



RESTORATIVE JUSTICE

Discussing reforms in the criminal justice system can be a polarizing exercise, with one side accusing the other of either having a “hug-a-thug” or a “lock-em’-up and throw away the key” mentality. In this report, we look at current criminal justice practices in Canada, the foundations for restorative justice, and the benefits of a proper application of restorative justice principles. We avoid the extremes of the debate by proposing specific improvements to criminal law through restorative justice principles.

One night in Elmira, Ontario, in 1974, two intoxicated boys went on a vandalism spree. They were caught. Thankfully for them, their probation officers saw their case as an opportunity to apply a restorative justice process rather than incarceration. The judge agreed and ordered the boys to apologize to the owners of the damaged properties, pay for repairs, and fix anything money could not replace. The boys were also fined and placed on probation for 18 months.¹ That same judge, in another case, sentenced a teenager to work on Saturday mornings at a car wash he had damaged.²

These sentences allowed the young offenders to understand the impact of their crime and to make restitution and apologize to their victims. The sentencing judge said of such young offenders: “one little bit of right direction at the right time and they are kept out of the court system forever.”³

One of the offenders was 18-year-old Russ Kelly. Over 40 years later, Kelly admitted that “It took every ounce of courage [he] had to stand on these people’s property . . . and meet them face to face,” and that if he had been sent to jail at the age of 18, he “quite likely would have come [*sic*] out a hardened person . . . [he] probably would have ended up in jail again.” Instead, Kelly learned from his crime and became an advocate for young offenders.⁴

Principles of restorative justice can be applied during sentencing, but also in other parts of the justice system, in ways that help offenders take responsibility for what they have done and, as much as possible, allow them to repair the wrong they committed. Restorative justice, rooted in biblical principles of justice and peace, has inspired valuable criminal justice reforms with its focus on reparation for crimes and

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reconciliation between victim and offender, thus leading to a greater likelihood of rehabilitation.

The criminal justice system is a critical component in public safety, law enforcement, and quality of life for Canadians.⁵ Its reach is extensive and includes police forces, court systems, victim services, and prisons. Regrettably, “Canada is suffering from a ‘justice deficit’ – a large and growing gap between the aspirations of the justice system and its actual performance.”⁶ Canada has a high rate of incarceration, and many offenders are repeat offenders who have done nothing to re-pay the victims of their crimes or the community. Canada’s criminal justice system is not working as well as it should. By putting restorative justice principles into practice, we can improve how our justice system deals with crime, promote justice for victims, and help reconcile and restore convicted persons to society.

Criminal Justice Practices in Canada

The *Criminal Code* explains that the fundamental purpose of sentencing is to “protect society and to contribute, along with crime prevention initiatives, to respect for the law and maintenance of a just, peaceful and safe society by imposing just sanctions.”⁷ Punishments may include fines, restitution, probation, community service, or imprisonment.⁸ The objectives of sentencing include denunciation, deterrence, separation, rehabilitation, reparation, and a sense of responsibility for offenders.⁹

These are worthy goals. But available data suggests that our criminal justice system performs poorly when it comes to achieving these goals. In *R v Proulx* (2000), Chief Justice Lamer stated that Parliament’s amendments to the *Criminal Code* “sent a clear message to all Canadian judges that too many people are being sent to prison.”¹⁰ It has been nearly



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25 years since this "clear message" was sent and, while incarceration rates have come down, more can be done.¹¹ Statistics Canada reported that in 2018/2019, an average of 37,854 adults were in custody on any given day, meaning Canada still has a relatively high incarceration rate of over 100 inmates per 100,000 population.¹² This rate is much lower than in the United States, but higher than most western European countries.¹³ While many factors contribute to incarceration rates, **recidivism** (the tendency of a convicted criminal to reoffend) is a major one.

Recidivism data is a helpful indicator of how well the correctional system is working in terms of rehabilitation and public safety. Correctional Service Canada states that "A standardized measure of recidivism provides a benchmark by which to evaluate an agency's effectiveness in facilitating crime reduction over time."¹⁴ Sadly, recidivism statistics in Canada's federal and provincial justice systems are inadequate and out of date.¹⁵

Provincial recidivism data should also be closely monitored to help determine the effectiveness of incarceration versus community supervision for various offences. Ontario reported a two-year recidivism rate of 37% in 2015/16 for those sentenced to over six months in jail. By contrast, the rate within community supervision was 22.6%.¹⁶ Better, more recent, data could help policy makers identify ways of reducing recidivism. The results and availability of statistics vary significantly between the provinces and territories.

