



Navigating Uncertainty: Public Policy for Turbulent Times

Volume XV

CONTACT US

Queen's Policy Review (QPR) | Queen's School of Policy Studies

Queen's University
Robert Sutherland Hall
138 Union Street
Kingston, ON
Canada

Email: qpr@queensu.ca

Website: <https://www.queensu.ca/sps/publications/queens-policy-review>

ABOUT US

The **Queen's Policy Review** (QPR) is a graduate-level scholarly publication edited and reviewed by students and faculty at the Queen's **School of Policy Studies** in Kingston, Ontario.

The goal of the fifteenth edition of this journal is to act as a competitive platform to publish exemplary work in public policy and governance and related fields from graduate students across Canada and the global sector.

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Daniel Migalla

Anyango Miguna

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LAND ACKNOWLEDGMENT

The **Queen's Policy Review** acknowledges that Queen's University is situated on **Anishinaabe and Haudenosaunee territory**. As an institution, Queen's has benefited from colonialism and imperialism in their destructive nature and as a student organization within this university, Queen's Policy Review shares in that complicity.

As a journal that explores policy issues that shape our everyday lives, we remain committed to a goal of allyship. Queen's Policy Review stands in solidarity with Indigenous persons, and dismantling systemic racial and ethnic discrimination, and other forms of oppression, in and beyond our roles at Queen's and as future policymakers.

Queen's Policy Review remains committed to engaging in academic theory and debate that elevates the perspectives and lived experiences of all equity-deserving persons both within academic spaces and beyond.

LETTER FROM THE CO-EDITORS-IN-CHIEF

Dear readers,

We are pleased to share with you the 2025-2026 edition of the Queen's Policy Review, titled "Navigating Uncertainty: Public Policy for Turbulent Times".

At first glance, this theme may seem as though it could apply to almost any year. That was, admittedly, part of its appeal. Yet, since the fall of 2025 when it was selected, this theme has only grown more fitting. The policy arena has become shaped and reshaped in seemingly every direction, making the task of navigating uncertainty especially pressing.

Through it all, our contributors have brought thoughtful and innovative perspectives to the forefront, offering new ways to understand the challenges before us and the possibilities ahead. We are proud to share their work with you.

This edition would not have been possible without the dedication of the entire QPR team. We are especially grateful to our editorial board, Anjali, Daniel, Naomi and Varna. Thank you for showing up after class and after long days of co-op, always ready to contribute your time, energy, and insight. Your thoughtful discussion shaped this edition and made this experience both meaningful and memorable.

We also extend our sincere thanks to the School of Policy Studies for the opportunity to bring our vision of QPR to life. We are grateful to have contributed to a longstanding tradition at Queen's University and we hope that future MPA cohorts will continue to build upon QPR's foundations, foster important conversations, and carry its legacy forward.

We hope you enjoy reading this year's edition.

Sincerely,

Magdalena Dubravsky and Allie Pepin

QPR 2025-2026 Co-Editors-In-Chief

Subsidizing Stagnation: The Fiscal Policy Instruments Enabling Canada's Productivity Crisis

Menka Bélanger, Queen's University, MPA

ABSTRACT

Canada's productivity decline stems from a business ambition deficit enabled by two fiscal instruments: the Scientific Research and Experimental Development tax credit and the Small Business Deduction. SR&ED rewards marginal R&D without tracking productivity outcomes, while the Small Business Deduction creates fiscal incentives to remain below growth thresholds. Despite well-documented shortcomings, the political economy continues to protect both programs. Organized small business constituencies have historically defeated reform efforts, and Canada has no institutional body capable of holding governments accountable for inaction. This paper argues that instrument-level reform is not viable without first altering the political conditions that allow these policies to exist. A statutory, independent productivity commission is the most viable mechanism for building up sustained pressure by accumulating authoritative domestic evidence across election cycles. The recommended design draws on the models of the Parliamentary Budget Officer appointment process, the Australian Productivity Commission's self-initiated mandate, and the Mintz Committee's Finance-adjacent structure.

Introduction

In June 2025, days before being announced as the Clerk of the Privy Council, Michael Sabia declared that Canada has an “ambition deficit” (Kiladze, 2025). This phrase implies a behavioural problem among businesses, which lack the desire to pursue growth. This seemingly cultural phenomenon cannot be explained by any single policy failure. In fact, the relationship between macroeconomic policy and productivity outcomes may be overstated. Most macroeconomic policy implementations are targeted at improving productivity, yet growth has deteriorated since 2000 (Eisen & Fuss, 2025). The Scientific Research and Experimental Development tax credit (SR&ED) and the Small Business Deduction are the primary fiscal instruments enabling this deficit. The issue lies in their inability to create incentives for growth; instead, they reward businesses that stay small and underinvest in productivity-enhancing capital. Despite their well-documented shortcomings, the political economy continues to protect them. Canada's political machinery has no institutional body capable of sustaining the pressure that reform requires. A statutory, independent productivity commission is the most viable instrument for beginning to build it, though it does not guarantee change (Atkinson, 2024).

Between 2000 and 2022, Canada ranked 28th out of 38 OECD members in terms of productivity

growth, having fallen from 3rd place in 1960 (Drummond, 2025; Haun, 2023). Over the same time horizon, labour productivity growth fell from 1.74% annually to 0.87% annually (Drummond, 2025). By 2021, business sector productivity had reached a new low, prompting Bank of Canada Senior Deputy Governor Carolyn Rogers to characterize the situation as a productivity “emergency” in 2024 (Rogers, 2024). Some critics reject the premise altogether, arguing that Canada's economic shortcomings stem from wealth distribution inequality, as demonstrated by the failures of productivity policy (Saul and Rezaee, 2025). This interpretation misidentifies the source of the problem. Distribution affects how gains are allocated, but it does not explain their absence. Multifactor productivity (MFP) has been negative since 2000, falling to -0.71 percentage points from 2019 to 2021 (Drummond, 2025). MFP explains growth in outputs when inputs stay constant, meaning it cannot be explained by increases in jobs created or dollars invested. A combination of efficient technology, management practices, innovation and knowledge contributes to gains in MFP. SR&ED, expected to increase MFP, costs \$4.5 billion annually and has operated at scale since the mid-1980s (CRA, 2025). Though contested, the fact that MFP has been negative throughout that period is consistent with instrument failure (Sargent 2024; Statistics Canada, 2024). It suggests the program is subsidizing activity that does not translate into economy-wide efficiency gains.

Cross-sectoral evidence of weak re-investment corroborates Sabia's diagnosis. Despite favourable pricing in recent years, Canadian oil and gas companies did not reinvest and instead returned revenues to shareholders (Snyder, 2026). In the early 2000s, following a mining boom, the same behaviour was observed (Dallaire-Fortier, 2025). Similarly, on an economy-wide scale, corporate profits doubled post-pandemic while investment remained flat. According to Canadians for Tax Fairness, 2022 alone saw \$128.7B in share buybacks, and in 2023, 68.2% of net profits were consumed by dividends and buybacks (Xuerab, 2024). This pattern persists across the business sector, as Statistics Canada finds that profits and investment are not correlated. From 2006-2019, the rate of return averaged 9%; however, investment per worker declined (Gu, 2024). Canadian companies need to be incentivized to invest in advancement.

A study commissioned by Industry Canada surveyed firms across 17 countries and scored them on their management practices. While Canada's average score is comparable to those of peer countries such as Germany, Sweden, and Japan, it trails our closest economic partner, the United States (Bloom, 2011). The US advantage lies in its incentives, which include rewarding high performers, removing underperformers, and promoting on merit. This practice is the most influential on growth behaviour (Bloom & Van Reenen, 2010). Furthermore, 22% of Canadian manufacturing firms score worse than the average firms in Brazil, China and India (Bloom, 2011). The relatively lax competitive environment here allows these firms to persist without forcing them to improve. Canadian managers rated themselves higher than those in any other country surveyed, a score that bore no relationship to their actual performance (Bloom, 2011). Subsidies, such as SR&ED, cannot prompt businesses to solve problems they are unaware of.

The SR&ED was introduced in the 1985 budget as a corrective measure following the failures of its predecessor, the Scientific Research Tax Credit (SRTC). The SRTC was cancelled and replaced after incurring a total cost of \$2.8 billion, following the Department of Finance's discovery of fraudulent extraction of tax credits without Research and Development (R&D) activity (Hale, 2002). In creating SR&ED, Finance's priority was safeguarding against abuse of the program by defining input eligibility (Wilson Budget, 1985). Productivity was not

a consideration, resulting in a lasting accountability oversight that has yet to be addressed. While SR&ED recipients were found to be significantly more likely to introduce product innovations, they showed no statistically significant improvement on firm performance indicators, including profitability, domestic market share, international market share, or ability to keep up with competitors (Czarnitzki, Hanel & Rosa, 2011). The program subsidizes R&D activity regardless of whether it produces commercially valuable outcomes. It does not distinguish between projects with high social returns and high private returns. Rationally, businesses use the tax credit to fund projects that have the highest private returns. This incentivizes firms to pursue marginal projects with lower returns for the economy, as the tax credit reduces the financial risk of pursuing R&D, thus lowering the cost threshold at which projects become worth committing to. Firms choose projects that are low-impact and would not have been funded at full cost. Transformative projects with high economic yields are typically undertaken without subsidy, as they are worth doing at full cost (Czarnitzki, Hanel & Rosa, 2011). Thus, SR&ED falls at the low end of the innovation distribution.

Small businesses in Canada receive preferential treatment, despite contributing less to productivity growth. Drummond identifies that "an example of the tax system rewarding firms for remaining small is the 35 percent rate for the SR&ED for small firms, while the rate for large firms is only 15 percent. Yet large firms are more likely to conduct research and have higher productivity" (2025, page 6). This directs capital to firms least likely to produce economy-wide benefits, as they generate lower R&D spillovers per dollar (Kim & Lester, 2019). If small businesses have genuine financing constraints, they can access support from Business Development Canada. This already covers the rationale for capital market failure, rendering the SR&ED differential redundant and counterproductive (Lester, 2025). A benefit-cost analysis of the credit finds that the large-firm rate generates a positive net social benefit, while the enhanced small-firm rate does not. The combination of high subsidy rates and compliance costs, with comparably small spillovers, produces a net social loss (Lester, 2024). Favourable policies for small and medium enterprises (SMEs) are abundant, demonstrating the political influence of this constituency. SMEs account for about half of Canada's output while receiving approximately two-

thirds of federal business subsidies (Lester, 2024). The Small Business Deduction reduces the federal corporate income tax (CIT) rate from 15% to 9% on the first \$500,000 of active business income for eligible small firms. This creates a fiscal incentive to stay small, as documented by Statistics Canada through “bunching” of businesses that remain at that threshold, suggesting that firms are choosing to stay below it (Lesica, 2025). This differential encourages the persistence of ownership and management structures associated with lower productivity (Bloom & Van Reenen, 2010). To confront this issue, Drummond proposes switching the eligibility criterion from size to age (Drummond, 2026). A young start-up in its first five years deserves preferential treatment; however, a firm that remains small for thirty years provides no economy-wide benefit. He also argues that instrument-level reforms do not go far enough, and Canada should instead move away from corporate and personal income taxes toward consumption taxes, offset by a two-point GST increase, to lower the marginal cost of public funds and raise after-tax returns on investment (Drummond, 2025). That reform poses a fiscal trade-off that would likely require a critical juncture to generate enough political support, despite its theoretical rigour.

Beyond the tax credit, the federal government uses direct spending to induce growth. The Strategic Innovation Fund (SIF), now called the Strategic Response Fund, administered by Innovation, Science and Economic Development Canada (ISED, formerly Industry Canada), and the Canada Growth Fund (CGF), are the primary investment vehicles designed to produce innovation. Though SIF performance is high according to its own metrics, such as leverage ratio and additionality, neither it nor CGF measure productivity outcomes. Instead, both funds track metrics such as jobs, intellectual property (IP), and patents (SIF, 2021; GCF, 2025). While patents are an output of innovation activity, they are not guaranteed to be commercialized. Canada’s IP investment per worker has declined since 2008, exhibiting divergence between patent creation and productivity gains (Drummond, 2025; Lester, 2025). Both direct spending and tax credit instruments are used by the federal government to encourage innovation, yet neither tracks productivity measures as key performance indicators. In Canada, firms engaging in marginal R&D and intentionally remaining below growth thresholds receive more

support than those that scale. The Federal government spends billions on “innovation” annually but has no productivity metrics to tie its success to.

The Jenkins Panel, commissioned by the government in 2011 to review SR&ED, identified the program’s flaws and recommended an arm’s-length delivery agency and a whole-of-government evaluation body. The Harper government did not implement these machinery additions. It heeded part of the panel’s advice by introducing a marginal rate cut for large firms (Jenkins, 2011). This was a fiscally convenient intervention, as it reduced program costs without disrupting the politically organized small-firm claimants. The infrastructure recommendations were rejected because implementing them would have required these claimants to submit to external evaluation, potentially leading to the loss of their programs if they failed a cost-benefit assessment. If a government were to propose removing SR&ED benefits from thousands of claimants, each of those firms has a strong individual reason to fight back, the loss of a measurable subsidy. The millions of Canadians who would benefit from stronger productivity growth have no individual stake, as the gains are too diffuse and distant to motivate political action. Thus, the organized few beat the unorganized many (Olson, 1965). To create the political bandwidth to implement this, the government would have had to make a compensating offer to the small business constituency, which it refused to do (Hale, 2002). This pattern has precedent within Finance. The department recognized the economic flaws of the Federal Sales Tax 15 years before it was replaced by the General Sales Tax (GST). This example demonstrates the influence of political conditions on economic policy, confirming that implementation is not determined solely by Finance’s analytical capacity. Reform was only made viable by the external shock of US tax reform in 1986 (Hale, 2002). Falling productivity metrics warn that Canada cannot afford to rely on an external shock to create the conditions for growth.

The word “productivity” tends not to sit well with Canadians, making this a government communication failure as well. The public associates it with working harder for less pay, rather than its true definition: investing in better technology and management practices that improve living standards (Sargent 2024; Gregg, 2007). Without effective messaging that connects productivity reform to living standards, governments cede the public’s

interpretation to concentrated interest groups that frame policy interventions as attacks on small business (Entman, 1993). Finance and Industry Canada have understood this communication problem since the deficit was eliminated in the late 1990s. At the time, the two departments became convinced that productivity was the country's most pressing economic challenge. However, the research on public opinion surrounding the deficit was not replicated when it came to productivity (Gregg, 2007). This explains why Chrétien and Martin were successful in framing the deficit as a fairness and collective responsibility issue, enough to justify drastic cuts to public spending. Productivity, on the other hand, remained a concern for economists, leaving it abstract, technical and vaguely threatening to ordinary Canadians (Gregg, 2007). Politicians have adopted consumer-marketing logic by responding only to what voters already want, despite policy analysis (Delacourt, 2013). Under this framework, any policy changes that impose immediate, tangible costs in exchange for unclear future gains will be widely unpopular. Cabinet memoranda in Canada must include a strategic communications plan as part of the annex, covering, but not limited to, public opinion research, predictions of public response, and connections to government priorities (PCO, 2013). Communications risk aversion is thus embedded in the policy process by formally documenting anticipated political reactions, creating friction at the outset of attempts to address this issue (Marland, 2016).

The Canadian Federation of Independent Business (CFIB), founded in 1971 due to protests against tax rates, represents approximately 100,000 businesses. It operates as a registered federal lobbyist, with its policy positions set by member referendum. Business interests dominate federal lobbying in Canada, as the CFIB's organizational structure gives them greater access to engage governments. This influence is disproportionate compared to the disorganized general public interest, not represented by any single 'federation' (Graham et al., 2023). The 2017 Morneau tax reform proposals are the most recent example of what organized small businesses are politically capable of. In July of that year, Finance proposed the most significant reform of small business corporate tax preferences in forty years that restricted sharing income with family members who do not work in the business, holding personal investments inside a corporation to defer tax and

converting regular business income into capital gains, which are taxed at a lower rate (Tasker, 2017). Within weeks, the CFIB mobilized its membership, assembled a coalition of roughly 80 business associations and generated sufficient backbench Liberal MP pressure for representatives of competitive ridings to begin publicly distancing themselves from Finance's proposals (Tasker, 2017). By October 2017, the government withdrew the most contentious proposals, significantly diluting the remainder, effectively fully reversing the initial plan within three months (Bryden, 2017). The passive investment income restrictions were subsequently reintroduced in the 2018 federal budget, albeit in significantly diluted form. The Small Business Deduction for firms holding passive investment income above \$50,000 annually was capped, but none of the original broader restrictions were imposed. No subsequent government has attempted a comparable reform of small-business tax preferences, as such attempts function as a deterrent to similar future proposals.

The Department of Finance controls the instruments that affect productivity, including SR&ED, CIT policy, and all tax expenditures. According to Hale, "one of the most important norms that tax policy officers learn is that their job is to defend the tax system against forces that would erode its legitimacy and its revenue base" (Hale, 2002, p. 97). This overlooks whether existing instruments are achieving productivity outcomes. Finance is best positioned to propose the necessary interventions, but it is not designed to evaluate whether they are needed. The 1981 MacEachen budget, which proposed eliminating several tax preferences, was largely reversed within months after affected constituencies united in protest (MacEachen 1981; MacEachen 1982). Within Finance, this established the principle that any proposed policy that imposes net losses on an organized group without a compensating offer will fail (Hale, 2002). Finance measures successful tax reform by whether it achieves a broad political consensus and avoids mobilizing opposition, derived from Wilson's experience and embedded in the department's operating culture (Hale, 2002). Without undisputed external pressure, SR&ED restructuring is not a viable proposal until Finance presents an acceptable compensating offer. Finance has the technical capacity to do so, but has not reached a threshold where the political cost of inaction exceeds the cost of reform. Canada has no

institutional body with the mandate or independence to push it there.

Arm's-length institutions may be able to manufacture the political environment traditionally reserved for external shocks if designed to hold the government to account. The accountability that emerged from the Jenkins Panel died along with it. The Panel identified the problem, recommended an accountability body in the form of an Industrial Research and Innovation Council, and was subsequently dissolved (Jenkins, 2011). Finance selectively implemented recommendations that reduced program expenditure, yet discarded those that would have created external oversight. Its fragile construction ensured its recommendations would not survive once presented to the institutions they challenged. The 2021 Liberal platform later promised the formation of a permanent Council of Economic Advisors to provide independent advice on long-term growth. The 2022 federal budget announced it, with details to follow "in the coming months", but the Council was never established (Freeland, 2022). The Technical Committee on Business Taxation, headed by Jack Mintz, is the stronger precedent. Appointed by Finance Minister Paul Martin in 1996, the Committee produced an analysis that influenced corporate tax reform for a decade, beginning in 2000 (Mintz Committee, 1997). It worked well because it was built well. Mintz held the Clifford Clark Visiting Economist position at the Department of Finance, meaning his office was in the building. The Committee secretariat was staffed by officials seconded from Finance and Revenue Canada, who developed the analysis in collaboration with those responsible for implementation. Despite its success, the Committee was constituted with a single mandate and was discontinued once that mandate was exhausted (Mintz Committee, 1997). Neither model creates sustained pressure, as the former was controlled by Finance and the latter was not designed for continuity.

The Australian Productivity Commission is the most cited international comparator, conducting inquiries on the Treasurer's reference, the Australian equivalent of Canada's Minister of Finance (Productivity Commission Act 1998 (Cth)). In Canada, this would result in an apparent conflict of interest, as analysts in Finance would be evaluating the programs they design and administer. The New Zealand Productivity Commission failed due to its own structural flaws. Its former chair, Murray

Sherwin, warned that the body had become politicized after the Labour Finance Minister appointed an openly left-leaning economist as his successor in 2021. The incoming National-led coalition disestablished the body in 2024 (Sherwin, 2023, as quoted in Tibshraeny, 2023, New Zealand Productivity Commission Act Repeal Act 2024). A Canadian productivity commission must safeguard against both executive proximity and politically managed appointments. The recommended commission considers both by blending three precedents. The appointment process would follow the Parliamentary Budget Officer (PBO) model. Selection would be done by Governor in Council after consultation with all recognized party leaders and approval by resolution of both Houses (Parliament of Canada Act, s. 79.1(2), as amended by Budget Implementation Act, 2017, No. 1). The PBO's self-initiation authority is bounded by statute to fiscal and macroeconomic matters which do not extend to the cross-sectoral productivity benchmarking and instrument evaluation that a productivity commission would be responsible for conducting (Parliament of Canada Act, s. 79.2(1), as amended by Budget Implementation Act, 2017, No. 1). It would be equipped with a mandate whose scope replicates the Australian Productivity Commission's self-initiated research function, which allows the body to identify what requires scrutiny without parliamentary or ministerial direction (Productivity Commission Act 1998 (Cth)). The commission would operate similarly to the Mintz committee. Its Finance-adjacent setup and Clifford Clark Visiting Economist appointment for the chair were notable successes to ensure collaboration and sufficient proximity to finance (Mintz Committee, 1997).

The Officer of Parliament status creates an adversarial relationship with Finance, as the commission would be a challenge function. In contrast, the Mintz model worked because the collaborative nature of the relationship allowed bureaucrats to see the analysis as constructive. Though these two conflict, the mandate would manage this by focusing more narrowly on productivity benchmarking than on the department's fiscal and budgetary commitments. The commission creates a singular, domestic evidence base that will accumulate authority over time. This increases the accessibility of productivity data that Members of Parliament, journalists and the public can use to hold the government to account (Lynch & Mitchell, 2025).

This type of benchmarking changes the public evidence conditions in a way that a single panel report cannot, because it accumulates across election cycles and cannot be dismissed as politically motivated. After the immediate crisis of shocks such as tariffs and budget cycles fades, it would sustain political pressure on the topic (Sargent, 2024). By making Canada's underperformance against peer countries politically salient, it raises the cost of inaction for the government. The commission has natural limitations. It cannot compel specific findings, guarantee government action or substitute entirely for the political will created by external incidents. The commission can, however, be an effective tool to begin to tackle Canada's ambition deficit by changing the public evidence environment in which that behaviour is rewarded.

While the commission is tasked with creating the political conditions for reform, the specific instruments follow. Regarding SR&ED, Lester (2024) warns of a trade-off associated with imposing output criteria on an input-based program. The likely firm reaction would be to perform less R&D in Canada, with no guarantee that more of it would be commercialized. Some firms would prefer to exit rather than accept performance conditionality on what is currently an unconditional credit. Thus, the right instrument for commercialization must be separate. An IP Box would apply a preferential tax rate to income from IP developed in Canada, including all assets beyond patents, such as trade secrets, and embedded IP income in products sold (Lester, 2022; Lester, 2024). This raises the after-tax return on R&D that reaches the market, without penalizing firms that conduct research that takes longer to commercialize. The federal government opened consultations on a patent box regime in 2024 (Finance Canada, 2024). The output metric cannot be jobs or patents, even though governments typically use these as primary numbers because they are visible or attributable (ISED 2021; CGF 2025). Neither is a productivity outcome, whereas commercialization is because IP income from commercialized products reflects actual market value created from R&D investment (Lester, 2024). SR&ED should be restructured in parallel to rebalance the rate differential in favour of large firms. This maximizes spillover benefits, since large firms generate higher R&D spillovers per dollar and are currently under subsidized relative to the social optimum (Lester, 2024).

