



CANADA WORLD BUSINESS INVESTING OPINION POLITICS SPORTS LIFE ARTS DRIVE REAL EST.

OPINION

## Bill C-22 is inadequate for the task of addressing injustice in Canada's justice system

**JODY WILSON-RAYBOULD, KIM PATE AND WANDA THOMAS BERNARD**

CONTRIBUTED TO THE GLOBE AND MAIL

PUBLISHED FEBRUARY 23, 2021

UPDATED 20 HOURS AGO

15 COMMENTS SHARE TEXT SIZE BOOKMARK



*Jody Wilson-Raybould is the independent member of Parliament for Vancouver Granville and the former Liberal attorney-general and justice minister of Canada. Kim Pate is a senator for Ontario and the former executive director of the Canadian Association of Elizabeth Fry Societies. Wanda Thomas Bernard is a senator for Nova Scotia and the former chair of the Standing Senate Committee on Human Rights.*

Trauma and marginalization are the legacy of colonial and racist policies. And there is a clear link between that fact and the overrepresentation of Indigenous people and Black Canadians in our justice system – as victims, as accused, or as prisoners. Indeed, the percentages of prisoners who are Indigenous or Black continue to escalate at an alarming rate.

After committing in 2015 to repealing the legislative provisions in the Criminal Code that have contributed to this injustice – mandatory minimum penalties (MMPs), which exist for 72 offences – the Liberal government has dallied for more than six years of harmful delays because of political expediency. Now, the federal government has finally introduced Bill C-22 –

The use of MMPs in Canada correlates directly with the increased rates of incarceration of Indigenous people and Black Canadians, which is why the Parliamentary Black Caucus, the Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women and Girls have called for the elimination or reconsideration of all MMPs. MMPs also discriminate against women more generally, particularly those who are marginalized by race and income disparity. MMPs also undermine the rule of law as they encourage wrongful guilty pleas and carry enormous and needless financial costs.

Most importantly, as extensive evidence has demonstrated, MMPs do not deter crime. They do not serve the interests of victims, either. Rather, they harm all of us by making Canada a harsher, more punitive country. Simply put, MMPs result in a less fair and less just society for all.

In fact, the proliferation of MMPs in the past few decades has been an aberration – a trend at odds with the broader historical, non-partisan consensus against them. Canada's rigid and harsh MMPs have made us an outlier among Western democracies. This is shameful.

For their part, judges have been telling us for decades that mandatory sentences limit their ability to administer justice. Back in 1987, when the Criminal Code only contained a total of 10 MMPs, 57 per cent of Canadian judges said that mandatory minimum penalties restricted their ability to mete out a just sentence. In the intervening years, rather than reducing the numbers and impact of MMPs, successive federal governments have increased them – some six- or sevenfold.

The harshest MMP in the Criminal Code is life in prison. Between 2006 and 2016, 45 per cent of women sentenced to life in prison were Indigenous. Not because they represent the gravest threat to public safety, but rather because Canada's principles of justice, fairness, proportionality and restraint in sentencing – including section 718.2(e) of the Criminal Code, which obligates lower courts to consider “all available sanctions, other than imprisonment, that are reasonable ... with particular attention to the circumstances of Aboriginal offenders” – have been obliterated by MMPs.

In recent months, the House of Commons and the Senate have worked on Bill C-7, which would amend the law around medical assistance in dying, after a single lower court ruling in a single jurisdiction. By comparison, Bill C-22 repeals a mere 19 of the at least 43 MMPs that have already been struck down by courts at all levels throughout this country, with the courts continuing to rule MMPs unconstitutional and disproportionate

The government should not be afraid of this so-called “red meat” issue. The Canadian public overwhelmingly supports judicial discretion in sentencing. In 2017, nine in 10 Canadians wanted the government to consider giving judges the flexibility to not impose MMPs. So, it makes no political sense for the government to introduce this half measure. Those who oppose this action will oppose it in any case.

We need legislation that is transformative, not performative. This government could, as has been widely recommended, reinvigorate the law reform commission to review and recommend meaningful change to our criminal legal system. Alternatively, the government could introduce legislation to repeal all mandatory minimums or to allow judges discretion to not impose MMPs and instead allow them to use the most appropriate penological response, whether diversion from the legal system, personal or community service work, house arrest (also known as conditional sentences), treatment or incarceration.

Or we could fix Bill C-22, and get the job done now.

*Keep your Opinions sharp and informed. Get the Opinion newsletter. [Sign up today.](#)*

---

© Copyright 2021 The Globe and Mail Inc. All rights reserved.

351 King Street East, Suite 1600, Toronto, ON Canada, M5A 0N1

Phillip Crawley, Publisher