Defining Justice

We must first define "justice" before we can reform our criminal justice system. Charles Colson, a restorative justice advocate, offers a compelling vision of justice: "A system of true justice ... holds individuals responsible for their actions ... under an objective rule of law, but always in the context of community and always with the chance of transformation of the individual and healing of fractured relationships and of the moral order."¹⁷

The Hebrew word "*shalom*," frequently used in the Old Testament, paints a beautiful picture of what true justice should bring. Often translated "peace," *shalom* means more than the absence of conflict; it denotes wholeness and harmony, integrity, and balance.¹⁸ *Shalom* is everything as it ought to be. *Shalom* makes justice and peace inseparable.¹⁹ Justice must seek to build *shalom* or it will be rudderless.

An offender not only harms his victim but also breaks *shalom* within the community impacted by his crime. The moral order, everything as it ought to be, is broken by crime. Further, guilt lies with society as well if they ignore or excuse a crime that has harmed a victim and the community.²⁰ On a practical level, when more crimes are committed, and more people go to prison, communities are destabilized, and it is difficult to reverse the process of increasing crime rates.²¹

Restorative justice, then, offers a comprehensive vision of the justice system. Restorative justice is not only about retribution or financial recompense; it is about people living in community,


governed by the rule of law, taking personal responsibility for their actions, and seeking to build *shalom*. Thus, it promotes accountability for the responsible party, prioritizes participation from those who have been harmed, and cultivates community engagement.²² Finally, the application of restorative justice principles has positively impacted other goals of justice such as reduced recidivism and restored relationships.

Restorative Justice in the Bible

The Old Testament legal code is an early example of restorative justice principles in action.²³ Old Testament principles require a wrongdoer to make restitution, an important piece of restorative justice.²⁴

God taught his people to show concern for their neighbours' well-being and to take ownership for harms caused to another. If a thief stole an animal, he would have to return the animal and pay the victim double for what he had taken. The penalty was compounded if the thief sold or slaughtered the stolen animal, causing even further harm.²⁵ If the thief merely had to return what he had stolen, it would cost him nothing and there would be no disincentive to stealing. By requiring the thief to pay back double or more, the law simultaneously achieved restitution, retribution, and deterrence.

Restitution can be used for crimes where property has been taken, destroyed, or damaged by the commission of a crime. Offenders are often unaware of the harm



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they have caused until they must make restitution. Restitution helps offenders to understand the nature of what they have done and have a better sense of the true cost of the damaged or stolen property, and to take responsibility for making amends.²⁶

From a biblical perspective, restorative justice requires acknowledgement of moral responsibility. Ignoring or dismissing moral responsibility for crime results in a costly and ineffective justice system because the root of the problem is ignored.²⁷ The Bible calls us to recognize our wrongdoing (including outside of the criminal law), repent from it, and participate in restitution and restoration where warranted.

Protestant theology teaches that the moral law taught in the Bible serves three purposes: 1) it restrains people from committing wrong due to the threat of divine punishment, 2) it condemns those who have violated the moral law so that they can seek forgiveness, and 3) it teaches people how to live rightly.²⁸ Building off these premises, English and American jurists focused on three purposes of criminal law: 1) it deters or prevents crime by warning about punishment by the State, 2) it enacts retribution or restitution when a crime is committed so that a criminal is punished and moral order in the community is restored, and 3) it rehabilitates or reforms the one who has committed a crime so that further crimes might not be committed.²⁹ As the moral law binds citizens to personal obedience, citizens are also morally bound to obey the criminal law.³⁰

Aleksandr Solzhenitsyn wrote, “The line separating good and evil passes not through states, nor between classes, nor between political parties either – but right through every human heart – and through all human hearts.”³¹ To reduce vice in society, we must also look at what helps form virtue. Every individual is powerfully influenced by his or her culture but is also a responsible moral agent. It is thus important to build a sense of virtuous character and to inculcate a sense of personal responsibility for one’s actions. As Charles Colson states, “Without individual virtue, we cannot achieve a virtuous culture...