This applies to the Small Business Deduction as well, which uses size as its eligibility criterion. Small firms do not necessarily require financing support unless they are new. Thus, Lester (2025) proposes phasing out the Small Business Deduction over eight years, using the freed-up revenue to eliminate capital gains tax on shares of qualifying SMEs that are sold to Canadian residents. If implemented together, they would be revenue-neutral and would allow firms that are actually growing and eventually selling shares to gain additional benefits, while preventing those that stay small from receiving the deduction. This also serves as a compensating offer for the business constituency. The rate-adjustment approach operates within the existing CIT structure. Mintz et al. (2026) present a more drastic and fundamentally different alternative. Under a distributed profits tax, retained earnings reinvested in the business would be exempt from CIT entirely, with tax applying only on distribution to shareholders. The authors model this as revenue neutral only if paired with a GST increase or payroll levy. Estonia adopted this model in 2000. Research finds a positive relationship between the reform and investment and liquidity outcomes, with effects strongest among smaller firms (Masso, Meriküll & Vahter, 2013). The commission increases the likelihood of either of these interventions by challenging the framing of tax reform as an attack on small businesses, making the cost of the subsidy politically visible and potentially salient.

The highest-return structural reform, sitting outside the tax system, is eliminating internal trade barriers. The IMF estimates full elimination could raise real GDP by approximately 7% over time (IMF, 2026). The commission alone cannot remove provincial trade barriers, which have proven difficult to dismantle, as they remain entrenched despite fragmenting the domestic market, reducing the returns to scaling and removing competitive pressure. It may make provincial barriers more publicly visible by quantifying what each province is forgoing, a different function from producing the political will to act. The 2025 wave of mutual recognition legislation is evidence that Provinces have independent incentives to act when faced with external pressure. The tariff shock created political conditions more effective than any federal advocacy efforts (Tombe, 2025). Tombe (2025) finds that unilateral provincial action can capture over 60% of the potential gains from internal trade liberalization in most provinces, meaning that the coordination problem is primarily

constrained by political factors. An arm's length commission is the only internal machinery capable of loosening those constraints. Each of the three reforms imposes concentrated costs on identifiable constituencies, namely SMEs and Provinces, while delivering diffuse gains to the economy. This is a classic political economy problem that evidence alone is not sufficient to move (Olson, 1965; Hale, 2002). The commission does not resolve the problem either, but it could amplify the consequences of leaving it unresolved.

Ultimately, Canada's productivity problem stems from a business ambition deficit, enabled by weak political will to remove fiscal instruments that subsidize stagnation. The failure of incentives keeps the institutions responsible for implementing the required reforms complacent. A Productivity Commission would function by creating sustained public pressure through authoritative domestic evidence and by challenging governments that fail to act. As labour force growth slows and fiscal pressures intensify, the cost of inaction will become increasingly visible. Canadians will continue to see slower income growth and fewer opportunities for firms to grow and workers to move into more productive jobs. Though outcomes come down to business decisions, governments remain responsible for creating policy incentives that make growth the rational choice.

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Indigenous Governance and Transformation

Justin Brooks, University of Victoria, PhD Public Administration

ABSTRACT

This paper explores Indigenous governance transformation in Canada as a response to ongoing political, legal, and institutional uncertainty. Drawing on Indigenous legal scholarship, constitutional developments, and governance theory, it examines how Indigenous Nations navigate imposed colonial structures while revitalizing Indigenous legal orders, justice systems, and governance institutions. The paper argues that legal pluralism and Indigenous resurgence offer viable pathways for addressing contemporary policy challenges and advancing self-determination in turbulent times.

Reframing Indigenous Governance Transformation

There is no single or definitive pathway for advancing Indigenous governance and resurgence. While some approaches call for a complete rejection of Western governance systems, such a position risks overlooking how these systems continue to shape the institutional environments Indigenous Nations must navigate. Rather than positioning Indigenous and Western governance traditions as mutually exclusive, this paper argues that Indigenous governance transformation is most effectively advanced through the strategic engagement and reinterpretation of Western governance frameworks under Indigenous authority. Grounded in Indigenous epistemologies and legal orders, this approach enables the development of governance systems that support self-determination while maintaining cultural integrity.

This paper advances the central argument that meaningful Indigenous governance transformation requires a dual process: the revitalization of Indigenous legal traditions and governance principles, and the strategic adaptation of Western governance tools to support Indigenous-defined priorities. Central to this argument is the concept of legal pluralism, which recognizes the coexistence of multiple legal orders and affirms the legitimacy of Indigenous law as a foundational component of governance. Rather than treating Indigenous legal systems as subordinate or supplementary to Canadian law, legal pluralism provides a framework for rethinking governance as a space of negotiated coexistence and reciprocal recognition.

At the same time, governance transformation cannot be separated from questions of economic development and material sustainability.

Indigenous self-determination requires not only political and legal authority, but also the economic capacity to support community well-being and long-term autonomy. As such, this paper situates economic development as a critical component of governance transformation, emphasizing approaches that align with Indigenous values of relationality, intergenerational responsibility, and collective prosperity. Economic resurgence, when grounded in these principles, functions not as a departure from Indigenous governance traditions but as a necessary condition for their continuation and strengthening.

Western governance models provide insight into how systems of rule are structured and maintained, offering tools that can be selectively adapted to Indigenous contexts (Teghtsoonian, 2015). However, these models are also shaped by historically rooted rationalities that often marginalize Indigenous knowledge systems and constrain Indigenous authority (Alcantara & Morden, 2019). Approaches such as multilevel governance (MLG) attempt to redistribute authority across actors and scales, yet in practice frequently fall short of enabling meaningful power sharing, often limiting Indigenous participation to consultation or program delivery roles. These limitations underscore the need for governance frameworks that move beyond inclusion within state-defined structures toward the reassertion of Indigenous authority.

Indigenous governance transformation must therefore be understood as both a political and structural project. Legal developments such as Section 35 of the Constitution Act, 1982, and landmark cases including *Tsilhqot'in Nation*, have expanded the recognition of Indigenous rights and title. However, recognition alone has proven insufficient to achieve substantive self-determination. As scholars such as Alfred and Corntassel argue,

meaningful decolonization requires the strengthening of Indigenous governance systems from within, enabling communities to exercise authority in ways that reflect their own laws, values, and relationships to land and community. In this context, Indigenous governance transformation is not simply a matter of institutional reform but of reconstituting the foundations of governance itself. It involves re-centering Indigenous legal orders, embracing legal pluralism as a guiding framework, and developing economic systems that sustain cultural continuity and collective well-being. By integrating these elements, this paper contributes to a growing body of scholarship that seeks to move beyond symbolic recognition toward the realization of Indigenous self-determination through grounded, practical, and culturally aligned governance systems.

Resurgence and governance as drivers of constitutional and institutional change

Indigenous values – relational accountability

Indigenous Nations across Canada, both before and after contact, created and sustained their own traditional systems of governance. Before the European arrival, there were generally two primary governance structures: one that relied on rank, status, and hierarchy, and another that was less formal and more egalitarian (Poucette, 2018). These governance structures persisted well after contact with Europeans and supported the development of trading relationships between Indigenous Nations and settler societies. Throughout the 17th and 18th centuries, European interactions with Indigenous Nations remained significantly shaped by Indigenous legal orders (Mandamin, 2020). One example of this Indigenous approach to relationships was recorded in 1650 by a Jesuit who documented an altercation between the Nippissings and the French:

A French drummer boy wounded a Nippissing brave. The Nippissings demanded: "Behold, one of thy people has wounded one of ours; thou knowst our custom well; give us presents for the wound." The French refused to follow Indigenous custom and promised to punish the boy by whipping. The Nippissings were horrified and pleaded for mercy, stating that the boy was only a child who did not understand his actions. One Nippissing placed his blanket over the boy and declared:

"Strike me, if thou wilt, but do not strike him" (Mandamin, 2020, p. 3).

This incident illustrates a clash between two distinct governance philosophies: one grounded in centralized authority and formal legal processes, and the other in relational accountability and decentralized governance rooted in Nippissing social orders (Napoleon, 2012).

Indigenous resurgence and justice

Another significant development shaped by Indigenous influence in the criminal justice system was the Royal Commission on Aboriginal Peoples, which concluded that the Canadian justice system had failed Indigenous peoples (Royal Commission on Aboriginal Peoples, 1996). The Commission determined that this failure stemmed from fundamentally different worldviews between Indigenous and non-Indigenous peoples, including differing understandings of what justice is and how it should be achieved (Royal Commission on Aboriginal Peoples, 1996). Even before the Commission's findings, during the 1980s and 1990s, Indigenous justice workers and communities were already advocating for sentencing approaches rooted in Indigenous concepts of justice, particularly restorative justice (Mandamin, 2020).

Circle sentencing represents one of the most significant innovations during this period, beginning with the 1992 Yukon Territorial Court decision in *R v Moses*. This approach was later developed further, including guidance from Saskatchewan courts outlining conditions such as:

- The accused must consent to circle sentencing.
- The accused must have strong connections to the community involved.
- Community Elders or respected leaders must be willing to participate.
- The victim must participate voluntarily and without coercion.
- The Court should determine whether the victim is experiencing battered spouse syndrome, ensuring counselling and support if needed.
- Any disputed facts must be resolved before the circle.
- The case must be appropriate for a court to consider a departure from traditional sentencing ranges (Mandamin, 2020, p. 10).

Indigenous restorative justice circles help reduce the revolving door of reoffending by providing community-based, therapeutic, and problem-solving justice approaches. They also address underlying issues such as addictions, FASD, and mental health challenges among both youth and adults, while enhancing community safety and supporting both participants and victims (Flannigan, 2023).

Aboriginal courts provide an alternative to conventional provincial courts for Indigenous peoples, including First Nations, Inuit, and Metis individuals. These courts are generally grounded in restorative and healing-focused approaches rather than solely punitive responses (Whonnock, 2011). In British Columbia, there is currently only one such court: The First Nations Court located in New Westminster. Beyond B.C., several provinces have developed similar Indigenous-specific court systems, including the Gladue (Aboriginal Persons) Courts in Ontario, the Cree Speaking and Dene Speaking Courts in Northern Saskatchewan, and the Tsuu T'ina Peacemaking Court in Southern Alberta (p.99). Although each Aboriginal court reflects the distinct cultural, linguistic, and social realities of the local Indigenous communities they serve, they share core characteristics (Flannigan, 2023; Whonnock, 2011). To date, all Aboriginal courts operate within their respective provincial court systems, rather than as fully independent judicial bodies (Buller-Bennett, 2010; Mehaffey, 2009). Each court involves meaningful participation from Indigenous community members and is designed specifically to support Indigenous clients (Whonnock, 2011). Across Canada, Aboriginal courts consistently incorporate peacemaking or restorative justice approaches that emphasize healing, accountability, and community involvement rather than solely punitive measures (p.99). It is also important to note that these specialized courts are relatively recent developments, with most having been established within the last two decades (Whonnock, 2011; Buller-Bennett, 2010; Mehaffey, 2009).

The Aboriginal Court in New Westminster began sitting in fall 2006. Operating as a pilot project, it functions with no additional resources beyond those available to a standard provincial court and has largely developed through the judicial leadership of Judge Buller Bennett, who remains the only female Aboriginal judge in British Columbia (Whonnock, 2011). The court convenes once a month. When it

was first established, it typically dealt with between three and twelve cases per sitting; however, this number has since expanded significantly, and the court now hears approximately thirty to forty matters each session (Mehaffey, 2009). The Aboriginal Courts have jurisdiction over federal and provincial matters, including both summary and indictable criminal offences, and it is also able to address youth, family, and child protection cases (Whonnock, 2011). Although its title references “Aboriginal,” the court is inclusive of all Indigenous peoples, including First Nations, Metis, and Inuit participants (p.100).

A central restorative element of the court is the development of a healing plan designed to address the underlying causes of the offender’s behaviour; as Judge Buller Bennett explains, “The goal of the court is to take a First Nations perspective, being a holistic and restorative approach, to sentencing.” (Buller Bennett, 2010, p.14). The healing plan is created collaboratively, with contributions from everyone participating in the progress (Whonnock, 2011). Additionally, the court schedules multiple review hearings following sentencing to ensure accountability, support progress, and reinforce continued engagement in the healing journey (p.100).

Indigenous governance and legal orders have existed since time immemorial and address the same essential concerns as Canadian law, including community well-being, fairness, and accountability. These shared legal principles are evident across many Indigenous legal orders, as demonstrated through the work of the Indigenous Law Research Unit directed by Val Napoleon (Napoleon, 2016). The Supreme Court of Canada has also affirmed the continued existence of Indigenous law, such as in *R v Mitchell*, which recognized that European settlement did not extinguish Indigenous legal systems and that Indigenous customs, practices, and laws persisted beyond Crown sovereignty (Borrows, 2010, p. 11).

The overarching goal for Indigenous Nations in advancing governance, law, legal orders, and resurgence is to establish a more symmetrical and respectful relationship with the Canadian state and its legal institutions. This symmetry requires moving beyond the colonial asymmetries that historically denied and restricted Indigenous legal traditions and instead supporting Indigenous self-determination and governance revitalization (Napoleon, 2016).

The impact of Indigenous law

Indigenous peoples across what is now Canada developed diverse spiritual, political, and social practices to guide relationships, and over time, these practices formed sophisticated legal traditions. Knowledge is preserved through memory-keeping systems such as wampum belts, masks, totem poles, medicine bundles, culturally modified trees, birch bark scrolls, canoes, button blankets, landforms, crests, and other cultural records (Borrows, 2005). Although Indigenous peoples have preserved much cultural knowledge, they have also endured forced assimilation policies that they rejected, noting that these programs failed and contributed to serious human rights violations (Borrows, 2010).

Recognizing and strengthening Indigenous legal traditions across Canada could serve as a powerful mechanism to counter assimilation (Borrows, 2010). Indigenous peoples can advance this by applying their own laws in collaboration with law societies and law schools, shaping interactions beyond reserve boundaries, and reclaiming traditional territories in ways that coexist respectfully with other communities (p. 221). Integrating Indigenous legal traditions alongside Canadian law is appropriate, given Indigenous Nations' long legal engagement with the state, as demonstrated in treaty-making, such as the 18th-century Peace and Friendship Treaties (Canada, 2015; Coulthard, 2014).

Mobilization and the role of research with Indigenous peoples

The strength of cultural revitalization lies in local mobilization. Indigenous cultures and cultures of resistance have been nurtured for generations, with meaningful initiatives emerging from within communities and grounded in Indigenous knowledge, resilience, and creativity. These movements support social, educational, health, and artistic renewal while re-centering the roles of women, Elders, and others marginalized through colonialism (Smith, 2012, p. 127).

Ethical research standards emphasize respect for Indigenous values, traditions, and knowledge systems (Drawson et al., 2017). They support research agreements grounded in informed consent, equitable partnerships, transparency, academic integrity, benefit sharing, community empowerment, and OCAP principles (p. 1). Continued cultural

revitalization requires reconciliation with the land while recognizing that Indigenous legal traditions remain deeply attentive to environmental relationships (Ash et al., 2018). The long-term hope is that Indigenous Nations will regain authority over their lands and communities, no longer existing "in the shadow of hierarchy," where collaboration occurs under ongoing power structures (Whitehead, 2003; Hooghe & Marks, 2003, p. 253).

Economic reconciliation vs. self-determination

An Indigenous worldview is deeply rooted in relationships with the land, shaping identity and understanding of the world. Little Bear explains that worldview functions as a framework for how Indigenous peoples interpret beliefs, actions, and relationships (Little Bear, 2000). Today, Indigenous economic development faces challenges as communities work to uphold stewardship responsibilities while navigating complex legislation, policy, and regulation within broader nation-rebuilding contexts (Hilton, 2021). These externally imposed systems often constrain Indigenous responsibilities and create tensions in pursuing economic opportunity, prosperity, and meaningful development (Hilton, 2021, p. 30).

These tensions can be managed through cultural resurgence frameworks. Manuel and Posluns (1974) argue that Indigenous peoples do not need to recreate historical material lifestyles; instead, they must ensure that future generations inherit Indigenous values, strengths, and spiritual teachings, "the fruit of 1000 generations' cultivation of North American soil by Indian people" (p. 8). Although Indigenous peoples have demonstrated resilience, innovation, and adaptability, uncertainty remains. Power in Canada and the Western world continues to be shaped by ownership, where governments and corporations accumulate capital at the expense of the many (Coulthard, 2014). As the dominant economic paradigm reveals structural weaknesses, Indigenous worldviews grounded in intergenerational responsibility offer a compelling alternative. Moving away from systems driven by commerce, narrow metrics of value, and unsustainable growth is essential for shaping a viable future (Hilton, 2021).

Meaningful progress requires immediate investment in Indigenous economic development to address population growth and community needs. Supporting Indigenous economies today creates the

foundation for long-term success, resilience, and shared prosperity (Hilton, 2021, p. 222). Moving forward also requires greater awareness and the development of innovative financial and economic tools grounded in Indigenous knowledge to strengthen outcomes and build more just and sustainable systems (Hilton, 2021, p. 222).

Navigating tensions through Indigenous legal orders and governance innovation

Indigenous peoples in Canada are positioned at a pivotal moment as their laws move closer to broader recognition within the country's legal landscape. While the Supreme Court of Canada acknowledges that Indigenous law exists and informs Indigenous governance, it has not yet granted Indigenous legal authority the same standing as federal or provincial law (Gunn & O'Neil, 2021). Even so, the progress made over the past century is substantial. Indigenous peoples have moved from being disenfranchised at the federal level until 1960 to leading highly successful governance and economic initiatives, such as the Osoyoos Indian Band, which has become one of the first financially independent First Nations in Canada (Dabin et al., 2019; Ducharme, Thiessen, & Lindquist, 2024). The Elsipogtog Nation provides another example of governance innovation through its establishment of a community-driven wellness court, the result of more than two decades of effort (Mandamin, 2020).

Indigenous justice and governance structures continue to advance through several key developments. These include expanding restorative justice partnerships with the Canadian legal system, modern treaty and self-government agreements that affirm Indigenous jurisdiction, and a growing body of Indigenous scholarship that revitalizes legal thinking grounded in culture and community (p. 12). Val Napoleon describes Indigenous "legal orders" as systems of law embedded within social, political, economic, and spiritual life. In contrast, "Indigenous legal traditions" refer to the practices and protocols that sustain those systems (Napoleon, 2007). Building on this foundation, John Borrows has played a central role in advancing Indigenous legal education, contributing to the creation of the first university-level Indigenous law degree (Mandamin, 2020).

Despite ongoing tensions created by partial recognition, Indigenous governance continues to strengthen. Progress is increasingly evident through

restorative justice innovation, treaty-based jurisdictional affirmation, and expanding Indigenous legal scholarship (Asch et al., 2018). Examples such as self-governing Nations and community wellness courts highlight how Indigenous communities are asserting their authority and shaping the future of Indigenous law, supported by leading scholars and continued governance innovation.

Legal pluralism

In 2018, the University of Victoria launched the first cohort of its JD/JID Joint Degree in Canadian Common Law and Indigenous Legal Orders, marking a historic development in legal education. The program plans to graduate up to twenty-five students each year who are trained within a framework that recognizes Indigenous multi-juralism and uses a trans-systemic approach, as Val Napoleon describes, "this training supports the development of more balanced and mutually respectful relationships between state-based and Indigenous legal systems" (Napoleon & Friedland, 2016, p.725). The continued endurance and renewal of Indigenous legal orders and constitutional traditions in Canada, and globally, challenge the dominant authority of the liberal state, advancing a vision of constitutionalism that recognizes and makes space for multiple, coexisting legal systems (McKerracher, 2023).

The Truth and Reconciliation Commission of Canada's 2015 Calls to Action urged the federal government to formally adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Truth and Reconciliation Commission of Canada, 2015). They further emphasized the need to reconcile Crown and Indigenous constitutional and legal frameworks, including acknowledging and incorporating Indigenous laws and legal traditions into Canada's legal landscape (Truth and Reconciliation Commission of Canada, 2015; McKerracher, 2023; Napoleon, 2019).

In November 2019, following considerable advocacy from Indigenous groups, British Columbia enacted the Declaration on the Rights of Indigenous Peoples Act (DRIPA), becoming the first province to legislate UNDRIP principles. (Declaration on the Rights of Indigenous Peoples Act, 2019). At the federal government level, Bill C-15, which also implemented UNDRIP, came into law in June 2021

(Canada Justice, 2021). These governance developments are intended to align Canadian law with International human rights standards and support the realization of Section 35(1) of the *Constitution Act, 1982*, thereby advancing true constitutional partnership and Indigenous self-determination (McKerracher, 2023). Anishinaabe constitutional scholar Aaron Mills (2017) emphasizes that Indigenous and non-Indigenous peoples within what is now called Canada are deeply interconnected; our political communities are formed in relation to one another and remain mutually dependent. From this perspective, constitutionalism and federalism among distinct peoples must acknowledge and embrace legal pluralism (Mills, 2017). Napoleon (2019) similarly argues that legal pluralism has long existed among Indigenous Nations across Turtle Island and is already present within Canada. Therefore, a meaningful vision of reconciliation must begin with the recognition of multiple legal orders, both Indigenous and Canadian, as foundational rather than supplementary elements of governance (Napoleon, 2019).

Quebec, for instance, holds a distinct position within the Canadian federation and is reflected in the coexistence of civil law and common law traditions, and since the 1990s the McGill University Faculty of Law has adopted a trans-systemic approach to examining their relationship (McKerracher, 2023). However, both legal traditions are relatively recent Euro-colonial imports, and both are grounded in state-based systems characterized by centralized political and administrative authority (p.135). By contrast, Indigenous legal orders, while internally diverse and pluralistic, are generally decolonized, discursive, and relational, with responsibilities distributed through kinship relationships and community networks (p.135). It is crucial to recognize that legal acknowledgement must operate reciprocally, understanding that recognition cannot simply flow from state law to Indigenous or non-state legal systems, because such a one-directional recognition reproduces exactly the kind of superficial acknowledgement critiqued by Coulthard (2014) and Simpson (2014), circumventing recognition that will ultimately reinforce colonial power structures and result in weak forms of legal pluralism.

The responsibility at hand is to learn how to exist alongside one another in ways that honour both

differences and connections, to stand together, distinct yet in relationship, and strive to live in ways that uphold right relations (McKerracher, 2023).

Conclusion

The significant changes taking place in Indigenous governance across Canada reflect both the strength of Indigenous peoples and the growing recognition of Indigenous legal traditions. Western governance systems still shape many of the institutions Indigenous peoples must work within, so Indigenous Nations continue to navigate these spaces while also strengthening their own governing systems. Developing expertise in both Indigenous and Canadian governance is essential for advancing self-determination (Teghtsoonian, 2015; Alcantara & Morden, 2019). Major constitutional developments such as Section 35 of the *Constitution Act, 1982*, the *Tsilhqot'in Nation* ruling, and the legal efforts of Cowichan Tribes demonstrate increasing recognition of Indigenous authority, while reaffirming that resurgence remains rooted in land, community, and Indigenous worldviews (Constitution Act, 1982; Gunn & O'Neil, 2021; Ko, 2025).

