
**Submissions of Canadian Race Relations Foundation in relation to
the consultation on a Criminal Case Review Commission for Canada**

July 30, 2021

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I. INTRODUCTION

The phenomenon of wrongful convictions is the most shameful stain on Canada’s criminal justice system. When a state wrongfully deprives a person of their liberty and in some cases, their life,¹ it is not simply a single individual who suffers—families are torn apart, generations are lost, and communities lose faith in the administration of justice. In Canada, the injustice that results from wrongful convictions is compounded by the reality that at every stage of the criminal justice system, Indigenous and Black persons are over-criminalized and under-protected.

The Canadian Race Relations Foundation (the “CRRF”) submits that an independent Criminal Case Review Commission (the “Commission”) cannot fulfil its mandate to integrate the values of equity, inclusion, respect and fairness into the criminal conviction review process for individuals who believe they have been wrongfully convicted without express recognition of and attention to the role that racism plays in the manifestation of this phenomenon.

From this perspective, the CRRF makes the following 4 recommendations:

- **Recommendation 1: Commissioners should be criminal justice experts and at least two seats must be reserved for Indigenous and Black advocates.**
- **Recommendation 2: The Commission’s case review protocol should incorporate a layer of review that examines the role that racism might have played in the conviction of Black, racialized and Indigenous applicants.**
- **Recommendation 3: The Commission should examine less serious cases as well as serious cases.**
- **Recommendation 4: The Commission should have a role in systemic reform to prevent miscarriages of justice, including the collection of race-based data.**

¹ A recent report jointly released by the Correctional Investigator of Canada and the Canadian Human Rights Commission highlights that over the last decade, the proportion of inmates over 50 years of age in federal custody has increased by 50%. The report found that many older individuals in federal custody seem to be languishing behind bars. Their sentences are no longer being actively managed, and there are little or no interventions to assist in their rehabilitation and return to the community. Simply put, they are left to die in prison: Correctional Investigator of Canada and the Canadian Human Rights Commission, *Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody*, (February 28, 2019), at p. 3 (online: <https://www.oci-bcc.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20190228-eng.pdf>). Further, the *Protecting Canadians by Ending Multiple Murders Act*, which came into force on December 2, 2011, allows judges to impose consecutive 25-year parole ineligibility periods. This means that some offenders will spend the rest of their natural life behind bars. For the first time in Canada, this legislation imposes a living death sentence with no actual prospect of release.

II. THE CONNECTION BETWEEN RACISM AND WRONGFUL CONVICTIONS

Some causes of wrongful convictions are widely acknowledged. These include tunnel vision, flawed police investigations, faulty eyewitness testimony, evidence from unreliable in-custody informants, and erroneous science. In any given case, the presence of facts that support one or more of these errors raises the spectre of a wrongful conviction. The CRRF submits that the presence of an Indigenous or Black accused should have the same effect. Racism should be recognized as a factor contributing to wrongful convictions. From arrest to incarceration, Indigenous and Black persons are overrepresented at every stage of the Canadian criminal justice system. There is research to suggest that this disparity exists with wrongful convictions as well.²

1. A History of Institutionalized Racism

It is no longer possible to discuss Canada's criminal justice system without acknowledging the way in which direct as well as systemic racism shapes this system and its outcomes. As alluded to in this Panel's June 18, 2021 Consultation Document, Indigenous and Black persons are overrepresented among Canada's inmate population, and that rate of over-representation is only accelerating over time. This is a reality readily acknowledged by our federal government and one that necessitates legislative response. Indeed, some of the governments most recent criminal justice reforms have been expressly designed to target and remedy the over-incarceration of Indigenous and Black people in Canada.³

A history of institutionalized racism is a cause of the overrepresentation of Indigenous persons in the criminal justice system. In June 2019, the National Inquiry into Missing and Murdered Indigenous Women and Girls identified "the ongoing criminalization of Indigenous women as ... another iteration of residential schools or the Sixties Scoop."⁴ Racist federal policies that implemented residential schools, segregated hospitals and the Sixties Scoop sought to assimilate Indigenous people and to eradicate their culture, language and way of life. For many Indigenous people, these policies translated to low incomes, high unemployment, lack of opportunities and option, substance abuse, loneliness, and community fragmentation. These factors contribute to a higher incidence of crime and incarceration.⁵ They also translate to relative positions of marginalization in society and powerlessness within the criminal justice system.

