racially discriminated, it is vital to recognize the foundation of systemic discriminatory practices in the Canadian Crimin