Justice transformation also illustrates this renewal. Restorative justice circles, wellness courts, and similar initiatives strengthen Indigenous legal orders and respond to long-standing failures of the Canadian justice system identified by the Royal Commission on Aboriginal Peoples (Royal Commission on Aboriginal Peoples, 1996; Mandamin, 2020; Flannigan, 2023). At the same time, tensions continue between economic development, cultural revitalization, and sovereignty, highlighting the need for governance approaches that support both institutional reform and responsibility to future generations (Hilton, 2021; Coulthard, 2014). Legal pluralism is increasingly shaping this future. British Columbia's DRIPA, Canada's federal Bill C-15, and programs such as the University of Victoria's JD/JID degree signal growing space for Indigenous law and constitutional partnership (Declaration on the Rights of Indigenous Peoples Act, 2019; Canada Justice, 2021; Napoleon & Friedland, 2016). Scholars such as Mills (2017) and Napoleon (2019) argue that reconciliation requires recognizing that multiple legal systems can coexist in respectful, reciprocal relationships. The goal is not assimilation into Canadian governance, but the creation of just, relational, and nation-to-nation governance grounded in Indigenous law, land, and self-determination (Napoleon, 2019).

At the Truth and Reconciliation Commission's Knowledge Keepers Forum in 2014, Mi'kmaq scholar and Elder Stephen Augustine described the Mi'kmaq concept of "making things right," offering a powerful metaphor for understanding change within Indigenous law. He likened the process to an overturned canoe in a river. First, he said, the canoe must be turned upright and kept steady in the water, so it does not crash against the rocks or drift to shore. In doing so, some

belongings may be lost, and although they may eventually be recovered, they will not return in the same form as before. This metaphor describes the role of Indigenous and non-Indigenous Nations. There are mutual interests at stake, and for there to be success and meaningful partnership, both sides must find a way to make this right (Truth and Reconciliation Commission of Canada, 2015).

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Rational Choice Theory and Educational Reform: Balancing Efficiency, Equity, and Policy Outcomes

Elina Callas, Northwestern University, MPPA

ABSTRACT

This paper explores the application of the Rational Choice Model (RCM) in analyzing and shaping educational reform in the United States. It begins by tracing historical reforms, particularly the Elementary and Secondary Education Act (ESEA), and identifies three persistent policy goals: equity, quality, and accountability. By applying RCM, a framework emphasizing cost-benefit analysis and incentives it investigates how policymakers, educators, and students make decisions within the education system. Key case studies include charter schools, standardized testing, teacher performance incentives, and student decision-making regarding higher education. The paper also addresses critiques of RCM, including bounded rationality, social norms, and the tension between short and long-term tradeoffs. To overcome these limitations, it proposes integrating behavioral economics and equity-centered policies, such as simplifying financial aid processes and expanding digital access through programs like E-Rate. Ultimately, the paper argues for a more nuanced, incentive-aligned approach to educational reform that accounts for human behavior and structural inequalities while maintaining a focus on long-term educational success.

Introduction

In the United States, educational reform plays a huge role in shaping the quality and integrity of the education system which leads to the economic growth and social advancement its democracy needs to prosper and grow. Historically, educational reform has been driven by two major factors: increased access to education and standardized testing methods. These drivers are highly connected and address both fair access for students as well as measure quality and accountability while highlighting factors for improvement. In the policy period Birkland defined as the “Era of National Standards” (1961-present) which featured Great Society programs like the Elementary and Secondary Education Act (ESEA), the prioritization of increased access to education is clearly evident as legislation increased federal funding for all schools nation-wide as well as provided financial aid for higher education for the very first time (Birkland, 2016). ESEA was also the debut of the federal government implementing measures for standardized testing. To enact further policies like ESEA and improve educational reform, expanding on the goals of quality and equity, policymakers often use frameworks to help organize thoughts and guide ideas.

One such framework is the Rational Choice Model (RCM), defined by Dye as the policy that “achieves maximum social gain” and suggests that governments and actors should deliberately choose

public policies based on gains exceeding the costs (Dye, 2002). This model centralizes the role of incentives and institutional structures in shaping public policy, which can help illuminate the perspective of policymakers, specifically why certain policies are adopted over others. By assuming that individuals and groups will make the rational choice and choose the best option, this model can be extremely helpful in creating policy as it assumes a certain level of predictability, which also may point to why current policymaking may not be a more rational process. In other words, as goals change, this framework can be modified to accept these new goals as the perceived gains to society.

This paper argues that while Rational Choice Theory provides a useful framework for understanding educational policy decisions, practical effectiveness is limited by real-world constraints such as bounded rationality, social norms, and institutional pressures. The paper examines how rational choice theory applies to key areas of educational reform, including charter schools, standardized testing, and stakeholder decision-making, and evaluates potential limitations in addressing equity and long-term outcomes.

Goals and Challenges of Educational Reform

Applying the RCM framework to educational reform requires first understanding the various goals and weaknesses of the framework to sort out the main purpose from what needs to be

remedied. After analyzing prior policy efforts such as the ESEA act, the No Child Left Behind Act, the Common Core State Standards and more, the three main focuses of educational reform are equity, quality of education, and accountability (Education Revolution Association, 2024). Equity involves ensuring equal access to education for all students regardless of their background. In modern terms, these resources include student technological needs, training for educators, and creating a safe school climate to account for the diversity in student background. Quality of education goes hand in hand with standardized testing and revolves around not only students receiving an education but rather if that education scaffolds success later in life, focusing on student outcomes. Lastly, accountability is a major goal of educational reform; as with any policy, it is essential to ascertain what actors throughout this process are responsible for the successful outcomes—in this case student progress and performance.

Despite past reform acts and improvements, many issues remain surrounding educational reform including, but not limited to, poor resource distribution, a lack of change, and conflicting stakeholders. Regarding lack of resources, one of the most profound, current examples is the increased dependence on technology. Although household technology use has risen approximately 72% in the United States, half of low-income families still do not have the technology required for online education (American University School of Education, 2020). Additionally, because of the interdisciplinary and institutional-sensitive nature of educational reform, the work of improvement and evolution will never conclusively end. Recent evidence suggests a significant lack of progress in addressing key issues like unequal resource distribution, stagnant literacy rates, and gaps in technological access, suggesting the educational reform system is largely outdated in effectively meeting student needs. In a panel discussion at the Institute of International Education in New York, Marcie Craig Post, Executive Director of the International Literacy Association, stated that around 32 million adults in the United States cannot read and “what’s more shocking is that we haven’t moved the needle in 10 years...we know that literacy helps people escape the bonds of poverty and live longer” (*Statistics*, 2024). Another considerable issue affecting educational policy may be that of conflicting interests. Many stakeholders, including the parents and students, teachers, school districts, policymakers,

and more, all have different agendas regarding educational reform.

Application of RCM in Education Policy

After identifying the goals (equity, quality, and accountability) and weaknesses (resources, lack of change, and competing stakeholders) the rational choice model can now be applied to analyze the policy decisions and perspectives that feed into educational reform. One positive aspect of educational reform policy lies in its well-established history and practice. Meaning, they already have preconceived goals in increasing factors like equity and accessibility, therefore policies can be implemented that promote these items as a framework for perceived benefits. For example, during the Trump administration, education policy emphasized school choice initiatives, including the expansion of charter schools and voucher programs, reflecting a market-based approach aligned with rational choice principles. Additionally, the administration sought to rethink state testing requirements. Therefore, the rational choice model can be applied to two important areas of policy decision – charter schools and standardized testing.

Charter Schools

Charter schools are publicly funded, tuition free schools that differ from traditional school districts; they enjoy higher flexibility and operate under a public entity with the ability to create curriculum and operations. The rational choice model explains the increase in charter schools as a response to the incentives and self-interests of various stakeholders. Policymakers may support charter schools for a variety of reasons including financial incentives. These schools can choose which students to accept and often answer to for-profit companies that may support certain political campaigns in return for candidate support. Parents also act as rational decision makers as they choose charter schools over traditional schools based on perceived location, educational quality, and programs that increase demand and influence policy. On the other hand, groups in opposition may include teachers’ unions due to fear of job insecurity.

Standardized Testing

Standardized testing represents another example of policy decisions influenced by the RCM. Standardized testing involves administering and

scoring tests given to all students in the United States to compare across multiple groups. They ensure that everyone is measured under the same procedures, helping to identify faults in education by comparing results. Standardized tests act as benchmarks for student progress and accountability. Teachers and schools shift curriculum to strengthen testing performance as it directly correlates to funding and access to higher education, scholarships, and better schools. Both parents and students have a vested interest in standardized testing, as they undoubtedly want access to the top schools while private companies developing such tests maintain a financial interest in keeping a reliable source of income.

Teachers as Rational Actors

Aside from policymakers' decisions, the role of RCM can also be looked at as it applies to two of the most important rational actors: students and teachers. As with any other profession, the main motivators for teachers to perform well are compensation and job security. However, unlike many other jobs, some teachers encounter the opportunity for tenure—the ability to have a permanent, highly protected role, with near zero threat of termination, enshrining job stability. Additionally, many teachers' salaries tie into student performance, which then perpetuates a high degree of focus on standardized testing methods to improve salaries and/or bonuses. According to a study conducted by a UC Riverside professor on the Teacher Advancement Program (TAP), the benefits from teacher incentivization outweigh the costs, with TAP costing \$400 per student in Louisiana but the rise in earnings for the school from test score gains totaling about \$945,000 per year (Ober, 2019). Therefore, when applied to teacher incentivization, the rational choice model suggests that teachers will positively respond to incentives as exhibited by the rise in test scores above. However, monetary incentivization may not be enough, as test scores may be dependent on resources and outside factors outside of teaching ability, leading to potential pushback from instructors as they fear job loss due to low test scores.

Students as Rational Actors

The student perspective may be the most important to consider when discussing educational reform in the U.S. An important feature of the rational choice model is the glimpse into the mind of

the stakeholder—an inside perspective to help better create policy and reforms based on what is needed from those most impacted. The education students receive may be what sets the stage for the rest of their lives, propelling them toward opportunities of upward mobility and security previously inaccessible or unthinkable.

One way students use the rational choice model is through cost-benefit analysis concerning school selection and higher education. Students and their families may apply rational choice decision-making to determine between going to a private school over public, with the benefits of smaller class size, specialized programs, and better chances in pursuing higher education outweighing the financial costs. When reaching higher education, students may weigh the costs of tuition and debt against career earnings before deciding the worthwhileness of the investment. Students and their families often apply rational choice decision-making when evaluating whether higher education is worth the financial investment. Prospective students may weigh tuition costs, potential student debt, and short-term financial sacrifices against expected long-term benefits such as increased earning potential, professional opportunities, and access to valuable educational networks. Many students ultimately determine that the anticipated career and economic advantages of obtaining a degree outweigh the immediate financial burdens, illustrating how cost-benefit analysis influences educational decision-making.

Students may also be affected by socioeconomic factors influencing their educational choices. For example, more affluent students may be able to better afford private education, tutoring, and resources. The rational choice model explains why low-income students may miss out on opportunities presented by private schooling and associated resources as these disadvantaged students may require the short-term benefits of entering the workforce more than bearing long-term costs of quality higher education.

On a similar note, financial aid plays a huge role in the decision making of students looking to access colleges and universities. Scholarships, grants, and loans reduce immediate financial burden and increase the likelihood of students enrolling in colleges and universities. Policymakers can use this perspective to design financial aid programs that encourage affordability as a key factor for students.

Current policies include Pell Grant expansion which successfully and effectively expanded eligibility to a wider range of students. Overall, the rational choice model displays how policymakers, teachers, and students all make decisions based on incentives, self-interests, and cost-benefit analysis.

Limitations of Rational Choice Theory

Despite the ability of the rational choice model to predict future outcomes, align incentives, and enhance accountability, many notable critiques of this framework include bounded rationality, social norms, and the complications and differences between long- and short-term tradeoffs. Bounded rationality suggests that the rational choice model may have faults surrounding cognitive, information, and time constraints. Many of the policymakers that create policies geared toward educational reform do not practically participate in the school system themselves. Therefore, legislators may rely on incomplete and/or biased data received second-hand. Policymakers may also be influenced by outside political pressures and lobbying efforts not necessarily reflective of teacher and/or student interests. Additionally, teachers under the rational choice model are expected to improve students' performance based on financial incentives. However, socioeconomic circumstances of students, resources, and administrative burdens may impact the results of students' education despite increased efforts made by teachers. Students may also fall victim to bounded rationality as they may be weighing college choice without essential data and skills, such as financial literacy, access to accurate job market information, and the proven benefits of long-term education.

Social norms can also disrupt the assumptions of the rational choice model. These factors lie outside the self-interest and cost-benefit fields and are thus overlooked in importance. For example, in a 2015 study conducted in the U.S., around 70% of educators stated they do not believe that their primary state assessment is developmentally appropriate for their students (Walker, 2016). Policymakers, however, continue to fiercely support standardized testing despite statistics describing a reduction in tests may be beneficial for students' overall wellbeing; the study notes that improper or unsuitable testing can lead to a reduction in effort and confidence in students who consider these results a measure of their intelligence. Additionally, professional ethics may come into play as teachers

subsequently value their commitment to student success over financial incentives. Students may also be swayed by societal pressures, peer expectations, and cultural norms, feeling the pressure to attend college with their peers despite lack of affordability. Students may also, furthermore, refuse financial aid for fear of stigma surrounding the inability to pay for school. Hidden family expectations to pursue a certain career that contradicts any other rational career choices may also represent an underlying factor.

Lastly, another considerable factor, especially regarding educational reform, is the critique of actors unable to maximize long-term benefits due to outside pressures and institutional constraints. Rationality assumes the individual thinking ahead and, specifically in terms of educational reform, an importance lies in the ability to prepare students for job opportunities and continued higher education. Assumed actors, however, do not always prioritize the long-term benefits for a variety of reasons. Policymakers, for example, encourage standardized testing, in part, due to the immediacy of data and results. Concurrently, they may invest in school projects, such as infrastructure upgrades, rather than training programs, particularly in the scenario of especially short or limited term lengths. Immediate results would be preferable to add such accomplishments to their resume, rather than long developments they may not see through to the end. For teachers, a huge criticism has surrounded the emphasis on performance-based pay and the idea that teachers may "teach to the test" to get positive test results, rather than instill long-term critical thinking for students. Relatedly, students may also suffer from choosing short term incentives by rejecting opportunities like financial aid, due to concerns over future loan burden, and consequently decide to withdraw from university to address immediate financial or family struggles. Many overarching critiques are largely influenced by immediate pressures that force students to choose short-term incentives rather than think through long-term consequences.

Policy Recommendations

To combat these critiques, the rational choice model should be turned into a framework focused on the true incentives of each stakeholder as well as apply behavioral economics and incentive structures aligned with equity and quality. Rather than

short-term financial incentives, the rational choice model should centralize encouraging long-term commitment to student success through the retention of quality teachers. The model should enshrine evaluations that not only consider student performance but qualitative peer and observational-based performance to ensure fairness when judging teachers who are on performance-based pay. Additionally, educational reform can redirect student-focused incentives towards apprenticeships, financial aid awareness, and more flexible learning options like online schooling to combat some of the original incentive critiques such as social pressures and the short-term gains of getting a job instead of spending time at school. Reforming educational policy through a rational choice framework can also involve reducing the overemphasis on standardized test scores and improving the competitiveness of public schools, making them a more attractive option compared to charter schools.

Incorporating behavioral economics also presents a valuable piece of the puzzle. The rational choice model assumes decisions are made utilizing cost-benefit analysis. However, behavioral economics integrates the biases and social norms previously discussed as considerations helpful in designing interventions that work with human behavior. For example, instead of framing standardized testing as “determining students’ future,” tests can be conceptualized as a challenge for students to simply display what they have learned, reducing performance-derived anxieties. Additionally, educational reform can seek to implement simple and more transparent processes, such as providing more college counselors and simplifying The Free Application for Federal Student Aid (FAFSA) packages. Offering such materials in different languages and color-coding sections to make necessary steps more apparent might perhaps aid students in their financial aid endeavors, whether they go through the process alone or with caregivers unfamiliar with the process. One hundred percent compliance with all stakeholders acting rationally will never truly come to pass. By applying behavioral economics, highly avoidable shortcomings can be mitigated by predicting what prevents people from making the perceived rational choice based on

circumstance. Lastly, rational choice structures can be redeveloped to further align with equity and quality. In the age of the digital divide, educational policymakers must work to close gaps in both technological accessibility and digital literacy, exemplified in the increasing federal E-Rate programs, which make telecommunications and information services more accessible for students. Eligible schools can receive up to a 90% discount with funding immediately provided to high-poverty schools first, ensuring an equitable distribution (Federal Communications Commission, 2019).

Conclusion

Overall, the rational choice model provides a valuable framework for understanding and shaping educational reform by analyzing how students, teachers, and policymakers make decisions based on incentives and cost-benefit analysis. While traditional educational policies often assume uniform decision-making, RCM highlights the importance of structuring incentives to align with desired outcomes, whether through teacher pay structures, school choice policies, standardized testing reforms, or financial aid accessibility.

By applying RCM to charter schools, standardized testing, and teacher incentives, policymakers can design data-driven, efficiency-focused reforms that enhance student achievement and institutional accountability. However, RCM must also be supplemented with insights from behavioral economics and social considerations, recognizing that decisions in education are influenced by bounded rationality, social norms, and short-term trade-offs.

Ultimately, educational reform must balance rational decision-making models with real-world complexities to create policies that are both effective and equitable. By leveraging incentives, reducing barriers to success, and designing policies that encourage long-term investment in education, the rational choice model can serve as a powerful tool for improving educational outcomes and fostering a more adaptive, student-centered education system.

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Observing Spillover Effects of Safe Consumption Site Closures in Ontario: Shared Risk, Heightened Costs, and Stretched System Capacities.

Myla Demers & Anonymous, Queen's University, MPA

ABSTRACT

Ontario's transition from supervised consumption sites to Homelessness and Addiction Recovery Treatment (HART) hubs represents a significant shift in provincial addiction policy. While HART hubs emphasize coordinated, recovery-oriented services, the closure of supervised consumption sites have introduced unintended pressures across community and healthcare settings. This paper examines the cascading impacts of these closures, focusing on increased reliance on public libraries, rising strains on community support systems and public spaces, and increased emergency medical service utilization. Drawing on policy reports, municipal service data, and oversight body findings, the analysis highlights the limited empirical evidence supporting HART hub implementation and the absence of standardized reporting mechanisms comparable to those historically required of supervised consumption sites. The findings suggest that rather than improving pathways to treatment and recovery, the removal of harm reduction interventions has instead redistributed risk across public institutions and emergency services. The paper concludes that the transition toward recovery-oriented care reflects broader ideological shifts in addiction policy and underscores the need for evidence-based evaluation frameworks to assess long-term public health outcomes.

Introduction

Canada's opioid crisis represents a complex and ongoing public health emergency, contributing to thousands of preventable deaths each year. Since national surveillance began in 2016, Canada has seen substantially elevated numbers of opioid-related deaths, with a total of 53,308 apparent opioid toxicity deaths reported between January 2016 and June 2025 (Public Health Agency of Canada, 2025). Ontario has been particularly affected by this crisis, accounting for 36% of all suspected opioid overdose facilities in Canada (Registered Nurses' Association of Ontario, 2024). Urban centres in Ontario, including Toronto, Hamilton, and Ottawa, have experienced sustained increases in opioid-related harms, reflected in elevated emergency department visits, hospitalizations, and other indicators of crisis-related health system strain (Ali et al., 2025a).

Harm reduction strategies have emerged as a critical public health response to opioid-related harms. Harm reduction encompasses interventions designed to minimize the negative health, social, and economic consequences of substance use without requiring abstinence (Baltzer et al., 2008). In Canada, this includes programs such as supervised consumption sites, needle and syringe exchange programs, and opioid agonist therapies. Despite a strong evidence base supporting the effectiveness of harm reduction interventions, Ontario has recently experienced a retrenchment of harm reduction

services, transitioning supervised consumption sites towards abstinence-focused care models (Ali et al., 2025b). This policy shift represents a departure from established public health evidence and has generated a series of spill-over consequences that extend beyond the immediate closure of services.

This paper seeks to examine how the closure of supervised consumption sites has produced cascading social, institutional, and health system effects across communities. It will begin by outlining the policy context behind Ontario's shift from harm reduction to recovery-oriented care, highlighting the legislative decisions and policy rationale that led to the closure of supervised consumption sites. It will then examine the cascading impacts of these closures, including increased pressure on community institutions such as public libraries and drop-in centres, changes in public drug use, associated strains on healthcare and emergency services, and heightened demand at remaining operational supervised consumption sites. This paper will then examine the policy alternative of Homelessness and Addiction Recovery Treatment (HART) hubs, analyzing their scope, objectives, and the limited empirical evidence supporting their effectiveness. Finally, the discussion situates these outcomes within broader structural and political dynamics, exploring how safe consumption site closures shift risk onto other community and health services and reflect ideological motivations that prioritize abstinence-focused care over evidence-based public health interventions.

Policy Context

Prior to recent legislative reforms, supervised consumption sites formed a central component of Ontario's drug strategy infrastructure. As of 2023, 23 supervised consumption and treatment sites were operating across the province, with 17 receiving direct provincial funding (Canadian Drug Policy Coalition, 2024). These facilities played a critical role in overdose prevention, with reports indicating that between 2020 and 2024, supervised consumption sites in Ontario prevented more than 20,000 fatal overdoses and served nearly 200,000 unique clients (Werb et al., 2024, p. 3). In addition to overdose response, these sites provided sterile equipment distribution, health referrals, and connections to social services, forming an integrated component of the province's response to the opioid crisis (Health Canada, 2026).

Ontario's supervised consumption infrastructure underwent significant restructuring beginning in August 2024, with the province introducing new zoning restrictions affecting the operation of safe consumption sites programs. These restrictions were formalized through Bill 223, the *Safer Streets, Stronger Communities Act*, alongside the *Community Care and Recovery Act* (Government of Ontario, 2024a). A central provision of the legislation prohibited the operation of supervised consumption sites within 200 metres of schools or licensed childcare centres (Government of Ontario, 2024a). This proximity restriction effectively mandated the shutdown of multiple sites across Ontario, with ten safe consumption sites slated for closure (Draaisma, 2026). In addition, the legislation required municipalities to obtain provincial approval before applying for federal exemptions under the *Controlled Drugs and Substances Act*, significantly impairing the ability of local governments to implement harm reduction initiatives (Wellington Guelph Drug Strategy, 2025, p. 7).

Alongside the restriction of supervised consumption sites, the provincial government introduced a new service delivery model characterised by Homeless and Addiction Recovery Treatment (HART) hubs. Announced in August 2024, this represented a transition towards a treatment-focused and abstinence-oriented model of addiction care (Ali et al., 2025b). The government committed to establishing 28 hubs with an investment of approximately \$550 million over three years, with a

goal of opening all approved hubs by April 1, 2025 (Government of Ontario, 2026). Existing safe consumption sites affected by the proximity restrictions were given the opportunity to submit proposals to transition into HART hubs, with nine applications approved for conversion (Ali et al., 2025b). While HART hubs are intended to provide detoxification, addiction treatment, and housing services, they explicitly exclude harm reduction measures, including supervised consumption services and needle exchange programs.

The legislative changes were framed by the provincial government as necessary measures to enhance public safety and minimise community disruption (Government of Ontario, 2024b). A key catalyst for these shifts was a fatal shooting that occurred near a supervised consumption site in Toronto's Leslieville neighbourhood in July of 2023, which amplified public concern regarding safety in areas surrounding the facilities (Griffin, 2023). Government representatives argued that sites located near schools and childcare centres posed unacceptable safety risks, with the proximity rule framed as a means to promote "treatment, recovery, and safer communities" (Government of Ontario, 2026b). Officials further emphasised that the transition to HART hubs would improve access to treatment and recovery, positioning abstinence-based services as a more effective response to substance use disorders.