² Kent Roach, "The Wrongful Conviction of Indigenous People in Australia and Canada," *Flanders Law Journal* 17, 2015, p. 224.

³ See e.g., Department of Justice Canada, "Bill C-22: Mandatory Minimum Penalties to be repealed", (February 18, 2021) (available online: <https://www.canada.ca/en/departement-justice/news/2021/02/bill-c-22-mandatory-minimum-penalties-to-be-repealed.html>).

⁴ National Inquiry into Missing and Murdered Indigenous Women and Girls, "Reclaiming Power and Place: Executive Summary of the Final Report" (2019), at p. 40 (online: <https://www.mmiwg-ffada.ca/final-report/>).

⁵ *R. v. Gladue*, [1999] 1 S.C.R. 688 at para. 67.

Those who are racialized, marginalized and powerless are less likely to be protected by the criminal justice system, even when they are innocent. By way of example, statistics from the United States, where the phenomenon of wrongful convictions is more robustly documented, reveal that a disproportionate number of people from the marginalized African American population are wrongfully convicted:⁶

- a. Approximately half of the 2,725 people exonerated since 1989 are Black individuals;
- b. Of the 185 people exonerated from death row since 1973, approximately 53% are Black individuals;⁷
- c. In 2020, approximately 42% of people on death row were Black individuals;
- d. Innocent Black individuals are seven times more likely to be convicted of murder than innocent white individuals;⁸ and
- e. Innocent Black people spend an average of 13.8 years wrongly imprisoned before being exonerated — approximately 45% longer than innocent white people.

Canada's criminal justice system also fails to protect those who are marginalized and powerless, even when they are innocent. In 1989, the *Royal Commission on the Donald Marshall, Jr. Prosecution* specifically examined the role that race and social standing plays in the administration of justice. It found that the mistakes that were made in Mr. Marshall Jr.'s prosecution would likely not have been made were he a person of influence and power, rather than a marginalized Indigenous man.⁹ The police would have been more careful with their investigation and both Crown and defence lawyers would have discharged their professional obligations with greater care. The Commission explicitly found that Mr. Marshall's Indigenous heritage was a factor in his wrongful conviction and imprisonment.¹⁰

The significant over-representation of Indigenous persons in the criminal justice system in Canada contributes to their increased risk of wrongful convictions. Indigenous persons are more likely to plead guilty to offences, including offences of which they are factually innocent, or for which they

⁶ Daniele Selby, "8 Facts You Should Know About Racial Injustice in the Criminal Legal System", *Innocence Project*, (February 5, 2021) (online: <https://innocenceproject.org/facts-racial-discrimination-justice-system-wrongful-conviction-black-history-month/>).

⁷ Citing to Death Penalty Information Center, *DPIC Special Report: The Innocence Epidemic* (posted February 18, 2021) (online: <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-special-reports/dpic-special-report-the-innocence-epidemic>).

⁸ Citing to Samuel Gross, Maurice Possley and Klara Stephens, "Race and Wrongful Convictions in the United States", *National Registry of Exonerations* (March 7, 2017) (online: http://www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf), at p. 4.

⁹ *Royal Commission on the Donald Marshall, Jr., Prosecution: Digest of Findings and Recommendations* (Halifax: The Commission, 1989), at p. 13-15 (online: https://novascotia.ca/just/marshall_inquiry/docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf).

¹⁰ *Ibid*, at p. 10.

have a valid defence.¹¹ Indigenous persons may also face language and translation challenges, defence lawyers who are inadequate and insensitive, racist stereotyping from arrest to sentencing and pressure to plead guilty based on a higher likelihood of being detained without bail.¹² These unique and systemic pressures result in false confessions and guilty pleas of those who are factually innocent.¹³

It is for these reasons that it is imperative the Commission acknowledge and commit to alleviate the inequity, mistreatment, and racism experienced by Indigenous individuals in the criminal justice system.

2. The Effect of Over-Policing

One of the most significant contributors to the current over-representation of Black and other racialized people in our criminal justice system in Canada is the phenomenon of over-policing. It operates in a way that renders this population more vulnerable to wrongful convictions.