Without a virtuous culture, we cannot hire enough police to keep order.”³² To be able to do this, it is necessary to involve social institutions besides the state in criminal justice, such as families, churches, and community support groups.³³

Civil government on its own cannot heal broken relationships between offenders and victims. Civil government is ill-suited to foster personal transformation. However, the government can create opportunities for restoration by employing restorative justice principles and by allowing faith-based and other civil society organizations to be involved in working towards transformation of the offender.³⁴ Religious groups and faith-based organizations are institutions that can inspire virtue in individuals to promote a virtuous society, and it is important to invite them to help restore relationships, shape an offender’s understanding of virtue, and encourage an acknowledgement of wrong-doing.

Restorative and Retributive Justice: Working Together

Although restorative justice principles are appropriate for many crimes, retributive justice remains necessary. Restoration and retribution are complementary, not contradictory, because in order for an offender to be restored, he must also be able to make some kind of payment for the wrong he has done. Retribution is a proper aim of criminal sentencing. It is not mere “institutionalized revenge” but is about making a reasonable decision about which punishment will be appropriate for a specific crime.³⁵

Punishment is a just consequence for law breaking and a punishment that is proportional to the crime committed remains an important part of sentencing. Retribution ensures that the one who is guilty is punished and that the innocent are protected.³⁶ Punishment signifies that the offender has committed wrong and deserves a just penalty for his actions. Punishment deters criminality, helps reconcile the offender to society, and brings healing to a society broken by crime.

At the same time, it can provide appropriate recompense to the victim.³⁷ Restorative justice is not entirely separate and distinct from retributive justice. Rather, they work together to further the goals of true justice.

The normative concept of “desert,” which sees right in treating people in accordance with what they deserve, affirms human dignity by affirming moral agency. When a person intentionally commits a crime, he chooses wrongly. The choice to do wrong deserves punishment. The concept of “desert” recognizes that humans are moral actors and choose to either do right or wrong.³⁸ An offender’s environment or circumstances can influence their actions, but ultimately, he makes a moral choice whether to commit a crime or not, no matter what the circumstances might be.³⁹

If deterrence or rehabilitation were the only aims of the criminal justice system, then the only relevant questions for criminal justice policy would be: what deters and what cures?⁴⁰ Public shaming might deter better than incarceration. Theoretically, forced re-education, psychotherapy, and medication might be most effective at “curing” an offender of whatever state officials believe caused the person to offend. If deterrence or cure were the sole or primary aims of the system, we might expect the state to conduct a plethora of experiments with convicted offenders to figure out what works best for deterring and rehabilitating. But we do not (and ought not to) treat people as objects for experimentation. People are moral beings with inherent dignity.

Some may wish to treat crime like a disease or a result of an offender’s circumstances. Of course, our criminal law rightly limits criminal liability to intentional wrongdoing – to acts within a person’s control. Our law also rightly considers the offender’s circumstances in sentencing. However, when crime is not viewed as moral wrongdoing, it is impossible to pardon it and it is impossible for the offender to make amends and seek restoration. This leaves the offender worse off than they were before.⁴¹

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Punishment, however, may take a restorative form: repaint a graffitied wall; repay funds obtained fraudulently; publicly acknowledge a statement as libellous. Of course, if an offender merely pays back what was stolen, it costs him nothing. Paying back what was stolen *and more* (to the victim, and also perhaps in the form of a fine paid to government or a contribution to a charity) restores what the victim lost, punishes the offender for wilful wrong, deters further wrongdoing, and benefits the community. Depending on the crime committed, restitution can also be combined with an alternative sentence such as a probationary period or a conditional sentence.

Restorative Justice Practices in Canada

One definition of restorative justice, as used by Justice Canada, states that it is “an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime.”⁴² In *R v Gladue*, Justices Cory and Iacobucci referred to changes made to the *Criminal Code* in 1996 as a significant reform of sentencing principles with two objectives: 1) reducing the use of prison as a sanction, and 2) expanding the use of restorative justice principles in sentencing.⁴³ However, various restorative justice principles are not commonly used in Canada.