Cascading Effects of Safe Consumption Site Closures

As safe consumption sites close or are converted to HART hubs, demand for harm reduction services has not diminished. Individuals who previously relied on supervised consumption sites continue to require safe spaces and associated supports, resulting in increased reliance on alternative community and institutional settings. This section will examine the most pertinent spillover effects of safe consumption sites closures, including public libraries, drop-in centres, public spaces, and within healthcare settings such as hospital emergency departments and Emergency Medical Services (EMS).

Public Libraries

Public libraries represent one of the few remaining low-barrier public spaces where access is not contingent on public expenditure. Library access

and use is able to create “a feeling of legitimacy for a homeless person who is not welcome in many other public arenas,” (Kelleher, 2013, p. 23). Especially in the winter, libraries act to fill the shelter gap as they are low barrier, free to access, and have consistent hours. In many Ontario municipalities, libraries are listed as warming centres during winter months, further expanding their role as informal service hubs for vulnerable populations (City of Hamilton, 2026a; City of Kingston, n.d.). Libraries have, in effect, “evolved to become community outreach hubs and the demand for support houseless patrons receive there is not likely to diminish anytime soon” (Bolton, 2023).

In the context of safe consumption site closures, this use of public libraries by people experiencing homelessness and addictions has the potential to threaten libraries’ primary function as an information hub and a place to promote literacy for children and families. The redistribution of drug use into libraries following the closure of safe consumption sites is acutely observed in Hamilton, Ontario. Hamilton Public Library has been proactive, hiring social workers to attempt to connect library patrons in need with health and social services as well as answer questions about community resources (Hamilton Public Library, n.d.). However, this has not been enough to curb excessive use of the public library by people experiencing homelessness and substance use disorders.

Following the transition of Hamilton’s singular SCS into a HART hub on March 31, 2025, the winter of 2025-2026 saw a substantial increase in service incidents at the Hamilton Central Library (Chandler, 2024; Ghobrial, 2026). Between December 2025 and the end of February 2026, paramedics were called to the Hamilton Central Library 105 times and security administered naloxone to overdosing individuals on 44 separate occasions (Ghobrial, 2026). In the first five weeks of 2026, there have been 771 documented incidents involving security guards inside the library (Ghobrial, 2026). The magnitude and frequency of these incidents point to gaps in service provision elsewhere in the service provision ecosystem. The widespread installation of BRAVE motion sensors in public library bathrooms to help prevent patron overdoses shows that this issue is not unique to Hamilton Public Library (Ghobrial, 2026; Pare, 2024; Vancouver Island Regional Library, 2023).

The redistribution of service demand onto libraries has also generated measurable impacts on library accessibility and use by families. In Hamilton, a 60 percent decline in the borrowing of children’s materials at the Central Library location illustrates this sentiment (Coleman, 2026). Observed drug use, intoxication, and verbal outbursts within the library are cited as primary factors in this significant decline (Coleman, 2026). In response, Hamilton Public Library’s board debated temporarily shutting down the central library branch, but ultimately chose instead to implement controlled entry requirements, requiring patrons to present a library card or special access pass (Coleman, 2026; Chandler, 2026). While such measures aim to enhance safety, they also reshape the accessibility of public spaces and illustrate how service reductions in one sector can alter operations across community institutions. This demonstrates how libraries are unable to adequately support families and the magnitude of people experiencing substance use disorders simultaneously on their premises.

Community Drop-In Centres

Drop-in centres represent a critical component of community-based service networks supporting individuals who are homeless, precariously housed, or socially isolated. These programs are designed as low-barrier spaces that provide essential support, including meals, clothing, and hygiene facilities without the need for formal referrals (Toronto Drop-In Network, 2025a). The Toronto Drop-In Network is a member-based coalition consisting of over 50 diverse drop-in centres across the city (Toronto Drop-In Network, 2025a). Following the closure of multiple supervised consumption sites in Toronto in March 2025, drop-in centres experienced a rapid increase in overdose incidents (Raveendran, 2025), illustrating a displacement of risk from formal harm reduction settings into community service environments.

Data indicates that overdoses within drop-in centres increased by approximately 75% in April 2025, followed by a 175% increase in May and a 288% increase in June (Toronto Drop-In Network, 2025b). Prior to the site closures, drop-in centres typically reported fewer than ten overdose incidents per month across participating locations (Raveendran, 2025). Following the closures, staff at

the Metropolitan United Church, a member of the Toronto Drop-In Network, reported that between 30 and 50 individuals were using drugs daily on church property, with outdoor areas increasingly functioning as de facto consumption spaces (Raveendran, 2025). This change further supports the redistribution of drug use risk to adjacent social service providers, as similarly seen in public libraries.

Emergency Medical Services and Health System Costs

Reductions in supervised consumption capacity have measurable implications for healthcare and emergency system utilisation. Supervised consumption sites have been shown to generate significant cost savings by preventing overdoses from escalating into emergencies requiring ambulance transport and hospital treatment (Dow-Fleisner et al., 2022; Kennedy et al., 2017; Levensgood et al., 2021; Tran et al., 2021). Economic analyses demonstrate that managing overdoses on-site reduces reliance on emergency medical systems (EMS) and acute care facilities, producing measurable savings for provincial health systems. For example, Khair et al. (2022) found that about \$1600 worth of provincial funding dollars were saved per each overdose managed at the site. These costs included the cost of an ambulance, the cost of care at hospital, and the cost of treatment in an emergency department, totalling more than 2.3 million dollars in savings between November 2017 and January 2020 (Khair et al., 2022). In addition, research has found that lifetime HIV-related medical care costs outweighs the operating costs of safe consumption sites (Pinkerton, 2010), further demonstrating their cost-saving impacts.

In addition to these costs incurred, areas with SCS record fewer calls to EMS. This is because overdoses occurring on site at SCS are managed onsite immediately. (Dow-Fleisner et al., 2022; Kennedy et al., 2017; Levensgood et al., 2021; Tran et al., 2021). This also means that EMS are able to respond more quickly to other emergencies within a community. Quantitative and qualitative data from Hamilton provide visible evidence of increased pressure on emergency medical systems due to safe consumption site closures. With the transition of Hamilton's SCS into a HART hub, Hamilton has seen an increase in drug overdoses (Keeler, 2026). The director of Hamilton's HART hub reported that many recent overdose cases involve individuals who had previously relied on supervised consumption

services, highlighting the challenges associated with transitioning clients into alternative care models (Keeler, 2026). Data obtained from the City of Hamilton's Opioid Information System Dashboard (City of Hamilton, 2026), suggests that during the 73 months in which Hamilton's supervised consumption site was formally authorised, funded, and fully operational, the mean number of opioid-related paramedic responses was 63.25 calls per month, with a median of 61 calls. In the 12 months following the transition to a HART hub, the mean number of monthly calls increased to 128.57, with a median of 133 calls per month. This represents an increase of more than 100 percent in both mean and median response volumes. These findings indicate a substantial rise in emergency service demand following the closure of supervised consumption services, reinforcing evidence that service reductions in harm reduction interventions can produce cascading pressures across healthcare and emergency response systems.

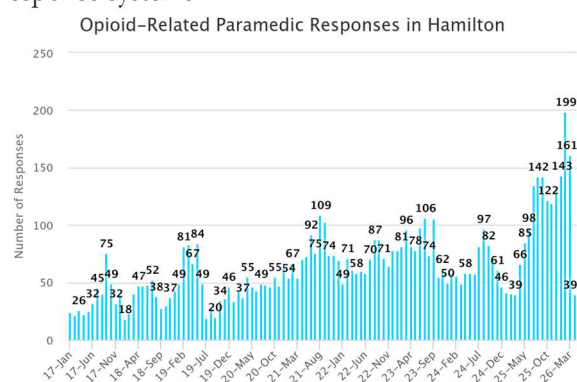


Figure 1. Opioid-Related Paramedic Responses in Hamilton, ON (City of Hamilton, 2026b).

Public Drug Use

A visible spill-over effect associated with the closure of supervised consumption sites in Ontario has been an increase in public drug use. When supervised environments are removed, people who use drugs often shift to public or semi-public settings due to a lack of viable alternatives (Tucker et al., 2025). Qualitative research conducted with people who use drugs in Sudbury illustrates this displacement dynamic, with participants noting that “if you take away the one place we had to go... where else are we supposed to do it?” (Tucker et al., 2025). At the same time, some participants described public drug use as a harm reduction strategy of last resort, noting that using substances in visible spaces increased the likelihood that bystanders could

respond in the event of an overdose (Tucker et al., 2025). Municipal data further supports findings of increased visible drug use following site closures. Toronto's Board of Health identified rising concerns regarding open substance use in neighbourhoods such as Jane and Finch and Parkdale, where community safety networks report noticeable increases in drug use occurring in public spaces (Callan, 2026). These outcomes illustrate that interventions intended to improve public safety are shifting risk away from supervised environments towards community spaces.

Remaining Operational Safe Consumption Sites

In addition to increasing pressure on community and health services, the closure of supervised consumption sites has significantly increased demand at facilities that have been permitted to remain open under legal protection. Following the implementation of the *Safer Streets, Stronger Communities Act*, several service providers launched constitutional challenges arguing that the forced closure of supervised consumption sites violated Section 7 of the *Charter of Rights and Freedoms*, which guarantees the right to life, liberty, and security of the person (Casey, 2025). Amidst these proceedings, several sites in Toronto were granted court injunctions allowing them to continue to operate temporarily while the case is being considered (Casey, 2025). While these injunctions preserved access to supervised consumption services in limited locations, they have contributed to an uneven service landscape in which demand has become concentrated at a small number of facilities.

Since April 2025, sites with court injunctions have reported increased rates of utilisation and operational strain. The Kensington Market Overdose Prevention Site has reported an approximately 30% increase in visitors, the Fred Victor Charity recorded increases of 15 to 35% percent in weekly visits, and Casey House reported a 25% increase in service utilisation, alongside increased drug use occurring outside its facility (McGillivray, 2025). Facilities operating under court injunctions have absorbed displaced demand without parallel increases in funding or staffing capacity (Bayoumi et al., 2024), demonstrating the system pressures generated by the restructuring of supervised consumption services in Ontario.

Policy Alternative: Homelessness and Addiction Recovery Treatment Hubs

The Homeless and Addictions Recovery Treatment (HART) hub model has been introduced in Ontario in three streams: mainstream, Indigenous-led, and a third stream intended to replace sites previously operating as safe consumption sites. HART hubs offer services like primary care, mental health and addictions care, supportive housing, social and employment services, and services to meet basic needs (Government of Ontario, 2026). The coordination of services meant to be provided at HART hubs point to a more network based, integrated model of care which aims to eliminate siloed service provision. HART hubs differ from safe consumption sites as they offer an increase in coordinated support, but do not offer harm reduction health services like needle exchange or supervised consumption services.

Though the transition began on March 31, 2025, evidence gaps leave early outcomes of HART hubs unclear. While officials in interviews have claimed that HART hubs are “extremely successful so far,” there is very little available data measuring the quantitative impact of HART hubs (Keeler, 2026). As of March 1, 2026, 11 of the 19 announced HART hubs have opened, and it is not clear when the remaining 8 are expected to open (Keeler, 2026). In some communities, the transition between SCS and HART Hub has occurred with service interruptions that reduced access to care. For example, Ottawa's Somerset West Community Health Centre closed its supervised consumption services in March 2025 but did not open as a HART Hub until six months later in September. As of March 1, 2026, the only services offered were showers, meals, and leisure activities (Keeler, 2026).

The absence of transparent reporting mechanisms further complicates the evaluation of HART hub effectiveness and is uncharacteristic of funding models for this type of service provision. In most housing, homelessness, and addiction service pilot models, funding is contingent upon demonstrated outcomes supported by stringent data reporting, as strict limitations on how funded dollars are meant to be spent greatly reduce flexibility (Richmond and Shields, 2024, p. 63). This funding model is characteristic of and integral to the neoliberal restructuring of state-funded human services, which became the norm during the shift to

new public management style governance in the non-profit sector. Service providers compete for precarious funding streams which are contingent on “greater discipline and parsimony in resource use,” which is dependent on robust metrics and data reporting (Hood, 1991, p. 5). This accountability system typically involves tightly controlled obligations which direct how funding is spent (Richmond and Shields, 2024, p. 66).

HART hubs, however, are slated to receive up to four times as much funding as supervised injection sites, with limited requirements for data reporting and evaluation (Government of Ontario, 2025). This contrasts sharply with the reporting expectations historically applied to supervised consumption services. Federally sanctioned supervised consumption sites operate under rigorous monitoring frameworks requiring the routine submission of standardised data to Health Canada and provincial ministries (Health Canada, 2025). This data includes the number of visits, client demographics, overdoses and medical emergencies, drugs used on site, and referrals to health and social services (Dalpé & Gagnon, 2021; Health Canada, 2025). These reporting obligations have enabled independent research and evaluation of sites, contributing to an evidence base demonstrating reductions in overdose mortality and increased connections to treatment and care (Drucker, 2006).

Policy justifications for replacing supervised consumption sites with HART hubs have frequently emphasised recovery-oriented care and public safety outcomes. Provincial officials have argued that “closing supervised consumption sites would reduce crime around them and help people get access to addiction support and a recovery plan” (Callan, 2025). However, supervised consumption sites have historically operated as complementary components within treatment pathways rather than alternatives to recovery (Wood et al., 2006). Many individuals utilise supervised consumption sites while waiting for access to treatment programs, with the average wait time to be admitted into residential treatment programs in Ontario exceeding 50 days (Office of the Auditor General of Ontario, 2019). The removal of supervised consumption services during these waiting periods may therefore increase risk exposure for people who use drugs rather than reduce it.

Concerns regarding the evidentiary basis for HART hub implementation have also been raised in formal oversight reports. The 2024 Ontario Auditor General (AGO) Report found that the Ministry of Health committed funding to HART hub development without conducting a comprehensive needs-based assessment (Office of the Auditor General of Ontario, 2024). The report further notes that key harm-reduction services have demonstrated effectiveness in preventing overdose deaths yet were excluded from the HART hub model (Office of the Auditor General of Ontario, 2024). In 2022-23 alone, the 10 sites that closed upon passing of the new legislation had successfully prevented fatalities from over 1,500 overdoses that happened on-site (Office of the Auditor General of Ontario, 2024, p. 4). Using previously established cost estimates from Kahir et al. (2022), this volume of overdose reversals represents approximately \$2.4 million in avoided healthcare expenditures.

The 2024 AGO report further found that the Ministry of Health “did not develop a comprehensive plan to assess and quantify the impacts on public health and Ontario’s health care system prior to finalising the decision to introduce the new legislation (p. 4). These findings suggest that the policy implementation occurred without sufficient evaluation of downstream system effects. Similar concerns have been raised by specialists within the field, including the Centre of Drug Policy Evaluation, public health leaders, and HIV and hepatitis organisations (Office of the Auditor General of Ontario, 2024; Centre on Drug Policy Evaluation, 2024; Canadian Public Health Association, 2024).

While HART hubs are positioned as a central policy alternative to supervised consumption sites, there is limited publicly accessible data on performance indicators, evaluation timelines, or mechanisms for oversight. This discrepancy is notable given that HART hubs receive substantially higher levels of funding than former safe consumption sites yet operate without equivalent transparency requirements. The absence of robust monitoring and evaluation frameworks limits the ability of policymakers, researchers, and communities to assess whether these new models effectively reduce overdose fatalities or improve outcomes for people who use drugs.

Discussion

While the integrated, service-coordinated goals of HART hubs align with broader federal initiatives such as Canada's *Reaching Home Strategy* (Employment and Social Development Canada, 2019), the closure of supervised consumption sites has introduced system-level pressures that were insufficiently accounted for during implementation. In particular, the absence of standardised reporting requirements for HART hubs represents a significant departure from established accountability norms in addiction and homelessness policy. The limited availability of performance data for HART hubs makes it difficult to assess their effectiveness relative to the well-documented outcomes associated with supervised consumption sites. This challenge is further compounded by the substantial increase in funding allocated to HART hubs, which receive significantly greater financial investment than the supervised consumption services they replaced (Government of Ontario, 2025).

The findings presented in this analysis demonstrate the cascading negative externalities produced across public libraries, community drop-in centres, the healthcare system, emergency medical services, and by members of the public witnessing increased public drug use. While HART hubs aim to improve service integration within centralised locations, the removal of harm reduction services has redistributed risk rather than reducing it. Instead of resolving underlying service demands, the restructuring of care has shifted responsibility onto institutions that were not designed to function as frontline responses to substance-related health crises.

Central to this outcome is the implicit assumption of service substitution embedded within the HART hub model. Policy implementation appears to assume that individuals who previously accessed supervised consumption services would transition directly to HART hub programming following site closures. However, the redistrictive effects identified across community and health system settings challenge the validity of this assumption. Rather than being absorbed within HART hub service capacity, the preceding analysis demonstrates that demand for harm reduction has instead been transferred to adjacent institutions and public environments. This pattern suggests that service needs have not been adequately redirected but instead displaced across various settings with varying levels of preparedness and capacity.

These outcomes raise concerns regarding the degree to which HART hubs are able to achieve their stated goals of promoting treatment and recovery pathways. The available evidence suggests that the transition from supervised consumption sites to HART hubs does not account for the complexity of service use patterns among people who use drugs, particularly those facing intersecting challenges related to housing instability, mental health conditions, and substance use disorders. The expectation of a direct one-to-one transition between service models is not supported by available data on outcomes, as the closure of supervised consumption sites in Ontario has been accompanied by increased pressures on surrounding institutions rather than a direct adoption of the HART hub framework. At this time of this analysis, the extent to which HART hubs can mitigate the cascading effects associated with supervised consumption site closures remains uncertain, particularly given the rapid pace of implementation and the limited empirical evidence supporting their effectiveness as a replacement for established harm reduction interventions.

Beyond these operational considerations, the restructuring of harm reduction services in Ontario reflects broader ideological dynamics shaping current addiction policy. The transition from harm reduction services to abstinence-oriented HART hubs frames access to care as contingent on behavioural compliance and perceptions of deservingness (Bryant & Raphael, 2020, p. 39; Zampini, 2018). Within this framework, services offered through HART hubs can be understood as conditional support that must be earned through abstinence, reflecting the means-tested logic characterisation of liberal welfare regimes (Bryant & Raphael, 2020, p. 39). Research across Canadian jurisdictions demonstrates that recovery-oriented policy shifts frequently reframe substance use as a matter of personal responsibility, shaping public discourse and political priorities while marginalising the perspectives of people who use drugs (Challand, 2025; Zampini, 2018).

Importantly, this policy shift towards recovery-based care has occurred despite evidence demonstrating the effectiveness of supervised consumption sites. A substantial body of literature supports harm reduction as a means to reducing overdose fatalities, connecting clients with treatment options, increasing public order, preventing the spread of HIV, and increasing safe injection practices

(Ng et al., 2017; Wood et al., 2017). Previous reductions in supervised consumption services following shifts in provincial leadership, including in Alberta and Ontario, illustrate how harm reduction policy is frequently shaped by ideological priorities rather than empirical evidence (Foreman-Mackey et al., 2022). Viewed in this context, the closure of supervised consumption sites represents a politically driven restructuring of care that prioritises recovery-oriented models over an established evidence base supporting harm reduction.

Conclusion

The findings presented in this analysis demonstrate that the closure of supervised consumption sites in Ontario has produced cascading effects across multiple community and institutional settings. Increased demand has been observed in public libraries, community drop-in centres, emergency medical services, and remaining supervised consumption facilities, indicating that the need for harm reduction services has not diminished but instead has been redistributed across less specialised environments. These outcomes suggest that supervised consumption sites functioned as a stabilising component within the drug policy ecosystem, and their removal has altered patterns of risk distribution across community and healthcare

systems. The transition to HART hubs introduces significant uncertainty regarding the effectiveness of replacement service models. Limited publicly available data, combined with the absence of standardised reporting mechanisms relative to those applied to supervised consumption sites, restricts the ability to evaluate outcomes systematically. Without comprehensive monitoring and needs-based assessment, it remains difficult to determine whether HART hubs are capable of minimising overdose risk, reducing healthcare system utilisation, or supporting long-term recovery outcomes. The observed redistribution of risk highlights the importance of evaluating harm reduction policies within a systems-level framework. Policy decisions affecting individual service components may produce unintended consequences across various sectors, especially when implementation occurs without adequate planning or evaluation. Future policy development in this area would benefit from transparent data collection, longitudinal evaluation, and impact analysis to ensure that interventions align with public health objectives, established evidence bases, and community capacity.

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Turbulence in Inflexibility: The Discursive Flaws of the Accessibility for Ontarians with Disabilities Act

Ashley Fortin, University of Victoria, Master of Public Administration

ABSTRACT

Using Fairclough (2010)'s method of Critical Discourse Analysis, this paper examines how Ontario's Accessibility for Ontarians with Disabilities Act (AODA, 2005) perpetuates policy instability through structural biases. Using Fairclough's (2010) three-dimensional framework, it examines issues such as definitional circularity (s.2), discretionary classification powers (s.6), and delayed enforcement mechanisms (s.35), which embed neoliberal governance ideas. Drawing on Foucault's (1995) concept of "judges of normality," Davis's (1995) bell curve paradox, and policy feedback theory (Béland, 2010), the study finds a "structural reproduction of turbulence:" policy that creates administrative friction, public distrust, and dependency loops. For example, the enforcement of "reasonable time" delays illustrates this: tribunal wait times average 4-10 years despite declarations of accessibility crises (CBC News, 2024; Ontario Legislative Review, 2023). Instead of promoting stability, the Act fosters volatility through conflicting statistical and normative standards (Snyder & Mitchell, 2006). This analysis shows how accessibility laws sustain policy uncertainty for disabled Ontarians, enriching public policy scholarship by revealing discursive mechanisms that uphold structural ableism under neoliberal conditions.

Introduction

In turbulent times, policies ostensibly designed to stabilize society often reproduce the very instabilities they seek to resolve. This paper uses Critical Discourse Analysis to examine how the *Accessibility for Ontarians with Disabilities Act* (AODA, 2005), Ontario's landmark accessibility legislation, embeds structural biases that perpetuate exclusion despite its promise of inclusion. Drawing on Foucault's 'judges of normality' and Davis's critique of enforced normalcy, this paper demonstrates how the AODA's discursive architecture, that is, the way language, framing, and structural choices within the text itself construct meaning and reproduce power relations, creates 'turbulence' through definitional ambiguity, bureaucratic discretion, and hierarchical classification. Davis's concept of enforced normalcy, the process by which social institutions actively construct and impose a standard of 'normal' embodiment, rendering deviation from that standard a problem to be corrected rather than a neutral difference, reveals that disability is not an inherent condition but a product of how normalcy is defined and enforced. Often, in times of turmoil, the focus of policy is the stabilization of society: citizens, the economy, and government itself, especially amid economic, geopolitical, and sociopolitical uncertainty.

Socially, there is a focus on Critical Policy Analysis (Dodge et al. 2022; Fischer, 2016), which examines the policies that have contributed to society's current state and how to change them. However, within the process of stabilization comes a point at which policy creates the illusion of, or complete hegemony, wherein dominant groups secure consent to their rule by making existing power arrangements appear natural, inevitable, and common-sense (Gramsci, 1971; Goodley, 2017). Politicization becomes the norm, and bias becomes customary. Considering these biases, and arguably the human nature of bias, when examining where they lie within the policy landscape and the effects on individuals, these biases are meant to hold sway in a politicized space. Related to the politicization of institutions, while speaking on the birth of the prison system, Foucault (1975) states:

"The judges of normality are present everywhere. We are in the society of the teacher-judge, the doctor-judge, the educator-judge, the social worker-judge; it is on them that the universal reign of the normative is based; and each individual, wherever he may find himself, subjects to it his body, his gestures, his behaviour, his aptitudes, his achievements." (Pg. 304).