Members of racial minorities have disproportionate levels of contact with the police and the criminal justice system in Canada. Evidence shows that Black, Indigenous and other visible minorities are consistently over-policed, which means they are more likely to be stopped, searched, arrested and convicted. For example, in the Peel region, in 2011, Black individuals were three times more likely to be stopped by the police compared to white individuals.¹⁴ In the city of London, in 2014, the police conducted more street checks than officers in other Ontario cities, and 7.7% of the people documented were Black and 5.3% were Indigenous, even though only 2.5% of people living in London are Black and 1.9% are Indigenous.¹⁵

In the 2019 decision *R. v. Le*, the Supreme Court of Canada expressly recognized the existence of disproportionate policing of racialized and low-income communities.¹⁶ A recent Ontario Human Rights Commission's report titled *Paying the Price: The Human Cost of Racial Profiling*, found interactions between the police and the Black community are often characterized by the following features: a lack of legal basis for police stopping, questioning or detaining Black people; inappropriate or unjustified searches during encounters; and unnecessary charges or arrests.¹⁷

¹¹ Angela Bressan and Kyle Coady, "Guilty Pleas Among Indigenous People in Canada, p. 5. Research and Statistics Division, Department of Justice Canada (online: <https://www.justice.gc.ca/eng/rp-pr/jr/gp-pc/gp-pc.pdf>).

¹² Roach, *supra* note 2.

¹³ Federal/Provincial/Territorial Heads of Prosecutions Subcommittee on the Prevention of Wrongful Convictions, "Innocence at Stake: The Need for Continued Vigilance to Prevent Wrongful Convictions in Canada," (September 2018), (online: <https://www.ppsc-sppc.gc.ca/eng/pub/is-ip/index.html>).

¹⁴ See David M. Tanovich, "Applying the Racial Profiling Correspondence Test" (2017), 64 *C.L.Q.* 359, at p. 371 (online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2937885).

¹⁵ *Ibid*, at pp. 371-2

¹⁶ *R v. Le*, 2019 SCC 34, at para. 97.

¹⁷ *Ibid*, at para. 93, citing to Ontario, Ontario Human Rights Commission, Inquiry Report, *Paying the Price: The Human Cost of Racial Profiling* (2003), at pp. 21, 26, 37 (online:

These kinds of interactions all increase the likelihood of wrongful convictions as they bring a person into contact with the criminal justice system where there is a complete absence of any connection to a crime.

This risk is compounded by the reality that racialized youth are disproportionately impacted by these policing practices. In 2018, the Honourable Michael H. Tulloch, of the Court of Appeal for Ontario, issued the *Report of the Independent Street Checks Review* which analyzed the practice of “carding” in Ontario. “Carding” is a term used to refer to a situation in which a police officer randomly asks an individual to provide identifying information when there is no objectively suspicious activity, the individual is not suspected of any offence and there is no reason to believe that the individual has any information on any offence. That information is then recorded and stored in a police intelligence database.¹⁸ Justice Tulloch’s report outlines how Indigenous, Black and other racialized youth, as well as youth in low-income housing, are disproportionately impacted by this policing practice.¹⁹

While a direct link has not yet been established empirically,²⁰ it is not difficult to draw a causal connection between the prevalence of policing practices that disproportionately impact Indigenous, Black and other racialized youth and a heightened risk of wrongful convictions. Justice Tulloch’s comprehensive report on the practice of street checks such as carding found that these intrusive and intimidating forms of surveillance are often a racialized young person’s first contact with the police.²¹ This is concerning because an abundance of research suggests that young people are particularly vulnerable to wrongful convictions.²² Youth are especially vulnerable to providing false confessions because they are easier to manipulate.²³

The existence of racial disparities at various points in the criminal justice system represent the unique vulnerabilities to wrongful convictions. For example, recent data from the Government of Ontario shows that Black people arrested for criminal offences spend more time in pre-trial

http://www.ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf.

¹⁸ Michael H. Tulloch, *Report of the Independent Street Checks Review* (Toronto: Queen’s Printer for Ontario, 2018), at p. xi (online:

<https://www.mcscs.jus.gov.on.ca/english/Policing/StreetChecks/ReportIndependentStreetChecksReview2018.html>).