Restitution orders requiring offenders to compensate their victims are rare in Canada. In 2015, Canada implemented the Victims Bill of Rights which recognizes the impact of crime on victims and gives victims the right to have the court consider a restitution order.⁴⁴ Provincial restitution orders in 2014 ranged from less than 1% of cases in Quebec, Manitoba, and Nunavut, up to 5.8% in Prince Edward Island and Nova Scotia.⁴⁵ In 2017-2018, just 2.41% of all guilty verdicts throughout Canada contained restitution orders.⁴⁶

Although not commonly used throughout Canada, restorative justice practices have been common among Indigenous groups for centuries.⁴⁷ One Indigenous method

of restorative justice is Sentencing Circles, where the community, victim, and offender collaboratively participate in the sentencing process to determine what is best for everyone involved.⁴⁸

Other examples of restorative justice practices in Canada include Family Group conferencing and Victim Offender Mediation, where a mediator facilitates a conversation between a victim and an offender to reach a peaceful and just resolution.

Restorative Justice in Sentencing

Principles of restorative justice can be applied in sentencing, incarceration, and reintegration into communities, and through the involvement of various community-based programs.⁴⁹ An important component of restorative justice is restoring the relationship between the offender, the victim, and the community. Reconciliation is facilitated through alternatives to incarceration for non-violent crimes, such as conditional sentencing, community service, rehabilitation programs, or direct restitution to the victim.⁵⁰

Restorative justice seeks to facilitate meaningful conversations between the offender and the victim, so that victims can explain the impact of the crime and offenders can take responsibility for what they have done. Such conversations can reveal ways that the offender can seek to repair the damage he or she has done. It can also help a judge decide which penalty would be most appropriate.⁵¹

Applying these principles in appropriate sentencing circumstances will help reduce recidivism and assist victims and communities who seek to deal with the harm of an offence in a productive and effective way. Incarceration fails to rehabilitate offenders. Repeat offenders have not been deterred by their punishment and many have lost their fear of going to jail. Often, prisons can be a place where offenders conspire with others and negative relationships are formed that extend beyond prison.⁵² Alternative sentences, which can include attendance at work or continued education, can prevent

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anti-social associations and promote good behaviour.⁵³ Ultimately, the goal is to enact both just punishment *and* restoration, to work towards peace and harmony within communities.⁵⁴ Alternative sentences often achieve this goal better than incarceration.

Restorative Justice in Incarceration

Prison plays an essential role in protecting the public from violent and dangerous offenders.⁵⁵ Prisons do not, as a rule, successfully rehabilitate criminals or deter crime, but they do restrain dangerous persons to protect the public. Incarceration efforts should primarily target offenders who pose a danger to those around them and who are at greater risk of repeat offences.⁵⁶

Prisons can, however, use restorative justice principles to inform *how* we incarcerate people. As much as possible, meaningful work should be offered. Work not only gives a sense of purpose but can provide offenders with an opportunity to make restitution and to support their families while incarcerated.⁵⁷ Prisons should be safe and prisoners should be treated with respect, busily occupied, encouraged to strengthen links with their family and community, and expected to improve themselves and given resources to do so.⁵⁸ Within prison, offenders can still find meaning and purpose for their lives, and practices within prison can respect human dignity and promote virtue.⁵⁹ When prisoners participate in education programs, recidivism decreases by 43%.⁶⁰ When prisoners are taught valuable skills and have a job while they are incarcerated,

their recidivism rate decreases by 24%.⁶¹

Once incarcerated, there may still be opportunity for offenders to participate in programs that apply restorative justice principles. In addition to their work supervising offenders and managing correctional facilities, Correctional Service Canada and provincial corrections can also facilitate the availability of various programs within prisons, positively affecting recidivism rates upon the release of offenders and improving victim satisfaction within the system. Faith-based organizations that work with offenders, for example, can have positive effects on offenders by promoting pro-social behaviour such as feeling empathy and concern, and behaving in ways that benefit others. This can help limit criminal behaviour, and “can also protect one from the effects of living in disadvantaged communities.”⁶²

One example of a faith-based restorative justice program used to varying degrees in 34 countries, including Canada, is the Sycamore Tree Project, a 5-8 week in-prison program which brings together groups of offenders and groups of crime victims. The program focuses on offenders recognizing the effects of crime, taking personal responsibility, and making amends, while the victims focus on paths toward healing and reconciliation.⁶³ A 2009 study of 5,000 prisoners in England concluded that the program positively impacted participant attitudes about crime and its effects. Specifically, the program seemed to improve participants’ attitudes toward crime which, if left unaddressed, would otherwise be more likely to lead to future or repeat offenses.⁶⁴

Restorative Justice in Reintegration

Principles of restorative justice can also be used to reintegrate offenders into their communities. For example, a community program could serve as an alternative to prison for minor offences, or a reintegration program could enable early release from prison.