In times of instability in the political system, and thus in public policy, it is crucial to acknowledge the dualities that are presented within policy and in society as a whole, and the effects on the socio-

political sphere, where biases are embedded in the society in which we live, often emerging during turbulent times and being fueled by them. In this way, the basis of this paper is the idea of dualistic perspectives, as demonstrated by Foucault in the previous passage, integrating policy and understanding where biases are embedded within our systems.

Biases, although not directly addressed by Foucault, are the direct lineage of the idea of the judges of normality and of normality itself, through the socially accepted definition of normality. However, the best definition of normality comes not from the bell curve, or normal distribution from statistics, but from societal construction of normalcy, as Davis (1995) states: "The problem of the disabled is created by the way normalcy is constructed to create the problem of the disabled person" (p. 24). This paradoxical understanding, both visualized by a bell curve, and not, feeds into the turbulence of public policy towards the disabled. Policy makers inherit this paradox, wielding statistical norms to justify tiered accessibility standards, "reasonable accommodations," and selective enforcement, all while claiming scientific impartiality. The AODA embodies this tension perfectly: its classification powers (s. 6) mirror bell curve logic, positioning some organizations as "normally accessible" while others require remediation or face discretionary exclusion. This creates policy turbulence because it demands mathematical precision while delivering bureaucratic ambiguity, disabled people become perpetual outliers in a system measuring against non-disabled norms, generating endless cycles of assessment, appeal, and reclassification without eliminating barriers (Snyder & Mitchell, 2006). These paradoxical, dualistic approaches emerge not only in the conceptualization of normalcy but also in the enforcers of normalcy: policies themselves. This can be demonstrated specifically through the Accessibility for *Ontarians with Disabilities Act* (AODA; 2005). As the first accessibility act in Canada, the Act illustrates a broader failure by policymakers to navigate uncertainty and competing policy frameworks in turbulent sociopolitical contexts. These failures are not only structural but are shaped by embedded biases that influence how disability is understood, governed, and prioritized.

Literature Review

Disability has long been an enigma to policymakers, with each era's policies reflecting the

prevailing biases and perceptions of the time (Jongbloed, 2003). Historically, disability policies evolved from viewing disability as a threat to law and order to a medical or economic deficit and eventually as a sociopolitical issue (Jongbloed, 2003). In Canada, these evolving perspectives influenced the development of disability policies within the broader social policy framework (Jongbloed, 2003).

Initially, disability was perceived as a threat to law and order, leading to policies focused on confinement and control. This approach aimed to segregate disabled individuals, treating them as anomalies to be managed rather than as members of society (Jongbloed, 2003; Foucault, 1975). These early policies were driven by societal fear and misunderstanding of disability (Jongbloed, 2003). However, there is also a question as to the degree of power relations within this so-called fear, the societal interest in control compared to 'misunderstanding,' and the consequential bias found within control when compared to the "societal fear" of disability and what is gained by the control of disabled individuals.

Each era's policies were tied to public perceptions of disability and prevailing models of disability. For example, social assistance programs from the 1940s, characterized by a pity-based approach, coexisted with policies from the 1990s that emphasized independence and the beginnings of the social model (Crichton & Jongbloed, 1998). This historical layering led to policies that incrementally addressed demands, often fragmenting disability policy within broader ableist frameworks: systems that treat non-disabled experience as the default standard (Priestley, 2003). These frameworks have yet to fully grapple with what it means to live with a disability and society's responsibilities (Jongbloed, 2003; Shakespeare, 2016).

Shakespeare (2016) argues that the medical model of disability, which locates disability within the individual as a health condition or impairment requiring treatment or cure, dominated policy thinking for much of the twentieth century, though outdated, still influences many contemporary policies, leading to inadequate support for individuals with disabilities, overshadowing social barriers (Scotch & Schriener, 1997). However, Lawson & Beckett (2021) and Haegle & Hodge (2016) argue that access to healthcare and social supports, with a focus on the medicalization of disability, remains essential.

Furthering the idea within disability policy, Research on policy ideas emphasizes their crucial role in policymaking, showing that ideas function both as cognitive shortcuts that help actors interpret complex realities and as strategic instruments used to advance their preferred understanding of society (Swinkels, 2020; Carstensen et al., 2024) - which can be seen in the *AODA*.

On the surface, it may seem we have moved beyond these beliefs, but it is crucial to acknowledge how deeply they are embedded in society and how our current policies reflect this past, perpetuating inequities and inflexible, turbulent ideologies within our current framework. With the enactment of the *AODA*, Ontario became the first jurisdiction in Canada to develop and implement an accessibility policy (Smith-Carrier et al., 2020). Key dates include the passage of the Act in May 2005 and the submission of a series of independent reports to the provincial government in 2010, 2015, 2019, and 2023, all of which consistently found that progress on accessibility in Ontario was insufficient (Kelly, 2024). By 2019 and 2023, the reports characterized accessibility progress in Ontario as “soul-crushing,” “glacial,” and ultimately “a crisis” (Kelly, 2024; Beer, 2015; Ontario Legislative Review, 2023). Furthermore, it had been described as “an atmosphere of...uncertainty” including “frustrating and stirred up emotions”, and in some cases, an “us vs them” dynamic (Beer, 2015). Central to this perspective is the concept of “sameness,” which prioritizes uniformity as the ideal standard of equality (Ingstad & Reynolds-Whyte, 1995; Devlinger et al., 2003).

Methods

Using Fairclough (2010)'s critical discourse analysis methodology, which examines texts across three layers: language and word choice, patterns of production and consumption, and broader institutional social practice, this paper examines the *AODA* to identify embedded biases and their consequences for disabled individuals.

Findings

Regarding the policy's inflexibility and effectiveness, which cause turbulence, the first key bias within the *AODA* is a bias towards structure, system, and status (Fortin, 2025). Through the use of tone and discourse situated within the bureaucratic ideals of the Neoliberal Governance Structure, the Act exhibits biases, including Authority Bias (the

tendency to defer to institutional hierarchy as legitimate regardless of outcome), Status Quo Bias (the preference for existing arrangements even when they produce inequitable results), and System Justification (the psychological tendency to defend and legitimize existing social systems even at personal cost) (Fortin, 2025). In this case, language and discourse is used to create the paradigm of accessibility being ‘special’ or ‘abnormal,’ even going as far as to describe different classes of people in Section 6, Subsection 8 of the act: “An accessibility standard may define a class to consist of one person or organization, or to include or exclude a person or organization that has the same or different attributes, qualities, or characteristics” (*Accessibility for Ontarians with Disabilities Act* (*AODA*), 2005, c. 11, s. 6 (8)). In this way, the *AODA* does not merely respond to uncertainty but actively reproduces it, embedding instability within accessibility governance during turbulent sociopolitical conditions. Furthering the argument that the turbulence is not just external, but embedded within policy itself, the bases of system, structure, and status are compounded to create a bias towards method, ambiguity, and neoliberal governance (Fortin, 2025). For example,

The Minister may delegate any of his or her powers under this Act to a director, whether or not the director is an employee of the Ministry, or to such employees of the Ministry as may be named in the delegation (*AODA*, 2005, c. 11, s. 34).

The power, held essentially by the minister and indirectly by the government itself, further envelops policies themselves in crises for the population through the ambiguity of the *AODA*. The power held by the minister, and in effect the government itself, is held in the ambiguity of the act. By focusing on the justification of the justification and the status quo bias regarding methods, the law of the instrument (the tendency for institutions to over-rely on familiar procedural tools regardless of whether those tools are actually suited to the problem at hand) applies, wherein the system may not be as efficient as described, feeding into each crisis and creating crises of its own.

Furthermore, this is starkly demonstrated in the *AODA*'s enforcement mechanisms. Section 35(2) states: "A notice, order or other document provided to a person with disabilities under subsection (1) shall be provided within a reasonable time after the request

is made" (AODA, 2005, c. 11, s. 35(2)). This vague temporal standard exemplifies the Act's discursive generalization of the system itself: its tone suggests efficiency while embedding structural delay. On Fairclough's layer of social practice, this creates profound crises for disabled individuals: tribunal wait times averaging 4-10 years (Tribunal Watch Ontario, 2024); minimal enforcement action with only 5 fines issued from 2015-2017 despite hundreds of thousands of obligated organizations (ARCH Disability Law Centre, 2024; CBC News, 2024); and systemic de-prioritization where compliance orders lack "regulatory teeth," leading to the effective discardment of disabled people both collectively and individually (Kelly, 2024; Ontario Legislative Review, 2023). The phrase "reasonable time" becomes a carefully constructed rhetorical device that appears to promise accountability while granting bureaucrats unlimited discretion. Complainants face endless administrative limbo, reinforcing dependency on a system that perpetually defers justice.

Furthermore, a key bias embedded within our disability policies is a structural Reproduction of Turbulence, regardless of the inclusion of bureaucratic oversight. Within the AODA, the very definition of an accessibility standard can be seen as a structural reproduction, through the friction it creates and the ambiguity it presents. According to Section 2, an "accessibility standard" means an accessibility standard made by regulation under section 6; ("norme d'accessibilité") (AODA, 2005, c.11, s. 2). Essentially, the standard is the standard itself, which, on the surface, may seem self-evident, yet it raises questions about the detail needed for the standard, the structures it takes, and whether it is value-based or whether the wording itself reproduces the need for the standard, leaving the government with a lack of accountability and guidelines, leading to the social reproduction of turbulence, as disabled individuals may be politically and practically sidelined by a lack of accessibility, creating further social struggles, including reliance on benefits due to being unable to functionally survive (Smith-Carrier et al. 2020), and reliance on the government to grant these rights as a right bearer rather than as inherent, much like their non-marginalized counterparts.

This is evident in Section 6, subsection 7, where the Accessibility Standards itself is defined as potentially "creat[ing] different classes of persons or organizations or of buildings, structures or premises and, without limiting the generality of this power, may create classes with respect to any attribute, quality or

characteristic or any combination of those items." (AODA, 2005, c. 11, s. 6 (7)). Furthering that, "An accessibility standard may define a class to consist of one person or organization or to include or exclude a person or organization having the same or different attributes, qualities or characteristics" (AODA, 2005, c. 11, s. 6 (8)).

Disabled individuals are thus caught in a political and social loop: the state's vague definitions perpetuate administrative friction and hinder practical accessibility efforts. Section 6(8) empowers the government to classify organizations or individuals differently depending on their "attributes" or "qualities" (AODA, 2005, s.6(8)). This language institutionalizes differentiation within the accessibility framework, reproducing systemic inequities rather than dismantling them. Consequently, those impacted are often forced into dependency on state benefits or advocacy systems for basic survival, positioning the government as a rights-granter rather than recognizing disabled persons as equal right bearers with inherent entitlements, much like their non-disabled counterparts. These clauses normalize differentiated treatment under the banner of regulation, embedding the potential for exclusion directly within the legal architecture designed to prevent it. In doing so, the AODA exemplifies how policy can reproduce the very social turbulence it claims to resolve: through definitional vagueness, bureaucratic control, and the maintenance of hierarchical classification.

Critically, these findings can be understood through a critical disability and neoliberal governance lens, which shows that the AODA does not simply regulate accessibility but also reproduces power through its language and structure. By defining accessibility through vague standards, allowing broad ministerial discretion, and using classifications that can include or exclude people and organizations, the Act frames access as something to be managed bureaucratically rather than guaranteed as an inherent right. This creates a policy environment where uncertainty, delay, and uneven enforcement become built into the system itself, which is why the turbulence you describe is not just a result of external implementation problems but a feature of the policy's discourse. In that sense, the AODA reflects structural ableism: the embedding of non-disabled norms as the invisible institutional default, such that exclusion is produced systematically, as it appears to promote

inclusion while still preserving the authority of the state, the status quo of existing institutions, and the unequal burden placed on disabled people to navigate inaccessible systems.

Discussion

Taken together, these findings suggest that the AODA is not merely an imperfect accessibility regime but a neoliberal governance framework that reproduces turbulence through ambiguity, classification, and discretionary authority. Rather than eliminating barriers, the Act stabilizes managerial control while leaving disabled people to absorb the consequences of delay, inconsistency, and under-enforcement. Through the idealization and bias towards the Status Quo, ideologies are embedded within the Act, creating classes of individuals and inflecting authority. In turbulent times, this leads to the ignorance of individuals with disabilities and to ambiguity being taken in the form of policy rather than towards the disabled population themselves. The duality of being the judge and jury on the side of the statute creates turbulence within a population, the same way that the duality creates peace for the so-called “normal” population that is seen unilaterally. Regardless, in any time of turbulence or uncertainty, the key to the future lies in how the population reacts, especially regarding the uncertain future of minority groups. Often, during times of uncertainty, individuals “who tie themselves together instrumentally, for a common purpose,” establish “a set of expectations for action towards a common goal” and collectivize individual actions “in light of a shared vision for the future” (Dean 2019 13–14; Mrovlje, 2024 p.28). Notably, disabled individuals, under the power structure, are often used as consultants and visual symbols to represent the government’s vague goals as recipients of rights, despite the fact that “A majority of the members of the committee shall be persons with disabilities.” (AODA, 2005, c. 11, s. 29 (3)), thus legitimizing current power structures. What must be addressed is the reduction of disabled individuals to symbols—and the subsequent tokenization that reinforces their marginalization (Drake, 2002; Joiner, 2006; Stainton, 2005). The first step is to acknowledge the limitations of the Acts in their current forms and the lack of meaningful input from disabled individuals. “Consultation” is not enough; it does not grant the minister the power, or obligation, to act on findings and suggestions, as all authority remains centralized. This also affects authority itself: people with

disabilities need greater autonomy to shape policies that affect them, informed by their lived experiences (Prince, 2009; Orsini & Prince, 2018). With this, it is key to view disability policy in terms of dimensions, as described in Fortin (2025) as shown in Figure 1.

In turbulent times, the key is to balance preconceived notions, public perception, and representation with the structural dimensions of policy. However, policy is not stuck in a cycle and often feeds dimensions into one another, reproducing turbulence (Béland, 2010; Béland & Schlager, 2019; Hall, 2019; Munro, 2024). This dynamic aligns closely with policy feedback theory, which posits that once enacted, policies exert both interpretive effects (shaping how citizens understand problems and their roles) and resource effects (altering political capacities, access to benefits, and institutional incentives), thereby influencing future policymaking in recursive, often self-reinforcing ways (Béland, 2010; Béland & Schlager, 2019; Mettler & Soss, 2004). In the context of disability policy like the AODA, this manifests as a structural mechanism where vague standards and discretionary classifications do not merely reflect external turbulence but actively produce it: bureaucratic language frames accessibility as a managerial problem requiring ongoing negotiation, which in turn reinforces public perceptions of disability as an individualized administrative burden rather than a collective structural failing (Holler, 2024; Pierson, 2004).

Critically, this feedback loop intersects with neoliberal governance logics, in which policy design privileges procedural flexibility and ministerial authority over substantive rights enforcement, thereby embedding path dependency that sustains inequality even as it appears to address it (Baudot, 2018; Hall, 2019). For disabled populations, the interpretive effect is particularly pernicious: repeated encounters with delayed enforcement and hierarchical classification cultivate learned helplessness or adversarial advocacy, while resource effects (such as limited tribunal access or inconsistent standards) concentrate power in state institutions, discouraging collective mobilization and perpetuating reliance on discretionary state largesse (Burke & Barnes, 2018; Munro, 2024). From a critical disability studies perspective, this reproduction of turbulence exemplifies structural ableism, wherein policy discourse normalizes non-disabled norms as the default, positioning disabled people as perpetual supplicants in a system that layers contradictory

welfare logics atop one another without resolving underlying exclusions (Goodley, 2017; Hughes, 2019).

Moreover, in turbulent sociopolitical conditions (such as economic precarity or shifting partisan priorities) these feedback mechanisms amplify volatility: positive feedback (the reinforcement of existing dynamics) may stabilize neoliberal frames temporarily, but negative feedback (disruptive counter-pressures) from advocacy failure, which generate policy lurches, where reforms promise inclusion yet revert to status quo biases through ambiguity (Howlett, 2019; Kingdon, 2011). Applied to the AODA, Sections 6 and 35 illustrate this layered instability, as ministerial delegation and "reasonable time" clauses create institutional interstices filled with uneven outcomes, feeding back into public distrust and further entrenching the policy's own inefficiencies (AODA, 2005; Ontario Legislative Review, 2023). Ultimately, this theoretical integration reveals turbulence not as a policy failure but as a form of policy functionality within neoliberal and ableist paradigms, in which structural dimensions perpetually regenerate through discursive and material loops, thereby demanding a paradigm shift toward unconditional access frameworks - policy models that treat accessibility as structural infrastructure, like roads or utilities, rather than a negotiated accommodation (Fortin, 2025).

The AODA exemplifies how policy ostensibly designed for stability can systematically reproduce turbulence through discursive architecture. Its definitional ambiguity, classification powers, and enforcement delays don't merely fail to deliver accessibility — they actively construct disabled Ontarians as manageable outliers within neoliberal governance frameworks. This "structural reproduction of turbulence" demands a paradigm shift from bureaucratic discretion toward unconditional rights frameworks, in which accessibility becomes infrastructure rather than aspiration. During uncertain times, effective public policy must dismantle rather than replicate the bell curve logic that positions disabled people as perpetual deviations requiring remediation.

Recommendations

Yet, optimistically, these fragments contribute to a larger picture: until policy and government seek to represent disabled individuals not as subjects to be governed but as co-creators of their own governance, accessibility will remain aspirational, without "teeth", rather than a fully realized structure of equity. In this case, the turbulence is created by repeated focus on governmental responsibility and by the lack of diversity embedded in disability policies themselves. The key to the solution, within the political realm, is recognizing the feedback loop among public bias, embedded bias, and the lack of regulation in policy. To avoid cycling through turbulence, it is crucial that we transition to policies that move away from reactive, strong measures and strengthen diversity in authority. There are four key recommendations based on the findings from Fortin (2025), which include:

- **Implementing Whole-of-Government Approaches** involves ensuring that accessibility considerations and responsibilities are integrated across all levels and sectors of government, rather than remaining confined to isolated ministries or specialized laws.
- **Transitioning to proactive, rights-based frameworks** emphasizes anticipating barriers and recognizing accessibility as a fundamental human right.
- **Strengthening Disabled-Led Authority** should focus on diversity to reduce the assumption of homogeneity, enabling individuals with disabilities to serve as equal partners with decision-making authority, rather than only in consultative or token roles, thereby co-creating policies that reflect lived experiences, and
- **Improving accountability and enforcement** requires designing and implementing clear, measurable mechanisms with 'teeth:' transparent enforcement tools capable of delivering meaningful sanctions and incentives, going beyond symbolic reporting to genuinely promote accessibility compliance.

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Fragmented Provincial Privacy Law and Uneven AI Rights in Canada

Salma Jaffar, McMaster University, Master of Public Policy

ABSTRACT

Artificial intelligence (AI) systems are increasingly deployed by private-sector actors in Canada to inform or automate decisions in areas such as employment, credit, insurance, and consumer services, intensifying concerns around transparency, accountability, and privacy. In Canada, however, responsibility for regulating private-sector privacy rests primarily with the provinces under section 92(13) of the *Constitution Act, 1867*, resulting in a fragmented legal landscape. This paper examines how provincial variation in private-sector privacy law produces uneven AI-related privacy protections for Canadians. It argues that Québec's strengthened framework under Law 25, which imposes explicit obligations regarding automated decision-making, transparency, and data governance, stands in sharp contrast to the principles-based, PIPEDA-aligned regimes in Alberta and British Columbia. Through a comparative legal and policy analysis, the paper demonstrates how these divergent approaches create siloed data governance structures, complicate national AI deployment, and result in unequal privacy rights for individuals subjected to similar AI-enabled services across provinces. While regulatory diversity is often defended as a feature of Canadian federalism, the paper contends that such fragmentation is increasingly difficult to justify in the context of cross-jurisdictional AI systems that expose individuals to comparable risks. The paper concludes by arguing that Québec's framework should not be viewed as a regulatory outlier, but rather as a more realistic response to AI-driven data practices, and recommends that the federal government issue national guidance on AI-related private-sector privacy practices to reduce fragmentation without encroaching on provincial jurisdiction.

Artificial Intelligence, Federalism, and Fragmented Privacy Governance in Canada

Artificial intelligence (AI) systems are being increasingly deployed by private-sector actors and organizations in Canada to make or inform decisions in all areas of industry, such as employment, credit, insurance, pricing, and making business more efficient. These systems rely on large-scale data and personal information, raising concerns about transparency, accountability, and individual privacy rights. In Canada, however, legal responsibility for regulating private-sector privacy does not rest primarily with the federal government. While the federal *Privacy Act* governs public-sector institutions only, (Privacy Act, 1985), private-sector privacy regulation falls within provincial jurisdictions under section 92(13) of the *Constitution Act, 1867*, which assigns provinces authority over “property and civil rights in the province”, (Justice Canada, 1982/1867). As a result, Canadian privacy law, particularly the adoption of AI applied to the private-sector is fragmented across provinces.

This fragmentation is increasingly problematic as provinces adopt divergent approaches to regulating AI-relevant data practices. Québec has enacted a significantly strengthened private-sector privacy framework through Bill 64: *An Act to*

modernize legislative provisions as regards the protection of personal information (commonly referred to as Law 25), which introduces explicit obligations related to automated decision-making, transparency, and data governance, (Assemblée Nationale du Québec, 2025). By contrast, Alberta and British Columbia continue to regulate private-sector privacy through statutes closely aligned with the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), relying primarily on principles-based, technology neutral standards rather than AI-specific rules, (Justice Canada, 2000). These differences raise pressing questions about whether Canadians' privacy protections in AI-enabled services should vary based on provincial residence, and whether such variation is compatible with fairness, accountability, and national coherence in data governance and the institutional adoption of AI.

This paper argues that provincial privacy laws create uneven protections for Canadians in AI-enabled services, with Québec's advanced framework contrasting with Alberta and British Columbia's PIPEDA-based approaches, resulting in a fragmented data governance landscape that limits private-sector AI deployment and creates inconsistent privacy protections for Canadians. To support this claim, the paper proceeds in three parts. First, it explains how provincial jurisdiction over

private-sector privacy law produces siloed data governance structures that shape AI deployment decisions. Second, it examines Québec's Law 25 as a case study of a more interventionist, AI-relevant privacy framework. Third, it analyzes the policy consequences of divergent provincial standards, including their effects on AI deployment practices and the distribution of privacy rights across Canada.

The paper then considers counterarguments grounded in federalism, regulatory experimentation, and principles-based sufficiency. Before concluding, reflections on assessing whether the resulting variation in AI-related privacy rights across Canada is acceptable within a federal system, whether Québec's framework should be understood as a national model or a regulatory outlier, and whether principles-based privacy laws are sufficient for governing AI, following a policy recommendation that the Government of Canada issue national guidance on AI-related private-sector privacy practices to reduce fragmentation while not exercising federal overreach over provincial jurisdictions.