¹⁹ *Ibid*, at pp. 41-42

²⁰ See Recommendation 4 below for a discussion of the importance of race-based data collection.

²¹ Tulloch, *supra* note 19 at p. 42.

²² See Allison D. Redlich, “The Susceptibility of Juveniles to False Confessions and False Guilty Pleas,” *Rutgers Law Review* 62, no.4 (2010): 943, at 943-945; Steven Drizin and Greg Luloff, “Are Juvenile Courts a Breeding Ground for Wrongful Convictions?” *Northern Kentucky Law Review* 34 (2007): 257 at 257-262 ; and Joshua Tepfer, Laura Nirider and Lynda Tricarico, “Arresting Development: Convictions of Innocent Youth,” *Rutgers Law Review* 62 (2010): 887 at 892; Federal/Provincial/Territorial Heads *supra* note 13, IV. Young Persons.

²³ Edwin Grimsley, “What Wrongful Conviction Teach Us About Racial Inequality”, *Innocence Project* (September 26, 2012) (online: <https://innocenceproject.org/what-wrongful-convictions-teach-us-about-racial-inequality/>).

custody than White people.²⁴ The pressure to plead guilty increases when an accused person is in custody.

III. RECOMMENDATIONS FOR A RACE-CONSCIOUS COMMISSION

Given the role that racism—both direct and systemic—plays in shaping criminal justice system outcomes in Canada, it is necessary for the Commission to expressly and purposefully acknowledge the role that racism may have played when dealing with complaints from individuals who are racialized. To meaningfully respond to a population that has been disproportionately harmed by the criminal justice system, this Commission must integrate an awareness of the way in which racism contributes to wrongful convictions into its operational framework—it must become race-conscious. The following recommendations flow from that race-conscious approach.

Recommendation 1: Commissioners should be criminal justice experts and at least two seats must be reserved for Indigenous and Black advocates.

The Commission should explicitly integrate into its mandate a recognition of the connection between racism and wrongful convictions. Direct and systemic racism contribute to wrongful convictions throughout criminal law processes. Throughout this complex and hostile system, discretion—which is very susceptible to prejudice, bias and stereotypes—shapes the decisions that determine the outcome of a case. More often than not, the operation of racism is subtle, understated and, therefore, often unrecognizable to those unfamiliar with the criminal justice system. Discretionary decisions such as the decision to arrest, release from the station, deny bail, and proceed with a prosecution, can only be adequately scrutinized by those intimately familiar with these processes and their vulnerabilities. Consequently, Commissioners must be criminal justice experts. They need to have a deep understanding of criminal trials and prosecutions in order to understand the points that are most vulnerable to the often-subtle effects of racism.

In addition, at least one seat should be reserved for a Commissioner who has experience representing Indigenous accused persons in the criminal justice system and at least one seat should be reserved for a Commissioner who has experience representing Black accused persons. These Commissioners will be attuned to the particular ways in which racism can amplify the errors that have been recognized to lead to wrongful convictions. For example, eyewitness identification error is one of the primary contributors to wrongful convictions. Race is known to affect eyewitness memory and cross-racial identification is documented to be less accurate than same race identification.²⁵ This “cross-race effect” is based on the finding that individuals are better at

²⁴ Anna Mehler Paperny, “Exclusive: New data shows race disparities in Canada’s bail system” *Reuters*, October 19, 2017, (online: <https://www.reuters.com/article/canada-us-canada-jails-race-exclusive-idCAKBN1CO2RD-OCADN>)

²⁵ John T. Wixted and Gary L. Wells, “The Relationship Between Eyewitness Confidence and Identification Accuracy: A New Synthesis” (2017) vol. 8, no. 1, *Psychological Science in the Public Interest*, at pp. 13-14.

recognizing previously seen faces of their own race, rather than faces of other races.²⁶ Put simply, members of one race tend to think that members of another race “all look alike”.²⁷ The Montana Innocent Project has documented that 42 percent of wrongful convictions based on misidentification are cross-racial misidentifications.²⁸ Black and Indigenous advocates would have sufficient expertise to be able to recognize phenomena, like the vulnerability of cross-racial identification, that contribute to wrongful convictions.