In 2007-2009, four researchers in a community in British Columbia studied Chilliwack Restorative Justice’s practices and their impact on the participants. The study included 308 participants and observed the number of repeat offences (shoplifting) committed in a two-year period following completion of the restorative justice program. The research tracked the average number of offences after 24 months and the time it took to first reoffend.⁶⁵ They discovered that participants in the program did not reoffend as consistently or quickly as non-participants. However, the authors cautioned that while their study suggests that restorative justice practices are effective, we need studies with much larger sample sizes to fully understand the effects on a broader scale.⁶⁶

Other programs provide supports to offenders upon release from prison. In the United States, for example, the Texas Offenders Re-entry Initiative seeks to provide services that focus on employment, education, housing, healthcare, family reunification, and spiritual guidance. The program manages offenders for a year after release and ensures that they re-integrate effectively. The results of the program since 2005 have shown just an 11% recidivism rate

among participants.⁶⁷ A similar Canadian program is No One Leaves Alone, initiated by the M2/W2 Association. It provides mentorship and accountability to offenders and supports them in areas of housing, employment, health, relationships, and education.⁶⁸

Public Safety Canada reviewed the effectiveness of multiple re-entry programs across the country, and many of the results were inconclusive. Certain programs reduced recidivism, while others seemed to have little impact.⁶⁹ Restorative justice programs should be analyzed individually, and more empirical research should be done regarding the relationship between restorative justice programs and recidivism to identify the most effective programs. Including community actors in restorative justice also helps facilitate the development of locally adapted reintegration programs. In 2021, Parliament passed Bill C-228, *An Act to establish a federal framework to reduce recidivism*.⁷⁰ The bill rightly recognized the importance of faith-based and other community initiatives in rehabilitating offenders and reducing recidivism.

Additional Practical Benefits

VICTIM SATISFACTION

The application of restorative justice principles has practical benefits for victims of crime and communities broken by crime. Restorative justice principles are based on an understanding that crime violates people and relationships. Many Canadians have a desire to mend those relationships. Restorative justice also considers all who were affected by the crime, whether that be family members, neighbours, colleagues, property owners, or customers. Those affected, and others within the community, can participate in various parts of the restorative process.


Most Canadians (87%) feel that victims should be able to meet with the offender and tell them about the impacts of the crime if they wish to do so. Over half (64%) of Canadians agreed that restorative justice processes should be available to all victims



and offenders, as long as both parties want to take part in the process and the offender admits guilt.⁷¹

Victims often benefit from restorative justice processes that facilitate victim-offender dialogue. Victims who participate in these processes are more satisfied, feel safer, often receive an apology, and their feelings for revenge subside compared to victims' experiences in processes that do not apply restorative justice principles.⁷² Nevertheless, if the offender does not seem remorseful, the victim does not feel safe to talk, or the offender does not complete the plan

agreed upon, victims can find the process unsatisfying.⁷³ Of course, participation in these programs must also be voluntary on the part of both victims and offenders, and facilitators should ensure that offenders who wish to participate have completed prior work in addressing their crimes. In some cases, if one side is willing to participate but not the other, surrogate victims and offenders (real victims and offenders, but in unrelated cases) are brought together to allow healing, understanding of harm, and offender accountability.⁷⁴



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REDUCTION OF COST

Operating expenditures for adult correctional services totaled over \$5 billion in 2018-2019, equalling \$318 per prisoner per day federally, and \$259 per day provincially.⁷⁵ While direct cost comparisons are not available, increasingly applying restorative justice principles would appear to reduce the costs of the justice system.⁷⁶ The majority of organizations that facilitate community restorative justice programs are run by a few paid employees, with the rest being led by volunteers in the community.⁷⁷ Reduced recidivism is also a major cost saver.

INCREASED EFFICIENCY IN COURTROOMS

“Justice delayed is justice denied,” states the famous idiom. More than that, a Hebrew proverb says, “Because the sentence against an evil deed is not executed speedily, the heart of the children of man is fully set to do evil.”⁷⁸ Canada suffers from serious backlogs and delays in its criminal justice system. In *R. v. Jordan*, the Supreme Court of Canada ruled that criminal trials must be completed within 18 months for provincial court cases or 30 months for superior court cases. Anything longer is presumptively unreasonable.⁷⁹ A recent study reported that in adult provincial

courts the median time between the first court appearance and the final ruling was 112 days. This does not include the wait time from the first charge until the first court appearance. A full 6% of cases tried in provincial court took longer than 18 months to process.⁸⁰

These wait times are long because the courts must process many cases, and judges require time to make a fair decision. Reduced recidivism and a more effective justice system will help reduce these wait times.