Provincial Jurisdiction over Private-Sector Privacy Law and Siloed Data Governance

The fragmented governance of private-sector data in Canada is not accidental; it is a direct consequence of Canada's constitutional division of powers. While the federal *Privacy Act* governs how federal institutions collect, use, and disclose personal information, it does not apply to private-sector actors, (Government of Canada, 2025). Instead, regulation of private-sector privacy largely falls within provincial jurisdiction under section 92(13) of the *Constitution Act, 1867*, which assigns provinces authority over "property and civil rights in the province", (Justice Canada, 1982/1867). As privacy law has long been understood as a form of consumer and contractual protection governing relationships between private actors, provinces carry primary authority to legislate in this area.

This constitutional allocation has produced a decentralized privacy framework in which provinces may enact their own private-sector privacy statutes, so long they meet minimum federal standards where applicable. PIPEDA applies to federally regulated industries across Canada and serves as a default privacy law in provinces without their own private-sector legislation. Only three Canadian provinces, Québec, British Columbia, and Alberta, have adopted

their own privacy laws that legally replace PIPEDA. However, British Columbia's and Alberta's Personal Information Protection Acts (PIPA), are largely similar in structure and approach to PIPEDA, being technology neutral. Québec, by contrast, has adopted a much stronger private-sector privacy framework, especially after the introduction of Law 25, which imposes more detailed rules and obligations on organizations. As a result, private-sector organizations deploying AI systems must comply with different legal practices depending on the province in which data is collected, processed, or used and resulting in multiple parallel privacy regimes across Canada rather than a single harmonized system.

These jurisdictional boundaries contribute to siloed data governance by structuring compliance obligations around provincial borders rather than around the functional operation of AI systems. Private-sector AI tools such as algorithmic hiring systems, credit risk models, or customer profiling applications are often developed and deployed across multiple jurisdictions simultaneously. However, because privacy obligations are provincial, data governance practices must be divided to align with varying statutory requirements. This division discourages integrated, cross-jurisdictional data governance strategies and drives organizations to tailor data practices to the most admin manageable or least restrictive regulatory environment. Which often results to organizations in provinces without clear privacy guidelines, like Alberta and BC to be discouraged to implement/deploy AI in their institutions out of risk-adversity.

Privacy law scholars such as Teresa Scassa have noted that Canada's traditionally soft enforcement approach to private-sector privacy offers limited accountability in a data-driven economy. Where enforcement powers and penalties vary by province, organizations are more likely to design their data practices around regulatory risk rather than consistent privacy protections (Scassa, 2021). The consequences of a federal system is not solely legal complexity, but a structural constraint on how AI systems are designed and deployed. AI development typically relies on large, diverse datasets to improve accuracy, reduce bias, and enhance predictive performances. When data governance obligations differ across jurisdictions, organizations may restrict data sharing, limit tech deployment in

certain provinces, or design AI systems to adhere to the lowest common compliance standard. In this way, provincial jurisdiction over private-sector privacy law does not simply regulate data practices after the fact; it shapes AI innovation trajectories by influencing where and how AI systems can legally operate.

However, one could consider that uneven provincial privacy standards are an acceptable, and even desirable, feature that honours Canadian federalism. Regulatory diversity allows provinces to experiment with different policy approaches and tailor privacy protections to local values and risk tolerances. From this perspective, Québec's more interventionist framework and Alberta's and British Columbia's principles-based models reflect legitimate exercises of provincial autonomy rather than regulatory failure.

Yet, while such an argument may be defensible in theory, AI-enabled data practices complicate this argument in reality. Private-sector AI systems routinely operate across provincial boundaries, legal divergence translates into unequal privacy rights for organizations subject to similar automated decision-making processes. Rather than fostering productive experimentation, fragmented standards risk undermining fairness, predictability, and coherent accountability in AI governance. This tension between constitutional structure and AI reality, forms the basis for the deeper divergence explored in the following sections.

Overall, this siloed governance structure forms the foundation for the divergence examined in the following sections. While all provinces share constitutional authority over private-sector privacy, they have exercised that authority unevenly. Québec has chosen to deeply modernize its legal framework in response to AI-driven data practices, while Alberta and British Columbia have largely maintained principles-based regimes aligned with PIPEDA. Understanding this divergence is essential to assessing whether Canada's current legal system produces acceptable outcomes for privacy protection, innovation, and fairness in AI-enabled services.

Québec's Law 25 Imposes Stronger AI-Related Obligations Than Other Jurisdictions

Québec's Law 25 represents a substantial modernization of private-sector privacy law, introducing obligations that directly address how to deploy AI in regard to privacy and the privacy risks of AI-enabled services. Unlike principles-based regimes in Alberta and British Columbia, Law 25 explicitly governs automated decision-making, transparency, and data governance, giving individuals and organizations enforceable rights including penalties that mitigate the "black-box" nature of AI systems. Under Law 25, organizations must inform individuals when decisions are made when using automated technologies such as AI, disclose the personal information used and the principal factors influencing the decision, and allow individuals to request corrections or provide additional observations, (Gliga-Belavic, 2023).

In contrast, Alberta and BC's PIPEDA-style frameworks rely on broad accountability principles without specifying requirements for automated decision-making or penalties if privacy laws are breached, leaving individuals less informed about how AI systems affect them, (The Canadian Bar Association, 2021). As a result, individuals in these provinces receive less information about when AI is making or influencing decisions, how the system works, or what data it relies on. Québec's more detailed approach strengthens transparency and data governance by giving people clearer rights and stronger expectations for how AI-related data practices must be managed. This transparency is critical for ensuring that the private-sector can understand where necessary, AI outcomes. However, it drives the question regarding is it fair that Québec has stronger privacy laws over the rest of Canada and is fragmentation just? This question signals that Québec's privacy regime can be deemed problematic and exacerbates privacy inequalities in Canada.

It is worth acknowledging a possible counterargument: Québec's stricter rules could be seen not as problematic but as beneficial. Supporters of Law 25 might argue that detailed transparency and accountability obligations encourage organizations to adopt better privacy practices and foster public trust in algorithmic systems. From this perspective, Québec's rules offer a model of how to govern automated decision-making responsibly without undermining digital innovation and governance overreach. However, even if Québec's heightened protections are desirable on their own merits, their existence alongside more flexible privacy regimes in

Alberta and British Columbia contributes to a pathway of legal standards that makes it difficult for organizations operating nationally to develop consistent privacy practices.

A relevant example is such as the BIG 4 consulting firms. A company such as Deloitte would operate varying in each province due to the federal nature in Canada section 92(13) of the Constitution Act, which gives authority for each province to impose privacy laws at their own accord - this creates an uneven adoption of privacy laws across Canada, even within the same company. For a larger company this could be seamless, but the inconsistent privacy laws across the country could discourage SME enterprises from deploying AI systems. This fragmentation can lead to uneven privacy protections for Canadians and raises questions about fairness and predictability in the governance of AI-enabled services.

In sum, Québec's Law 25 sets out stronger and more specific obligations for automated decision-making and data governance than the principles-based frameworks in Alberta and British Columbia. By requiring greater transparency and giving individuals clearer rights to information and review, Law 25 better aligns legal obligations with the risks presented by AI systems but it also highlights how divergent provincial approaches can produce unequal privacy protections across Canada. Together, these rules create clearer expectations for businesses and stronger rights for individuals in contexts where AI and automated systems play a central role.

Divergent Provincial Standards and Uneven Privacy Protections for Canadians

The divergence between Québec's Law 25 and the principles-based privacy regimes in Alberta and British Columbia has direct implications for how Canadians experience privacy protection in AI-enabled services. As private-sector organizations increasingly rely on automated systems to make or inform decisions in areas such as employment, credit, insurance, and consumer services, individuals across Canada are exposed to similar data-driven practices. However, the legal protections available to them differ depending on provincial jurisdiction. This results in uneven privacy rights for Canadians who are subject to comparable AI systems but are not afforded the same transparency, accountability, or

ability to understand how decisions affecting them are made.

As explained in argument two, in Québec, the private sector benefit from explicit rights related to automated decision-making, including being informed when AI is used, gaining access to information about the data and factors involved, etc. In contrast, industry in Alberta subject to *Alberta's PIPA* and British Columbia's *BC PIPA*, relies on broader accountability principles under PIPEDA-style legislation, which does not guarantee the same level of transparency or explanation when AI systems are deployed. As a result, people in these provinces may not know when automated tools are influencing outcomes that affect their lives, nor how those systems operate. This difference illustrates how provincial legal choices translate into unequal privacy protections, even when technological risks are the same.

This argument is further reinforced by Canada's former privacy commissioner Chantal Bernier's analysis on the privacy law reform in Canada. Bernier noted that fragmentation in privacy law does not simply create legal diversity, but leads to uneven protections in practice. She highlights that even the European Union's General Data Protection Regulation (GDPR), which was established to replace national privacy laws throughout EU nations with a unified framework, has even struggled to ensure consistent application across jurisdictions due to EU nations political and cultural differences (Bernier, 2022).

If even achieving uniform protections under a single overarching regulation like the EU's GDPR has challenges, the risk of inconsistency is even greater in Canada's federal system (Bernier, 2022). In this context, the coexistence of Québec's more interventionist framework with Alberta and British Columbia's PIPEDA-style regimes makes unequal privacy protections for Canadians not only likely, but inevitable, which is problematic since privacy is a human right.

Bernier also explains that Canada's constitutional privacy framework requires organizations operating nationally to comply with multiple privacy regimes at the same time, including PIPEDA, Alberta's PIPA, BC's PIPA, and Québec's act, (Bernier, 2022). This structure means that the same data practices can be subject to different legal

standards depending on the province. When applied to AI-enabled systems operating across Canada, this results in individuals receiving different levels of transparency and privacy protections based solely on where they live. As a result, fragmented provincial privacy laws can produce unequal outcomes for Canadians in practice.

This raises an important question about whether it is fair for Canadians' AI-related privacy rights to depend on where they live. While differences in provincial regulation are a normal feature of Canadian federalism, the lawful differences are harder to justify when AI systems operate across provincial borders. When organizations are affected by the same automated decision-making tools but receive different levels of transparency and accountability, privacy rights depend on location rather than the actual risk involved. As a result, uneven provincial standards weaken the idea that Canadians should receive similar protections from similar AI-related harms.

Fragmentation & Fairness

Overall, this paper has shown that provincial privacy laws create uneven protections for Canadians in AI-enabled services, with Québec's more advanced framework standing in contrast to Alberta and British Columbia's PIPEDA-based approach, resulting in a fragmented data governance landscape that both limits coherent private-sector AI deployment and creates inconsistent privacy protections across Canada. Moreover, this paper demonstrates that Canada's current approach to private-sector AI privacy regulation produces outcomes that are increasingly difficult to justify. While differences in provincial privacy law are a normal feature of Canadian federalism, allowing Canadians' AI-related privacy rights to depend on where they live raises serious fairness concerns. AI-enabled services routinely operate across provincial boundaries, expose individuals to similar risks, and rely on the same data-driven practices. Yet, Canadians do not receive comparable levels of transparency or accountability when those systems are used. In this context, uneven provincial standards shift privacy protection from a risk-based question to a geographic one, weakening the principle that individuals should be protected equally from similar technological harms.

Addressing the earlier introduction of question, if Québec is a regulatory outlier, Québec's Law 25 should not be viewed as an outlier. Instead, it reflects a more realistic response to the governance challenges posed by AI. Its explicit transparency obligations and enforcement mechanisms align legal protections more closely with how AI systems actually function in the private sector. At the same time, Québec's framework also exposes the limitations of Canada's fragmented approach- when stronger protections exist only one province, they highlight the absence of comparable safeguards in other jurisdictions rather than resolving national inconsistencies.

The continued reliance on principles-based privacy laws in Alberta and British Columbia further highlights this problem. While flexibility has long been viewed as a strength of PIPEDA-style legislation, broad principles alone are increasingly insufficient for governing non-transparent, automated systems that can significantly affect individuals' lives and deter organizations from deploying AI. Without clear obligations related to automated decision-making, organizations may not know when AI is used, how decisions are made, or how to challenge harmful outcomes. This gap weakens accountability and leaves meaningful privacy protection unevenly distributed across Canada.

Taken together, these findings suggest that Canada's fragmented privacy framework is no longer well suited to governing AI-enabled services at a national scale when considering privacy is a human right and all Canadian citizens should have the same equal rights to privacy, regardless of their location.

The Case for National AI Privacy Guidance

To address this gap without federal overreach on provincial jurisdictions, the Government of Canada should issue national guidance on AI-related private-sector privacy practices by developing a Statement of Guidance (SOG), led by the Office of the Privacy Commissioner (OPC) in collaboration with provincial regulators. In practice, once issued, this SOG would serve as an interpretative benchmark for organizations and regulators deploying AI, guiding how existing privacy obligations are applied to AI-enabled services in the private-sector, and supporting more standardized compliance practices, enforcement approaches, and regulatory decision-

making across jurisdictions. Such guidance would result in greater consistency in transparency, accountability, and data governance expectations across provinces, reduce uncertainties for organizations deploying AI, and help ensure that Canadians receive more comparable privacy protections regardless of where they live.

While this recommendation avoids legislative overreach, it is limited in enforceability. Organizations may not consistently or have enough incentive to follow the guidance across jurisdictions.

To mitigate this, the SOG should be developed in coordination with provincial regulators and in meaningful consultation with industry, clearly communicated to the public, and updated regularly to reflect the evolving technologies, helping ensure it remains relevant and more consistently applied over time. Thus, without coordinated action, Canada risks fostering a system where innovation proceeds unevenly and privacy rights remain contingent on geography for Canadian's rather than on the realities of AI-driven risk.

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Addressing Recidivism in Canada: Limitations of the Federal Framework and Paths Forward

Alaina McCulloch, Queen's University, MPA

ABSTRACT

Despite decades of reform efforts, recidivism remains a persistent challenge in Canada's criminal justice system. Although definitions vary and consider different timelines of reoffending, recidivism, at its core, refers to "a person's relapse into criminal behaviours, often after the person receives sanctions or undergoes intervention for a previous crime" (National Institute of Justice, n.d.). Recidivism is an important measure, with research on rates informing sentencing and corrections policy and serving as a key indicator of system performance, parole policy success, and public safety outcomes (National Institute of Justice, n.d.). The federal government has acknowledged that recidivism is a complex issue for which there is no simple linear solution (Public Safety Canada, 2022). This is important because high reoffending rates generate significant fiscal costs, undermine community safety, and signal ongoing policy failures. In response to this issue, the Government of Canada introduced *the Federal Framework to Reduce Recidivism* in 2021. While the framework identifies many key drivers of reoffending, it is unlikely to yield significant reductions in recidivism without stronger implementation mechanisms, improved continuity between correctional and community services, and a more distinct, Indigenous-led approach to reintegration.

Background

Recidivism is widely used to measure the success of correctional and parole programs because it indicates whether interventions are meaningfully reducing criminal behaviour. Persistent reoffending shows that many individuals cycle repeatedly through custody and release. Nearly all incarcerated individuals, over 95 percent, eventually return to the community, making reintegration policy central to public safety outcomes (Palis et al., 2022, p. 2). When reintegration into the community fails, the consequences extend beyond individual offenders to victims, communities, and government budgets. This underscores why recidivism policy matters: it directly impacts public safety, carries substantial fiscal costs, and reflects broader social failures. This is particularly seen in reintegration barriers such as housing, employment, and health systems, which directly shape post-release outcomes.

The *Reduction of Recidivism Framework Act* received Royal Assent in June 2021 and required the federal government to develop measures to reduce reoffending. The framework's goal is to increase public safety by reducing recidivism and creating safer communities (Public Safety Canada, 2022). Key mechanisms include promoting reintegration through access to ongoing resources and employment opportunities, supporting community initiatives, and improving risk-assessment tools (Public Safety Canada, 2022). Developed through consultations with over 20 organizations and 140 stakeholders

across the criminal justice sector (Public Safety Canada, 2022), the framework emphasizes collaboration, innovation, and implementation flexibility while recognizing the overrepresentation of Indigenous and other marginalized groups. Despite these strengths, recidivism rates remain high, particularly among Indigenous offenders, suggesting that deeper structural drivers continue to undermine policy effectiveness (Hogan and Corăbian, 2024, p. 343; Public Safety Canada, 2025).

Policy Analysis: Why Recidivism Persists

One of the most significant contributors to recidivism and reoffending is the persistent gap between institutional programming and community reintegration. The period immediately following release is particularly critical. Research shows that the days and weeks after release are a period of heightened risk for poor outcomes, including overdose, recidivism, and death (Palis et al., 2022, p. 2). Despite this, formerly incarcerated individuals in Canada routinely face barriers to accessing housing, employment, and health services (Palis et al., 2022, p. 2). These barriers undermine successful re-entry into the community and create instability at a time when stability is most needed. Although institutional programming is evidence-informed, the lack of coordinated support upon release weakens its long-term impact. Employment is also particularly important. Vocational and skills training that can lead to employment upon release has been identified as a key factor in reducing returns to prison (John

Howard Society of Canada, 2013). Without stable income and housing, individuals face an elevated risk of returning to custody, underscoring that reintegration success often depends heavily on community conditions that extend beyond the walls of the institution.

Mental health and substance use challenges are another major driver of recidivism. Mental disorders are highly prevalent among incarcerated populations; however, access to treatment remains inconsistent during incarceration and after release (Palis et al., 2022, p. 2). One study found considerable evidence of low treatment rates in correctional settings and upon release to the community (Palis et al., 2022, p. 2). Although this study was conducted provincially, the results showed that access to mental health care is associated with a significant reduction in reincarceration risk, with each additional month of delay increasing the hazard of returning to custody by 4 percent (Palis et al., 2022, p. 11). Evidence further shows that services have the greatest impact when delivered in the days and weeks immediately following release. These findings point to a systemic continuity-of-care problem, where individuals often leave custody during a period of peak vulnerability, without timely connection to community-based supports.

Beyond individual needs, systemic features of the federal correctional system also contribute to persistent recidivism. Although standardized risk-assessment approaches are widely used, they may not adequately capture clients' complex needs. Research indicates that common tools, including the Youth Level of Service and Case Management Inventory (YLS/CMI), may be less effective or ineffective at preventing recidivism among individuals with complex circumstances (Campbell, 2025, p. 120). Current tools often fail to capture the unique and critical needs that shape reoffence risk.

More broadly, Canadian reintegration policy operates within a fragmented federal-provincial landscape, with responsibility for housing, health care, and social supports distributed across jurisdictions. Even well-designed federal initiatives may struggle to achieve consistent outcomes when implementation depends on uneven provincial and municipal capacity. There is a significant structural challenge stemming from the current division of responsibilities, which poses a risk to policy

effectiveness. While federal policy receives significant attention, 63 percent of individuals in custody in Canada are held in provincial and territorial facilities, serving sentences of under two years (Statistics Canada, 2022). Although it is common for offenders to move between the systems, there is no mandated national consistency between the two in programming, data collection, or service access.

Finally, Indigenous overrepresentation remains one of the most pressing structural issues in federal corrections in Canada. Indigenous peoples comprise roughly 4 percent of the adult population but more than 20 percent of the federal inmate population (Lee, Hanson, and Blais, 2020, p. 43). Generic reintegration strategies are unlikely to address disparities of this magnitude. Risk assessment practices may also contribute to inequities. Research shows that Indigenous individuals are often assessed as having more risk factors and are more likely to be rated high risk (Hogan and Corăbian, 2024, p. 339). These disparities are linked to deep-rooted systemic factors. Without culturally grounded and Indigenous-led reintegration strategies, progress on both recidivism and overrepresentation will likely remain limited.

Evaluation of the Federal Framework

The *Federal Framework to Reduce Recidivism* is an important, evidence-informed policy step. It appropriately emphasizes reintegration, collaboration, and addressing systemic disparities. However, several gaps limit its potential impact. The framework remains largely strategic rather than operational, and the government has indicated it is still in a multi-year implementation phase (Public Safety Canada, 2022). While it promotes access to supports, it does not acknowledge the time-sensitive nature of post-release risk. The framework also relies heavily on voluntary intergovernmental collaboration. Additionally, accountability mechanisms and measures must be put in place to ensure that distinct Indigenous-led reintegration approaches are implemented.

More broadly, the framework underestimates the implications of Canada's heavily divided correctional landscape. Because provinces and territories maintain primary responsibility for the majority of the Canadian offender population and many reintegration supports, federal solutions must

operate through provinces, not around them. Without stronger intergovernmental mechanisms, this federal initiative risks uneven implementation across jurisdictions and may weaken overall impact, especially given that recidivism outcomes are significantly shaped by provincial custody and service delivery. These limitations suggest the framework is directionally sound but would benefit from more focused implementation strategies.

Policy Recommendations

The most immediate opportunity to strengthen the current framework is to improve continuity between institutional release and community services. Evidence shows that the days and months following release are the highest-risk period for reoffending, and that delays in accessing mental health care significantly increase the likelihood of reincarceration (Palis et al., 2022, p. 2). The current framework emphasizes access to supports but overlooks the time-bound nature of this need. The federal government should mandate structured pre-release planning and formalized hand-offs to community providers. This should include national standards for pre-release case conferencing, confirmed appointments with community health and social service providers prior to release, and shared health-corrections data that would allow providers to prepare for incoming clients. Establishing a structured 30-day post-release follow-up requirement would further ensure individuals do not fall through service gaps.

The federal framework assumes the availability of community supports but does not fully address capacity constraints in key areas, including housing, employment, and health services. To close this gap, the federal government should invest in transitional housing, rapid access to mental health and addiction services, and employment pathways to support the reintegration of those released. Strengthening these areas would ensure that the framework's reintegration goals are matched by the resources needed to support successful re-entry into the community.

Although the current framework acknowledges the overrepresentation of Indigenous peoples in federal corrections, additional measures are needed to meaningfully reduce these disparities. The federal government should advance an Indigenous-led reintegration strategy that expands

the use of Sections 81 and 84 of the Corrections and Conditional Release Act, increases sustained funding for Indigenous community-based reintegration services, and supports Indigenous-led case management. Policy frameworks should move towards culturally grounded rehabilitation that supports Indigenous self-determination. This approach is essential not only for reducing Indigenous recidivism but also for addressing the drivers of overrepresentation within the Canadian correctional system.

Improving accountability and strengthening the current policy framework requires more robust, consistent performance measures. While the framework identifies key priorities, it offers limited detail on how progress will be measured, particularly across jurisdictions. Canada currently lacks standardized recidivism indicators and longitudinal tracking systems to capture implementation outcomes. Strengthening this data and information gap would enable governments to better assess what is working, identify regional gaps and disparities, and refine policy interventions over time.

In addition to strengthening performance measures, there are also persistent measurement challenges across correctional jurisdictions. Existing research has identified the need for more comprehensive recidivism indicators that integrate both federal and provincial outcomes, as current reporting systems are extremely fragmented (Public Safety Canada, 2025). The federal government should work with provinces and territories to establish shared data standards and offender tracking mechanisms. Targeted federal funding and technical support could incentivize participation while still respecting jurisdictional bounds. Strengthened information and resource sharing would improve continuity of care, enable more accurate recidivism measurement, and support more coordinated reintegration planning across Canada's correctional landscape.

Limitations

While these recommendations are evidence-informed and extend beyond already pledged areas, several implementation limitations should be acknowledged. Many proposed changes depend on provincial and community service capacity, which the federal government cannot fully control. Expanding transitional housing, mental health

access, and Indigenous-led reintegration will require sustained funding and strong intergovernmental coordination, both of which have historically been uneven across jurisdictions. Improving data sharing may also raise privacy concerns that could slow implementation. These reforms also require sustained political commitment. Investments in reintegration for federally sentenced individuals may face limited public and electoral support. Additionally, short political cycles can make it difficult for governments to prioritize long-term recidivism reduction over more immediate public safety concerns. As a result, while these reforms could substantially improve post-release outcomes, their impact will depend heavily on long-term investment and collaborative partnerships across all levels of government.