Further, representation is important in combatting systemic discrimination. The *Royal Commission on the Donald Marshall, Jr. Prosecution* made several recommendations related to ensuring that visible minorities are treated fairly in the criminal justice system. Many recommendations were aimed at increased representation of visible minorities in all facets of the criminal justice system, including at law school, in the Crown prosecution office, and in courts and tribunals.²⁹ In that vein, the CRRF recommends that the Commission appoint at least one Commissioner who is Indigenous, at least one who is Black.

Recommendation 2: The Commission’s case review protocol should incorporate a layer of review that examines the role that racism might have played in the conviction of Black, racialized and Indigenous applicants.

Assessing the role that racism may have played in the conviction of an Indigenous, Black or racialized applicant should not be a discretionary decision left to individual reviewers and Commissioners to make on an *ad hoc* basis. Rather, the prevalence of racism within our criminal justice system necessitates a review protocol that incorporates a mandatory examination of the role racism might have played in a given case. Where an applicant is Indigenous, Black or otherwise racialized, the initial screening as well as the subsequent review process must compel reviewers to turn their minds to the way that racism may have played a role in the person’s conviction before an application is rejected.

Recommendation 3: The Commission should examine less serious offences that disproportionately impact racialized Canadians as well as serious cases.

The experience of racism within the criminal justice system is not always bold and does not only manifest itself in serious cases. Indeed, the reality is complex and nuance and is akin to death by

²⁶ Lisa Pascal, “Same-Race and Other-Race Eyewitness Identification Accuracy-The Bracket Lineup is as Good as Old” (2018) *Electronic Theses and Dissertations*, 7468, at p. 121 citing to Meissner, C. A., & Brigham, J. C., “Thirty years of investigating the own-race bias in memory for faces. A meta-analytic review” (2001) 7:1, *Psychology, Public Policy, and Law*, 3-35.

²⁷ *R. v. McIntosh* (1997), [1997 CanLII 3862 \(ON CA\)](#), 35 O.R. (3d) 97 (C.A.), at p. 105

²⁸ Montana Innocence Project, “Cross-Racial Witness Misidentification” (online: <https://mtinnocenceproject.org/cross-racial-witness-misidentification/>).

²⁹ *Royal Commission on the Donald Marshall, Jr., Prosecution*, *supra* note 9, at p. 26.

a thousand papercuts. For this reason, the Commission should consider both serious and less serious convictions.

There is a compelling argument to be made for devoting limited resources to serious cases only: serious cases attract more severe sentences. However, less serious convictions disproportionately impact Indigenous, Black and other racialized individuals and often have severe impacts on the lives of these individuals in the realm of education, employment and other opportunities. For example, a criminal record – no matter what the crime – can severely impact an individual’s ability to obtain employment that provides a living wage.

As outlined above, evidence shows that Black, Indigenous and other visible minorities are consistently over-policed. In addition to over-policing of Black and Indigenous communities in general, police officers have more discretion in dealing with minor rather than major crimes.³⁰ The potential for abuse inherent in low-visibility exercises of discretionary power by the police in Black and Indigenous communities are pressing reasons why the Commission ought to address wrongful convictions for both serious and less serious offences.

The research in Canada shows over-representation of Black people in arrest statistics for low-level crimes. Scot Wortley and Maria Jung conducted research on Toronto Police charge and arrest data, collected between 2013 and 2017, for select discretionary offences, including:

- i. Failure to comply with a condition, undertaking or recognizance;
- ii. Obstruct justice;
- iii. Assault police;
- iv. Uttering threats against the police;
- v. Cannabis possession;
- vi. Other (non-cannabis) illegal drug possession;
- vii. Out-of-sight driving offences (including driving without a valid licence, driving without valid insurance, driving while suspended, etc.);
- viii. Disturbing the peace; and
- ix. Trespassing.³¹

Their research found that Black people are grossly over-represented in the overall charge dataset. Although they represent only 8.8% of Toronto’s population, Black people represent 32.4% of the charges laid in the above nine discretionary offences.³² The research also revealed that Black males are specifically grossly over-represented in drug possession cases. The reasons for this over-representation offered by Dr. Wortley and Dr. Jung include: (i) higher rates of police surveillance; (ii) more likely to be subject to street checks, police stops, questioning and search practices than

³⁰ Scot Wortley and Maria Jung, “Racial Disparity in Arrests and Charges: An analysis of arrest and charge data from the Toronto Police Service” (July 2020), submitted to Ontario Human Rights Commission, at p. 3 (online: <http://www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20and%20Charges%20TPS.pdf>).