RECOMMENDATIONS

Crime and recidivism rates are high, and criminal activity is not typically viewed in the context of relationships and personal responsibility and transformation. However, Canada's justice system can be improved through a more consistent application of principles of restorative justice. Restorative justice provides opportunities to reduce crime, provide closure and satisfaction for victims, and allow offenders to make amends and be restored.

Recommendation #1

All levels of government should require actors within the criminal justice system, from police officers to attorney generals and solicitor generals to victim services volunteers, to have an in-depth understanding of restorative justice and be prepared to give the option to offenders. This is in line with Section 718.2(e) of the *Criminal Code*, which states that consideration should be given to all sanctions other than imprisonment that are reasonable in the circumstances.

Recommendation #2

Principles of restorative justice should be expanded beyond their current use, making further use of alternatives to incarceration through amendments to the *Criminal Code* as follows:

- A. Conditional sentences allow the offender to maintain work, support family members, pay restitution and remain active in society making reintegration more likely. The Federal government should remove Section 742.1(b) from the *Criminal Code*, making conditional sentences available for offences with a mandatory minimum sentence of under two years.
- B. The Department of Justice should conduct a thorough review of mandatory minimum sentencing provisions in the *Criminal Code* and the *Controlled Drugs and Substances Act*. Mandatory minimum sentences should be reserved for violent crimes which pose an unmistakable danger to the community, allowing judges to use restorative sanctions such as house arrest, probation, restitution, and community service for non-violent offenders.

Recommendation #3

Parliament and federal and provincial correctional services should encourage community groups, including Indigenous, faith-based, and local communities, to be actively involved in the sentencing process of individuals within their community by providing recommendations to the courts regarding specific cases and designing and running their own restorative justice programs in line with their beliefs. These programs must demonstrate victim satisfaction and reduced recidivism at least in line with traditional criminal justice processes.

Recommendation #4

The federal government should initiate a cross-country recidivism study comparing recidivism rates of those who participated in restorative justice programs and those who did not, as well as the various influencing factors such as offenders' desire to participate in restorative justice programs. Likewise, provincial governments should study data within their jurisdictions. This study should take a minimum 2-year view of recidivism and should seek to establish a unified definition of recidivism across the country to ensure that data is based on the same standard.

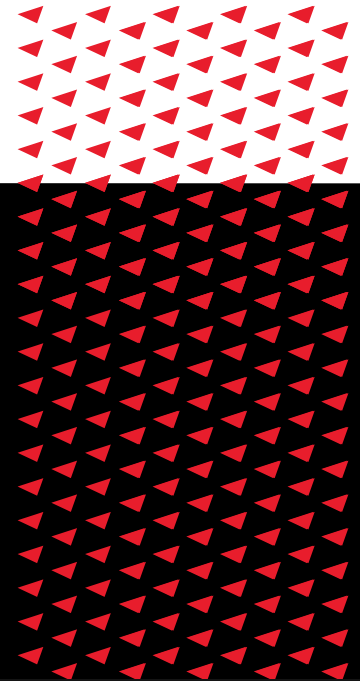
Recommendation #5

Provincial and federal governments should collaborate with other institutions to help prevent crime and reduce recidivism, help young offenders through mentorship programs, and help adult offenders reintegrate into society with a healthy support network. Faith-based organizations and community organizations should play a vital role. Multiple pilot projects should be started in every province. The Department of Justice and Correctional Service Canada should conduct a review of the efficacy and measured outcomes of faith-based and other moral rehabilitation programs and consider adopting successful models.



Endnotes

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We hope you enjoyed reading this policy report.

We know that championing our policy recommendations will take courage, dedication, and hard work. We at ARPA Canada strongly believe that doing so would be consistent with God's calling for you in a position of civil authority (Romans 13), and for promoting the well-being of our neighbours, in line with Canada's constitution and legal history. We are grateful for your service and we remember you in our prayers.

RESPECTFULLY SUBMITTED

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