Conclusion

Reducing recidivism in Canada is a long-standing policy challenge, and the *Federal Framework to Reduce Recidivism* reflects a meaningful federal effort to address it. However, as this analysis has shown, the framework alone is unlikely to produce substantial change without stronger mechanisms to support its implementation. Persistent reoffending is shaped by a combination of interconnected drivers, including gaps between custody and community-based supports, inconsistent access to mental health and addiction services, fragmentation across federal and provincial systems, and the disproportionate

incarceration of Indigenous peoples. While the framework addresses many of these drivers, it remains focused on broad commitments and does not yet provide the practical tools needed to translate those commitments into measurable change.

Closing this gap will require a more coordinated and accountable approach. The federal government should mandate stronger transitions between release and community services, invest in housing, employment, and health supports central to successful reintegration, and advance a distinct Indigenous-led strategy that reflects the priorities of Indigenous communities. Improved performance measurement and shared data systems across jurisdictions would further strengthen implementation and allow governments to evaluate progress more effectively over time. While no single reform is likely to resolve recidivism on its own, these measures offer a more practical foundation for delivering on the framework's stated goals. Realizing them will ultimately depend on sustained federal leadership and ongoing collaboration with provinces, territories, and Indigenous communities to support lasting reductions in reoffending and meaningful improvements in community safety.

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How Fiscal Federalism Has Positioned Canadian Municipalities to Fail

Daniel Migalla, Queen's University, MPA

ABSTRACT

Canadian municipalities across the country are facing a structural problem. They are responsible for a growing and increasingly complex portfolio of public services, yet they are constitutionally subordinate creatures of provincial governments with severely constrained revenue-raising authority. This is causing real problems for communities that will continue to develop if not properly addressed. Municipalities are often the forgotten level of government until a problem arises. This paper examines the structural origins of municipal fiscal constraint in Canada and surveys the consequences of this limitation across infrastructure, housing, social services, and fiscal equity. It argues that the mismatch between municipal expenditure responsibilities and revenue capacity represents one of the central governance challenges of twenty-first-century Canadian public policy.

Constitutional Context

Each level of government pulls its power and authority from the *Constitution Act of 1867*. However, municipalities differ from provincial and federal governments due to their lack of constitutional authority and jurisdiction. The structural constraint on Canadian municipal finance is found in Section 92(8) of the *Constitution Act, 1867*, which grants provinces exclusive authority over municipal institutions. The constitution makes no reference to specific municipal authorities or revenue raising capacities. Despite being the level of government closest to citizens, municipalities do not have independent constitutional status or inherent powers. This is in part because in the 19th century, when the constitution was written, the concept of municipal government bore no resemblance to what it is today. Consequently, municipalities only possess authority granted to them by their respective provincial governments. So much so, that municipal governments are often referred to as “creatures of the province.” While Canada has significantly changed since confederation, the division of responsibilities and powers between the three orders of government has largely remained the same (FCM, 2024). Though they have no inherent power, municipalities are asked to deliver a significant portion of public services.

Canada is a highly urbanized country, with more than 75 percent of Canadians living in urban areas, which was manifestly not the case when the constitution was first written (Statistics Canada, 2026). The cities in which Canadians now live, work, and travel are administered by municipal governments that maintain roads, transit systems, snow plowing, water and sewage infrastructure, parks, libraries, fire services, bylaw enforcement, and

local planning. Depending on provincial arrangements, municipalities also bear a share of social housing, public health, and social assistance operations. The scope of what municipalities do is substantial, and it has grown considerably over the past three decades as provinces have offloaded service responsibilities in the name of fiscal restraint (Zandbergen, 2023).

Fiscal Implications

Generally, the main form of tax that municipalities have at their disposal is the collection of property tax from residents and businesses. Municipalities cannot collect income or sales tax and have very narrow borrowing authorities, mainly limited to capital borrowing. Municipalities are generally not able to borrow towards operational costs and are not authorized to run an operational deficit unlike federal and provincial governments.

As a tax on the assessed value of land and improvements, property tax has several attractive fiscal properties: it is difficult to avoid, tied to an immobile base, relatively stable across the business cycle, and broadly understood by the public. For these reasons, many have generally viewed property tax as a reasonable instrument for funding local public services (Slack, 2011). However, while property taxes provide a stable revenue base, they are inelastic, meaning they do not automatically grow with the economy or inflation. Research comparing income tax revenues with property tax revenues across Canadian cities has found that personal income tax brackets grew at a median rate three to six times higher than property tax revenue between 2019 and 2022 (Macdonald, 2024). This means that municipalities are systematically cut off from the

revenue growth that accrues to the broader economy. To increase revenue, municipal councils must pass highly visible, politically unpopular tax hikes. Recent rate hikes from 2024 and 2025 indicate that the property tax dilemma has reached a breaking point. As inflation and population growth surged, many Canadian cities were forced to implement record-high property tax increases just to maintain existing service levels. In 2024, Toronto city council approved the largest property tax rate increase in 25 years, citing a significant infrastructure backlog (CBC News, 2024). This reliance on property taxes is increasingly criticized for its regressive nature, as it places a disproportionate burden on residents with fixed incomes, such as seniors, whose property values may have risen while their ability to pay has remained stagnant. The Federation of Canadian Municipalities (2024) reports that:

Canada and its local governments have become outliers in their approach to fiscal federalism. Among OECD members, Canada has one of the highest dependencies on property tax as a share of all public sector taxation revenue (10.5 percent, fifth highest in 2022) and as a share of gross domestic product (3.5 percent, sixth highest in 2022). Only the United Kingdom, South Korea and Israel ranked higher than Canada in both of these categories.

This points to a structural issue within the way that Canada operates on the world stage. Canada is operating on an expired fiscal framework that is no longer functioning for a modern world.

Municipalities are struggling to adapt their services to a growing population under a 19th century revenue framework that was never designed for the realities of the 21st century (FCM, 2024). While cities are responsible for 60% of Canada's core infrastructure, they receive only approximately 8 to 10 cents of every tax dollar collected in the country (FCM, 2024). This share has been declining for years: municipal governments' share of all government tax revenue has continued to steadily decline after peaking in 2010. At the end of 2024, municipalities raised only 10.2% of all government revenue (AMO, 2026). This is further exasperated by the gradual downloading of costs by higher levels of government. Fiscal downloading refers to the transfer of responsibilities for delivering services, such as housing, transit, public health, or social assistance, from senior governments

to municipalities without commensurate increases in revenue authority. This phenomenon is rooted in the constitutional framework, which assigns municipalities to provincial jurisdiction and leaves them with relatively narrow tax tools while provinces and the federal government control more elastic revenue sources like income and sales taxes. Faced with fiscal pressures or political incentives to reduce their own expenditures, higher levels of government may offload program costs downward, effectively creating vertical fiscal imbalance. The effects are significant as municipalities are then forced to finance expensive services, leading to structural budget strain. This often results in underinvestment in infrastructure, service cutbacks, or increased user fees, which can exacerbate inequality. Over time, downloading can also blur accountability, as residents experience declining service quality but may be uncertain about which level of government is responsible. Fiscal downloading, combined with inflationary pressures and population growth expanding rapidly, points to a crisis for cities across the country.

User fees and fines are another way that municipalities can generate revenue. Charges such as transit fares, recreation facility admissions, parking tickets, water and sewer charges, permit fees and development charges have grown as a share of municipal revenue. User fees represent roughly 19.9 percent of municipal revenues in Ontario, generating nearly \$9 billion annually in the province (PSD Citywide, 2017). In theory, user fees align service costs with those who request them, improving efficiency. In practice, they raise serious equity concerns when applied to essential services such as transit, water, and housing. The Canadian Union of Public Employees has documented that fees for public water and wastewater services have increased more than any other good or service in Canada over the past 15 years (CUPE, 2019). Due to limited revenue streams, municipalities resort to raising these fees to cover fiscal gaps. This can have a direct impact on many low-income residents within the community.

Development charges are fees on new residential and commercial construction to fund the capital costs of growth-related infrastructure. These charges have become an increasingly important tool as municipalities are forced to use any tool provided to them. Research commissioned by the Federation

of Canadian Municipalities estimates that the cost of the municipal infrastructure required to support new housing averages approximately \$107,000 per home across Canada (FCM, 2024). These charges may shift infrastructure costs onto the housing supply, contributing to affordability problems. Additionally, they create a perverse incentive structure in which municipalities become financially dependent on continued development. User fees are not a fix to the structural issue that municipalities are left in.

The structural gap between municipal responsibilities and revenue is theoretically bridged by intergovernmental transfers, yet this dependency introduces a secondary set of fiscal and administrative struggles. Provincial and federal grants often account for around 20% of municipal revenue, but these funds are frequently political, requiring cities to align local priorities with the political agendas of senior levels of government (FCM, 2024). A clear example is Ontario's *Building Faster Fund*, a \$1.2-billion provincial program that links municipal funding directly to housing performance targets set by the province. Under this model, municipalities are assigned annual homebuilding targets, and only those that achieve at least 80% of their target become eligible for funding, with additional bonus funding for exceeding targets (Government of Ontario, 2023). This creates a strong incentive for cities to align local planning decisions, such as zoning changes, expedited approvals, or infrastructure investments, with provincial growth priorities to secure funding. Critics argue that this effectively conditions municipal finances on outcomes that cities do not fully control, since private developers ultimately build most of the units and thereby shift both fiscal risk and policy direction downward while reinforcing provincial influence over certain municipal transfers (Jones, 2025). This creates a false sense of security, where municipalities may receive investment for new infrastructure projects, such as transit or housing expansions, but simultaneously lack the autonomous operating revenue to maintain existing assets. Furthermore, these transfers are often subject to sudden policy or political party shifts, which indicates that intergovernmental transfers are not the long-term solution that is needed.

Consequences

Public transit is a crucial sector that municipalities must fund, and one of the best

examples of how the current fiscal federalism model is failing cities. Public transit is one of the most capital and operationally intensive services municipalities are expected to deliver and fund operationally. Across Ontario, projected historic provincial investments of over \$70 billion have driven significant transit expansion, yet this wave of capital spending has arrived without a corresponding commitment to long-term, system-wide operating support. Federal funding is typically project-based and time-limited, offering little planning certainty to agencies. Ridership shifts since 2019 have further eroded farebox recovery, and municipalities are left without the fiscal tools to reliably sustain the systems they are being asked to operate and maintain.

Provincial contributions have not resolved this imbalance. In Ontario, the Gas Tax transfer program distributes fuel tax revenues to municipalities based on ridership; supporting systems like the Toronto Transit Commission (TTC), Ottawa-Carleton Transpo, and Grand River Transit, but in practice covers only five to fifteen percent of operating costs for most agencies (MTO, 2025). Even Ontario's commitment of up to \$1.2 billion in operating support for Toronto over three years has not permanently solved the TTC's projected \$380 million deficit (Office of the Premier, 2023). The pattern continues beyond Ontario: TransLink in Vancouver operates one of North America's most used transit systems and still faces a \$680 million projected deficit, while Montreal's Société de Transport de Montreal (STM) is calling for additional provincial support despite operating within Quebec's comparatively well-resourced framework (Business in Vancouver, 2024; CBC, 2026). Across systems of varying size and province, the story is consistent: provincial transfers remain modest, deficits persist, and municipalities are left absorbing costs they were never adequately resourced to carry.

The relationship between municipal fiscal constraint and housing affordability is another example of how fiscal federalism has set municipalities up to fail. A central cause is the near-complete withdrawal of federal and provincial governments from the supply of affordable and social housing beginning in the early 1990s. The federal government cancelled its social housing program in 1993 and downloaded management and ongoing subsidies for existing social housing to the provinces in 1996; provinces, including Ontario, further

downloaded this responsibility to municipalities (Open Council, 2024). Between 1973 and 1994, Canada built or acquired 16,000 non-profit or co-operative homes every year; between 1994 and 2016, that number dropped to just 1,500 homes a year (Open Council, 2024). When the federal government downloaded the responsibility of social housing to the provinces, they also passed time-limited funding. This funding was set to expire for each of the specific projects within each respective province. In Ontario, the provincial government downloaded to municipalities the responsibility for approximately 187,000 social housing subsidies beginning in 1996; the province committed to providing no further funding for social housing (Auditor General of Ontario, 2017). The waitlist has continued to grow and has the largest per-capita waitlist in all of Canada (Auditor General of Ontario, 2017). This is not a coincidence, but rather a direct result of policy failures that have left municipalities in Ontario struggling. While social housing waitlists are an issue across the country, Ontario is the only province to force municipalities to carry the burden. The City of Toronto alone spends \$933 million on social housing, or \$315 per person, with the provincial government contributing just \$0.11 per person, a share of 0.04 percent (Open Council, 2024). Municipal housing programs are funded predominantly from regressive property tax revenues, creating an unsustainable arrangement in which local taxpayers subsidize what is, in effect, a national social policy failure (Atkey et al., 2022).

Discussion

The compounding pressures of infrastructure deficits and the downloading of social responsibilities have led to a consensus among local leaders that the current Canadian municipal funding model is no longer sustainable. This realization is not new; it has been part of a decades-long struggle for fiscal autonomy. An important moment in this history was the enactment of the *City of Toronto Act, 2006*, which provided Toronto with broad, permissive powers and slightly new taxing authority. However, even at its inception, City staff and leadership admitted that these new tools, such as the Land Transfer Tax, "do not fully address the City's long-term fiscal imbalance" (City of Toronto, n.d.). The Act prohibited the city from accessing the most vital growth taxes, such as income or general sales tax, effectively ensuring that the structural deficit

would continue to widen despite the City's new status and continued population growth. Prior to this was the federal governments' *New Deal for Cities and Communities*, which established the gas tax transfer to fund municipal infrastructure. While it was not enough to bridge the gap, the fund was a recognition of the fiscal box cities are in across the country.

Furthermore, relying on property tax increases to bridge this gap is increasingly viewed as an unsustainable policy choice. Economically, property tax is inelastic, meaning it does not grow automatically with the economy. As inflation or the population surges, a municipality must take the politically volatile step of a visible property rate hike, which other levels of government do not have to go through. When the economy performs well, the federal and provincial government revenues increase as income and sales tax rise. As aforementioned, property taxes are inherently regressive, as they are based on property value rather than a resident's current income or ability to pay. This creates a serious burden for seniors on fixed incomes and lower income homeowners, necessitating extensive relief programs that further erode some of the net revenue gained from the hike. As seen in Calgary's 2026 budget, even when a city limits its own municipal increase to a modest 1.6%, homeowners can still face a record 8.1% total hike due to provincial education tax requisitions over which the city has no control (Ali, 2026). This proves that the property tax system is not a structurally sound system as it has the potential to be overdrawn by multiple levels of government, leaving the municipality with no room to fund its own growing infrastructure needs. To address these systemic imbalances, various municipal organizations have recently proposed more aggressive structural reforms. The Federation of Canadian Municipalities (FCM) advocates for a national tax framework linked to broader economic indicators like the GDP or HST (FCM, 2024). A city's revenue should not be stagnant as decades pass; if the economy is performing well, a city should be able to reap the benefits of its residents through equitable tax systems such as the ability to implement income tax or sales tax, or a share of the current tax base. This method has been taken up by other municipalities worldwide. In the United States, certain states such as Indiana, Kentucky, Maryland, New York, Ohio, and Pennsylvania allow their municipalities more revenue raising capabilities, with local income taxes

accounting for more than 10 percent of local government revenues. Many European cities fund local services primarily through local income taxes as well (PSD Citywide, 2023). This is largely unavailable to Canadian municipalities, and the consequence is a structural funding gap that perpetuates reliance on provincial and federal contributions that act more as a bandage rather than a permanent solution. The root cause must be addressed: Canadian municipalities need access to progressive taxes such as income and/or sales tax to fund their operations.

Ultimately, the stability of Canada's urban centers depends on moving toward a model where revenue authority is commensurate with the massive scale of municipal service delivery. The Association of Municipalities of Ontario (2026) has urged the provincial government to engage in a comprehensive Social and Economic Prosperity Review, aimed at clearly defining and funding provincial versus municipal responsibilities. History has shown that granting permissive powers without access to elastic revenue streams is an incomplete solution. For

Canada to remain competitive, it must transition to a model that ensures those responsible for local growth have the sustainable, growth-linked tools necessary to fund it.

The Canadian municipal finance model is in a state of crisis. The structural decoupling of service responsibility from revenue-raising authority has left cities unable to meet the demands of a rapidly growing and urbanizing population. As the "creatures of the province," municipalities remain at the mercy of provincial mandates and restricted to a tax base designed for a historic era. For Canada to meet its national goals regarding housing, climate action, and economic productivity, a fundamental renegotiation of the fiscal framework is required, one that grants municipalities the autonomous, predictable, and elastic revenue tools necessary for the 21st century.

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Injunctions Before Democracy: How Canadian Courts Silence Indigenous and Environmental Protest

Kristelle Persaud, McMaster University, Master of Public Policy in Digital Society

ABSTRACT

The increasing use of interlocutory injunctions in Canada to halt environmental and Indigenous protest movements in conflicts over significant resource and infrastructural projects is examined in the following piece. It contends that by allowing companies and governments to restrict constitutionally guaranteed freedoms of expression, assembly, and association before meaningful democratic deliberation can take place, present injunction law and practice violate the Canadian Charter of Rights and Freedoms. A major structural issue is found: courts frequently depend on civil principles like balance of convenience while postponing Charter and Indigenous rights examination to a "full" trial that seldom occurs because protest injunctions are presented as private law matters. Using case studies from the Trans Mountain pipeline protests, the Fairy Creek old-growth blockades, and the Wet'suwet'en resistance to Coastal GasLink, the paper details the political and empirical negative effects of enforcing injunctions, including militarized policing by RCMP units like C-IRG. In addition to modifications to limit the scope of overly wide injunctions and match enforcement tactics with Indigenous self-determination rights, this study ends with a normative argument for mandatory, structured Charter analysis in all protest injunction proceedings. Injunctions will remain a legal tool for securing extractive industries and preventing democratic alternatives in the absence of such reforms.

INTRODUCTION

In Canada, injunctions have emerged as a crucial but little-studied tool for managing divisive politics, especially when major resource and infrastructure projects clash with environmental protest and Indigenous land defense. Interlocutory injunctions are being used by governments and project supporters more frequently to turn disputes over pipelines, logging, and industrial growth into issues of trespass, access, and public order. This has significant ramifications for the actual exercise of Charter-protected freedoms of expression, assembly, and association. This paper makes the case that Canadian injunction laws and practices violate the Charter and unfairly hurt environmental and Indigenous movements by allowing companies and governments to suppress protest and influence public policy before substantive democratic discussion can occur. Since injunctions related to protests are usually framed as "private law" matters, courts often avoid conducting a thorough constitutional review at the precise point when their rulings are most likely to have an impact on the actual situation. As a result, there is a structural mismatch between these procedures' actual function in handling high-stakes disputes over land, climate policy, and Indigenous sovereignty and their formal doctrinal description (Feasby, 2020).

There are three stages in the paper. First, it points out the doctrinal vacuum that permits courts to treat

Charter issues and Indigenous rights as matters for a postponed "full" trial, which sometimes never occurs before projects move, while relying on private-law standards like balance of convenience. Second, it investigates the empirical and political effects of injunctions and their militarized enforcement by specialized units like the Royal Canadian Mounted Police's (RCMP) Community-Industry Response Group (C-IRG) on Indigenous and environmental movements, using case studies from the Wet'suwet'en resistance to Coastal GasLink, the Fairy Creek old-growth logging blockades, and the Trans Mountain pipeline protests. Lastly, the paper makes a normative case for requiring courts to conduct explicit, structured Charter analysis whenever injunctions to limit political protest are requested. It also suggests changes to limit broad protest injunctions and bring enforcement procedures into compliance with Indigenous self-determination commitments and constitutional rights.

Legal and Policy Background

In Canadian law, injunctions are equitable remedies that use the court's contempt powers rather than only damages to compel a party to do or refrain from doing something. To protect a claimed right or stop irreversible harm while a decision is being made, interlocutory (or interim) injunctions are awarded prior to a full trial on an expedited record. Permanent injunctions are based on a complete factual and legal record and are granted following adjudication on the

merits, typically after a trial or summary judgment. The interlocutory form is essential for protest because it allows authorities and corporations to clear camps and blockades long before underlying rights or policy issues are resolved. These orders can be swiftly obtained, framed broadly against "John Doe" and "Jane Doe" defendants, and supported by the threat of arrest and incarceration for contempt (Gunn, 2020) (Speigel, 2024).

The Supreme Court's ruling in *RJR-MacDonald Inc. v. Canada (Attorney General)* [1994 CanLII 117 (SCC), [1994] 1 SCR 311], which asks if there is a serious issue to be tried, whether the applicant will suffer irreparable harm if the order is not granted, and where the balance of convenience falls, serves as Canada's controlling standard for interlocutory injunctions. The "balance of convenience" portion handles much of the work in protest cases: courts weigh the damages to protestors if they are excluded, arrested, or dispersed against the financial loss and project delays asserted by governments or companies. These evaluations consistently favour well-resourced actors and treat protest disruption as a private annoyance or a threat to "public order" rather than as a form of democratic participation because they frequently give priority to property interests, contractual deadlines, and the execution of permits or approvals. These allegedly civil orders have a quasi-criminal bite since any violation of an injunction exposes demonstrators to contempt proceedings, which can result in penalties and jail time (Sharpe, 1984) (Sharpe, 2013).

Considering this, s.2 of the Canadian *Charter of Rights and Freedoms* provides freedom of expression, peaceful assembly, and association, protections that unmistakably cover political protest, marches, encampments, and other forms of collective dissent. However, courts often consider Charter review as secondary or postponed in injunction proceedings, arguing that constitutional issues are better handled at trial or in following prosecutions for contempt or related offenses. This position reflects worries about weak evidence and institutional competence at the interlocutory stage, but it has the effect of permitting extensive restrictions on protest to take effect without a structured proportionality analysis under s.1, even in cases where the order is likely to determine the dispute's practical outcome (Sharpe, 1984). This paper examines a key conceptual gap between the obvious public-law aspects of protest

injunctions and their formal classification as private-law or procedural problems (Maurita & Hannah-Moffat, 2016).

Injunctions as Unequal Policy Tools

Access to injunctive remedy is not equally distributed by Canadian courts. Businesses and governments can swiftly get interlocutory injunctions that safeguard infrastructure, building schedules, and business ties when they are represented by knowledgeable legal professionals and have substantial documentation to back them up. Individual protestors, grassroots groups, and Indigenous Nations seldom have the same resources or legal support, and their chances of obtaining their own injunctions against corporate or state activity are far lower. Empirical research on injunctions in resource disputes has revealed significantly lower success rates when First Nations seek injunctions to halt projects pending resolution of title, consultation, or environmental harms, and high grant rates for businesses looking to evict First Nations from disputed lands (Ceric, 2020). As a result, there is a remedial environment where one group of players can frequently get fast, coercive directives while those who contest the projects' fundamental validity encounter significant financial and administrative obstacles.