³¹ *Ibid*, at p. 9.

³² *Ibid*, at p. 15.

any other demographic group; and (iii) socially disadvantaged, high-crime communities often have a greater police presence and are subject to more aggressive, proactive policing strategies.³³

The over-policing of Black and Indigenous communities, the frequency of stops, arrests, and searches, and the likelihood of conviction are all factors that contribute to wrongful convictions. Cumulative non-violent arrests of an individual can lead to future suspicion for violent crimes. For example, mugshots from non-violent crimes may later be used in photo lineups for more serious offences.³⁴ Many of the systemic factors resulting in wrongful convictions are the same for less serious and more serious offences; accordingly, it is important for a proactive Commission to process wrongful conviction allegations related to both types of offences.

The reality of limited resources, however, dictates that not all minor offences should come within the purview of the Commission; priority should be given, first and foremost, to the cases where applicants are serving custodial sentences. Beyond that, the Commission can choose to examine various categories of offences. One such category should be applications based on less serious offences for which Black and Indigenous individuals are disproportionately policed. These offences often fly under the radar—most individuals serving a shorter sentence or a non-custodial sentence for a less serious crime are likely to simply serve their sentence and try and put the past behind them. Yet, the stigma of a criminal conviction and the persistence of a criminal records means that these wrongful convictions will continue to prevent a disproportionate number of innocent Black and Indigenous people from moving forward with their lives.

Recommendation 4: The Commission should have a role in systemic reform to prevent miscarriages of justice including the collection of race-based data

A proactive Commission should be designed around the prevention of wrongful convictions as much as it should be focused on remedying wrongful convictions after the fact. Its mandate should seek to examine and reform aspects of the criminal justice system that make racialized individuals more vulnerable to wrongful convictions. Without a proactive approach, the systemic factors that bring racialized applicants before the Commission will continue to persist.

A systemic review mandate is not an expansion of the mandate—rather, it acknowledges the reality that wrongful convictions are not simply a tragedy to be remedied after the fact, but a social, political and economic phenomenon that can be studied and prevented.

There is a need for consistent and institutionalized reporting of race data through all aspects of Canadian justice in order to fight racism.³⁵ Too often, our criminal justice policies are driven by

³³ *Ibid*, at p. 109.

³⁴ Grimsley, *supra* note 23.

³⁵ Paul Millar and Akwasi Owusu-Bempah, “Whitewashing Criminal Justice in Canada: Preventing Research Through Data Suppression” (2011) 26:3 *Canadian Journal of Law and Society*, at p. 653 (online:

political trends and talking points. In order to meaningfully prevent and address the issue of wrongful convictions, it is essential to understand who is being wrongfully convicted and to identify the contributing systemic factors. To that end, the Commission should collect race-based data on wrongful convictions.

This data can be used to examine disparities in criminal justice processing.³⁶ It can be used to inform investigations, assist the Commission in targeting outreach efforts in certain communities,³⁷ and create an empirical foundation for policy recommendations aimed at preventing wrongful convictions in the first place.

<https://www.cambridge.org/core/journals/canadian-journal-of-law-and-society-la-revue-canadienne-droit-et-societe/article/abs/whitewashing-criminal-justice-in-canada-preventing-research-through-data-suppression/D43DF40EF10EC6486B005BAC7C9D7BF0>.

³⁶ Akwasi Owusu-Bempah, "Race-Based Criminal Justice Data in Canada: Suggestions for Moving Forward", *Report Prepared for Public Safety Canada* (Ottawa: Public Safety Canada, 2011), at p. 2 (online: <https://www.publicsafety.gc.ca/lbr/archives/cn37453-eng.pdf>).

³⁷ Akwasi Owusu-Bempah, *supra* note 35, at p. 3.