The way courts present protest injunctions as typical private law issues perpetuates this imbalance. The political nature of the protest or the unresolved status of Indigenous and treaty rights are not as important to judges as physical blockage, economic loss, or safety concerns. Instead, applications are usually framed in terms of trespass, nuisance, or interference with business ties (Feasby, 2020). Courts have specifically declined to decide Charter or Indigenous rights at the injunction stage in a number of resource-conflict rulings, arguing that such matters are better left to trial or to parallel public law proceedings and that the interlocutory task is merely to maintain order and protect property or contractual rights in the interim (Speigel, 2024). By taking this stance, courts circumvent the Charter's structural proportionality examination and do not consider whether sweeping speech-limiting measures are justifiable or minimally damaging in a free and democratic society, even as they permit arrests, exclusion zones, and the deconstruction of camps (Gunn, 2020).

There are obvious policy ramifications to treating protest injunctions as ‘just’ private law remedies. Corporations and governments can effectively ‘freeze’ the status quo in their favour, clearing roads, securing project sites, and protecting timelines, because they can more readily gather the evidence and legal expertise required to demonstrate serious issues, irreparable harm, and a favourable balance of convenience (Do & Puddister, 2025). On the other hand, environmental movements and Indigenous Nations risk being delayed. Construction continues, forests are cleared, pipelines are constructed, and their Charter and Indigenous claims are postponed until a future trial that may never take place or will come too late to alter the current situation if they are unable to match the project proponents’ speed and resources. Rather than through democratic discourse or negotiated policy change, people and communities that persist in their resistance are coerced into conformity by the fear of contempt, penalties, and imprisonment (Diab, 2022).

Despite judges’ insistence that they are only using neutral privatelaw principles, this doctrinal arrangement transforms superior courts into de facto policy-making forums. In the years it takes for formal legal issues to be settled, decisions about whether a blockade can continue, whether a logging road may be used, or whether a construction corridor must be kept clear determine, in practice, whose vision of land use, climate policy, and jurisdiction will prevail (Coates, 2021). Therefore, injunctions serve as blunt tools for controlling climate politics and Indigenous jurisdiction, giving agenda-setting authority to those who can most easily use the language of property and economic harm, and marginalizing democratic and constitutional concerns. In the case studies that follow, this relationship creates a particularly striking contrast between the formal private-law framing of injunctions and their substantive function in stifling environmental and Indigenous activism (Do & Puddister, 2025).

Case Studies

Before underlying legal and democratic debates can be settled, interlocutory injunctions, which are framed in private law terms and enforced through strong police mechanisms, reshape the political landscape on Indigenous jurisdiction and climate policy, as demonstrated by the Coastal GasLink, Fairy Creek, and Trans Mountain controversies. When combined, they show how, in

the face of persistent opposition from Indigenous peoples and the environment, injunctions serve more as tools for corporate and state objectives than as impartial means of maintaining order (Business and Human Rights Centre, 2019).

1: Coastal GasLink / Wet’suwet’en

In the Wet’suwet’en–Coastal GasLink dispute, the business requested and received an interlocutory order from the Supreme Court of British Columbia to secure access to its pipeline construction corridor across Wet’suwet’en territory, allowing police to remove anyone blocking roads and work sites. The RCMP conducted many enforcement operations, dismantling camps that had become hubs for the assertion of Wet’suwet’en law and jurisdiction and arresting scores of persons under civil contempt of court when hereditary chiefs and land defenders persisted in obstructing entry. Instead of portraying continued presence at the locations as political protest grounded in Indigenous authority, the order was portrayed as required to preserve public safety, prevent economic harm, and safeguard Coastal GasLink’s legal rights-of-way (Proctor, 2021).

Importantly, the court specifically declined to address more general issues of Indigenous title, the legitimacy of hereditary leadership, or the sufficiency of consultation at the injunction stage, stating that these matters were outside the purview of an interlocutory motion and would have to be decided at trial or in other proceedings (Ceric, 2020). The rights to assembly and expression guaranteed by the Charter were also given little consideration; they were viewed as background principles rather than as catalysts for a systematic proportionality review of the scope and implementation of the order. This position effectively prioritized the continuation of pipeline construction over Wet’suwet’en claims of self-determination and over changing federal and provincial commitments to implementing UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples), allowing the project to proceed while basic issues of consent and jurisdiction remained unresolved. Even as governments continued to refer to reconciliation and nation-to-nation ties as guiding principles, the injunction served as a legal tool to supersede local Indigenous law and pre-empt larger policy discussions about land governance and climate obligations (Forester, 2022).

2: Fairy Creek (Old-Growth Logging)

In reaction to old-growth logging in one of the few intact watersheds of its sort, environmental activists and Indigenous land defenders set up roadblocks and camps at Fairy Creek on Vancouver Island to keep logging trucks out of the region. The Supreme Court of British Columbia granted Teal-Jones, the forestry firm, an interlocutory injunction that forbade anybody from physically blocking access to highways and work sites. This order also included extensive "John Doe" language and the authority for police to detain suspected violators. The RCMP's Community-Industry Response Group (C-IRG), a specialized squad established to handle resource-related protests, handled most enforcement (Government of Canada, 2023). Wide exclusion zones were created, media access was restricted, protesters were removed from tripods and structures using "extraction" teams, and hundreds of individuals were detained for allegedly violating the injunction (Murphy, 2022).

The general trend was that a civil order against obstruction was operationalized through extensively resourced, quasi-paramilitary enforcement, even if public outrage ultimately resulted in a brief period in which the injunction was not extended. Participation was stifled by this militarized enforcement, which reduced complex disagreements over biodiversity, old-growth protection, and Indigenous jurisdiction to a binary of obedience versus disobedience. Those who disobeyed the order faced arrest, criminalization, and long-term legal repercussions (Diab, 2022). While demonstrators on the ground articulated claims of ecological stewardship, obligations under Indigenous law, and demands for procedural fairness and recognition, the courtroom framed the dispute primarily in terms of trespass and interference with licensed logging operations (Business and Human Rights Centre, 2019). Even if injunctions appear to be modest weapons for maintaining property rights and order, the difference between this experienced justice and the limited legal categories of trespass and nuisance highlights how they might erase or marginalize alternative legal and moral systems (Forester, 2022).

3: Trans Mountain Pipeline Protests

Several injunctions against land defenders and climate activists who opposed increased bitumen transport and the related spill and climate dangers were also brought about by the development of the Trans Mountain pipeline. Mass arrests for purported

violations of civil injunctions were once again used in the enforcement of court orders prohibiting people from obstructing access to terminals and construction sites. Despite arguments regarding colonial history, the significance of the land, and the defendants' intentions to protect their territories and the climate, sentencing in some of these contempt cases, including those involving Indigenous defendants, showed a willingness to impose jail terms and significant conditions.

Courts emphasized that individuals could not unilaterally nullify legally granted permissions through direct action, and the legal framing of the Trans Mountain protests centered on access, safety, and the necessity of implementing legislative and regulatory decisions that had already approved the project (Business and Human Rights Centre, 2019). The study mostly ignored the climate consequences of locking in long-term fossil fuel infrastructure, and the Charter and Indigenous rights were viewed as background issues that might be discussed in other forums but did not stop the enforcement of the injunctions themselves (Forester, 2022). In terms of policy, this meant that by making persistent physical obstruction illegal as a form of political pressure after formal approval procedures had concluded, injunctions not only made it easier for a carbon-intensive project to continue but also limited the room for democratic reconsideration of Canada's climate commitments (Spiegel, 2024).

A recurring pattern appears in Coastal GasLink, Fairy Creek, and Trans Mountain: courts classify disputes as technical access or trespass disputes, swiftly grant interlocutory injunctions based on economic harm and order maintenance, and expressly postpone Charter and Indigenous rights issues to future, frequently speculative proceedings. Intense policing, usually by specialized units like C-IRG, is subsequently used to implement these directives, which increases the coercive power of civil remedies and discourages collective action. In each instance, injunctions function as crude tools for controlling Indigenous jurisdiction and climate politics, enabling corporate and state actors to push projects and solidify policy paths while the more complex legal and democratic issues brought up by environmental movements and land defenders go unanswered (Business and Human Rights Centre, 2019) (Murphy, 2022).

Kaleidoscopic Justice and Democratic Legitimacy

Understanding justice as a dynamic, multifaceted experience influenced by people's pasts, traumas, and shared goals is made possible by kaleidoscopic justice. It highlights that what is deemed 'just' cannot be reduced to results in formal institutions; rather, it can also be felt through acknowledgment, safety, voice, and the capacity to actively engage in influencing the future (Hope Heal Grow, 2021). Justice is therefore multifaceted for communities that have endured colonial brutality, environmental dispossession, or institutional exclusion; it includes material reparation as well as acknowledgment of harm, affirmation of identity, and freedom to practice alternative norms and relationships (Do & Puddister, 2025). This viewpoint aids in the explanation of why survivors and marginalized groups frequently resort to grassroots initiatives and collective action when state institutions seem hostile or apathetic (Gerbrandt, 2020).

According to this viewpoint, protest camps and blockades are locations where kaleidoscopic justice is actively imagined and performed rather than merely serving as tactical roadblocks to resource development. Instead of just stating them in court documents, encampments at Wet'suwet'en, Fairy Creek, and along the Trans Mountain route serve as places where Indigenous land defenders and allies can live out Indigenous legal orders, environmental ethics, and relational responsibilities to land and water (Spiegel, 2024). Additionally, these places allow people to develop solidarity that goes beyond the immediate struggle and to process trauma collectively, whether it be from residential schools, police violence, or climate grieving. By doing this, individuals produce embodied responses to the official discourses of inevitability that frequently accompany infrastructural development and extractive industries (Husa, 2012) (Zellerer, 1999).

These places of kaleidoscope justice are specifically targeted by injunctions and C-IRG-style enforcement. Courts dismantle the material and symbolic foundation of alternative legal and ethical worlds when they issue broad orders that forbid presence, structures, or "obstruction" and give police permission to clear camps, create exclusion zones, and detain land defenders. This goes beyond simply restoring access for businesses (Burnett & Gray, 2023). A civil remedy can be used to erase counter-

narratives and reassert a single, state-approved vision of law and order, as demonstrated by the pictures of officers destroying tripods, seizing personal property, or limiting media and legal observers (Mayeda, 2010).

Injunction rulings dictate whose visions can occupy the land while those discussions take place, even if judges maintain that issues of title, consent, and climate policy belong in other forums. This tendency perpetuates the idea that courts serve as tools of containment rather than as spaces for true accountability or change for environmental and Indigenous movements. The existing configuration of injunction practice undermines democratic legitimacy if it depends not only on formal procedures but also on the ability of marginalized people to see themselves and their experiences reflected in public institutions (Mayeda, 2010). Although it wouldn't end conflict, forcing courts to address the kaleidoscopic justice aspects of protest – by emphasizing *Charter* analysis, recognizing Indigenous legal orders, and appreciating the democratic value of disruptive dissent – would start to bring judicial practice into line with a more comprehensive, inclusive understanding of justice in a contested polity (Husa, 2012).

Normative Argument and Conclusion

A popular counterargument asserts that judges appropriately postpone *Charter* questions to full trials and concentrate on well-established standards like balance of convenience because they are ill-equipped to handle complicated public-order and policy issues in interlocutory processes. According to this perspective, the 'real' rights analysis happens later, once a more comprehensive factual basis is available, and intermediate motions are about maintaining order on a weak evidentiary record (Gunn, 2020). Deference at the injunction stage is framed as institutional modesty: courts avoid stepping into highly contested terrain on climate, Indigenous jurisdiction, or public safety until they can do so with the benefit of a complete record and full submissions (Feasby, 2020) (Coates, 2021).

However, this supposed modesty is illusory in situations involving protest injunctions. Delaying *Charter* analysis until trial is essentially to settle the rights question against demonstrators because interlocutory orders typically determine whether camps may remain, whether forests are removed, or whether pipelines develop. The project moves

forward, the camp is dismantled, and the woodland is cleared. Courts are already making public-order and policy decisions under the pretense of balance of convenience, deciding which harms are significant, who bears the risk of delay, and how much disturbance democracy can withstand, rather than refusing to do so. While it would not constitutionalize every private issue, a structured Charter analysis at the injunction stage would only improve the transparency, morality, and accountability of the current process (Spiegel, 2024).

Normatively, even in ostensibly private law cases, courts need to be required to perform thorough, organized Charter analysis if an order might materially restrict political dissent. Judges would have to determine whether rights are being violated, consider less restrictive options, and balance the protest's democratic importance against any alleged negative effects on the economy, government, or public order (Mayeda, 2010). Legislatures can support this shift through targeted reforms: a presumption against broad, open-ended 'John Doe' injunctions in protest contexts, with statutory limits on geographic

scope and duration; explicit obligations to consider alternatives such as time, place, and manner restrictions; and enhanced legal aid or intervenor funding so Indigenous nations and community groups can meaningfully contest applications (Ceric, 2020).

Injunction practice will remain a structural weapon for stifling Indigenous and environmental protest unless it is constitutionalized in this manner and democratized through scope restrictions, increased involvement, and rights-sensitive policing standards. Courts will continue to be important platforms for governments and businesses to impede policy discussions, solidify carbon-intensive and extractive projects, and block alternative futures before they can be properly expressed in democratic forums (Gunn, 2020). Therefore, reorienting injunction theory around *Charter* principles is an essential step toward bringing Canada's legal framework into line with its stated commitments to climate justice, reconciliation, and active democratic engagement (Sharpe, 2013) (Do & Puddister, 2025).

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Publicly Funded Education and Canada's Ageing Population

Georges Rigas, University of Ottawa, Graduate School of Public and International Affairs

ABSTRACT

Public education relies on a tax base where those who contribute to the welfare state outnumber those who expend from the system. What happens, though, when those who contribute – the productive population – are outnumbered by those who expend, such as minors, the unemployed, and pensioners? Canada, like many other countries, is facing this very issue as its ageing population grows at a faster pace than its productive population. With increasing demand on healthcare and pension systems, public education funding may be at risk. As such, innovative solutions must be explored to ensure that public education maintains a respectable level of quality so that future generations of Canadians are not disadvantaged. This paper examines how Canadian public education may be affected by an ageing population. It provides a historical overview of public education in Canada, analyzes the challenges posed by demographic shifts, and explores three policy responses: a voucher system, which promotes competition but may reduce equity, a public contribution with subsidy system, which balances financial sustainability with accessibility, and the *status quo*, which risks funding shortfalls.

Introduction

Public education is possible because those who contribute to the welfare state outnumber those who expend from the system. What happens, though, when those who contribute – the productive population – are outnumbered by those who expend, such as minors, the unemployed, and pensioners? By the end of the century, around 60 countries globally expect their populations to stagnate or decline due to ageing (United Nations, 2024). Increases in ageing populations come with the possibility of unsustainable public finances, as many welfare systems are focused on providing for society with tax revenue from the current labour force (Adhami et al., 2023). Canada is no exception from this trend. In fact, Statistics Canada estimates that the seniors' share of Canada's population will increase from under 15 percent in 2010 to over 25 percent in 2063 (Statistics Canada, 2016). This shift in population begs the question of how governments will need to allocate public funds to provide for an ageing population. As an ageing population is less likely to need services provided by publicly funded education, there exists a real challenge for governments to ensure that the services provided to Canadians are adequate while ensuring that they evolve with the population. Because resources are to be refocused to services that an ageing Canadian population uses, such as healthcare and pension expenditures, elaborate solutions must be explored to ensure that public education maintains a respectable level of quality. This paper will focus on how Canadian public education may be affected by an ageing population.

A historical overview of public education in Canada will be presented, followed by a discussion on why an ageing population is of concern to the current system. It will then propose three policy approaches: a voucher system, a public contribution with subsidy system, and a *status quo* option. It will conclude with final remarks.

A Historical Overview of Public Education in Canada

Canada's education system is a system where current taxpayers fund current educational services; a simple yet historically effective way of educating Canada's consistently growing population. In 1807, the District School Act was the first official government action for public education (Di Mascio, 2010). It allocated at least one school per district but also required tuition to be paid by attending students' families. Canada would have to wait until 1816, when the Common School Act was passed, to see a first major step toward providing mass schooling for the "common" people of Upper Canada – modern-day Ontario (Di Mascio, 2010). In 1840, the two Canadas were combined into the United Province of Canada, and the School Act of 1841 created non-denominational schools for Upper Canada and publicly funded Protestant and Catholic Schools in Lower Canada (Di Mascio, 2010). The Act stipulated that schools would be funded through a compulsory taxation system. Confederation in 1867 introduced Section 93 of the British North America Act, where matters of education became of provincial jurisdiction (Robson, 2012). With time, each province

developed their own education system based on its own needs, values, and realities. Nevertheless, all provinces developed public education systems whereby taxes are levied to fund schools. It is important to mention that such a system worked because Canada's labour force has grown continuously over the past 150 years. The system was designed without imagining a society where the population ages in such a disproportionate way that it alters the country's demographic balance.

An Ageing Canadian Population as a Concern to Canada's Public Education System

If current public expenditure is funded by current taxpayers, a decrease in current taxpayers equates to a decrease in expenditure or an increase in borrowing to cover the fiscal gap. A study from the Fraser Institute specifically analyzes the fiscal pressures the government in Canada will face due to this demographic transition. Specifically, the study posits that Canada's ageing population could push collective government deficits to \$143 billion, or 7.1 percent of GDP, by 2045 (Jackson et al., 2017). A slowdown in per-person income, combined with the pressure governments will face for higher spending on a variety of programs will contribute to a large increase in future levels of government spending without a guaranteed increase in tax revenue. (Jackson et al., 2017). Simultaneously, due to limited borrowing or due to increased interest payment costs, the study finds that an aging population theoretically also affects other government spending programs such as education and child benefits (Jackson et al., 2017).

A Chinese study found that population ageing has a significant negative impact on public education expenditure, showing that with every 1% increase in old-age dependency ratio, local public education expenditure decreases by 0.304% (Pan et al., 2022). This decrease in education spending is important due to the positive relationship of education with democracy and improved citizenship (Milligan et al., 2004; Glaeser et al., 2007). It is, therefore, evident that, without policy reform, Canada's ageing population could pose a threat to the current education system and hinder proper democratic governance.

Policy Approach 1: A Voucher System

Governments can either fund or produce education. Currently, government in Canada does

both for instance, through subsidies to educational institutions and running public schools across the country. A voucher system would eliminate the government's production of education, as vouchers would be spent in private educational institutions instead. Parents would be given a voucher to use to pay for their children's tuition at the institution of their choice. Public schools would become private institutions run by educational organizations from the private sector or community organizations. Paying salaries and infrastructure upkeep would be the responsibility of the individual schools as the government's sole financing will be through vouchers. Tuition may only be paid through these vouchers, and extra payments by parents are not permitted, to ensure that equality is achieved between wealthier and less fortunate families.

Proponents of a voucher system argue that it allows for the education system to become a competitive market where resources are allocated and used more efficiently. Milton Friedman (1955) proposed a shift in direct funding of education to such a voucher system. Although schooling was vital to a properly functioning democratic society, Friedman did not believe direct government production of education was appropriate. With a voucher system, good schools would continue to grow as students choose to spend their vouchers there, while the worst schools would be forced to close. This is different from Canada's current system where teaching staff are frequently unionised, and schools only close in the most extreme of cases. Such a system would likely come with lower government expenditure on education due to the Pareto improvement from shifting away from a centrally run system to a competitive market. In essence, the basic approach is to provide financial support to students rather than directly to schools. By doing so, if the market works correctly, government expenditure should reduce, which leaves more fiscal space for services geared towards the ageing Canadian population.

Friedman (1955) identified three cases where a voucher system may fail and would call for more government intervention: the presence of a natural monopoly; substantial neighbourhood effects; and a breakdown in free exchange. For instance, a natural monopoly may occur in rural areas with low density. A competitive market could not form in such an environment, creating a monopolistic or oligopolistic market with one or

few schools. Alternatively, a case where there is a strong neighbourhood effect is where uneven educational outcomes across neighbourhoods – or regions – exacerbate social inequalities. Lastly, a breakdown of free exchange may occur due to asymmetrical information. Parents and students may not be properly informed, creating sub-optimal outcomes (Rosen et al., 2016). The three cases identified by Friedman have been empirically studied and, while not definitive, it does seem that there are substantial concerns in each of these areas (Laitsch, 2016). This suggests that any attempt to privatize education comes with the possibility that it ultimately harms the public purposes of education outlined by Friedman and would, therefore, be suboptimal. Disparities between achieving students and poorly-achieving students can also increase as good students escape poorly performing schools (Ladd, 2002). As such, a voucher system may not only be ineffective in reducing government expenditure, but it may also exacerbate inequality and social disparities.

Policy Approach 2: Parent Contribution Paired with Government Borrowing

A second approach would combine both direct contribution and government funding of education. Firstly, a portion of public education revenue is levied through parental contribution. Each family's contribution will be determined on an ability-to-pay basis to ensure equity between families. Secondly, the government subsidizes the remaining educational funding needs through borrowed funds. Borrowed funds are acceptable and, arguably, optimal if it is assumed that education provides societal goods such as increased human capital, a sense of citizenship, and social cohesion (Rosen et al., 2016). Current levied taxes would then be available to provide current services to the ageing population while past education expenditure is paid by those who previously benefited from the system and who now pay taxes. It simultaneously ensures generational equity as children 'reimburse' their parents by paying for public services they now use as older adults.

Direct parent contribution can provide great benefits to schools who receive the funds. Rowe and Perry (2020) found that direct parent contribution significantly enhances resources in Australian public schools, leading to better programs and facilities. Simultaneously, direct

financial involvement is linked to increased student motivation and parental engagement, creating a supportive and inclusive learning environment (Roy & Giraldo-García, 2018). While allowing for fiscal space for government, a policy which warrants direct parental contribution has overarching societal benefits with regard to the quality of education provided. Nonetheless, if education provides positive externalities to society – benefits to society that are not considered by the market – government subsidies increase the quantity of education available so that optimality is achieved (Rosen et al., 2016). Particularly, if the positive externalities to society are to exist in the future, it is natural to believe that government may borrow to provide education in the present. The future gains from education would then be used in part to pay back the borrowed funds while the remainder is enjoyed by society. Government can then focus current spending on other services used by its ageing population.

Critics of a direct payment system argue that inequalities may persist, and even possibly widen. Rowe and Perry (2020) highlight such inequalities in their Australian study, showing that wealthier schools generated as much as four times the income of lower socio-economic status schools, reinforcing educational disparities. Critics of subsidies could argue that government may be unable to truly measure the positive externalities from education, which makes quantifying an appropriate subsidy challenging (Rosen et al., 2016). Specifically, even if a cost-benefit analysis is used, much information is unavailable to the state to determine the right size of a subsidy. Concurrently, borrowed funds are subjected to fluctuating interest payment costs, which could make borrowing to finance education sub-optimal at certain levels.

Policy Approach 3: Keeping the *Status Quo*

A third policy approach would be to maintain the current education system. As the population continues to age and the overall proportion of children continues to decline, a new equilibrium will be achieved where more resources are naturally allocated to services used by an ageing population and away from services used by children and young adults. Such a system includes both public and private schools as well as subsidized post-secondary education. Current taxpayers would

continue to pay for current educational expenditure under the same fiscal and legal constraints.

A 2022 OECD report found Canada to be the most educated country in the world, with the highest proportion of people who have at least attended post-secondary education (OECD, 2022). In many ways, Canada's current system has proven effective in providing accessible quality education to its population despite challenges. At the same time, different studies have shown that there are conflicting views on the relationship between ageing populations and educational finance. Gradstein and Kaganovich (2004) showed that causal empirical evidence from OECD countries does not suggest a reduction in public financing of education over time. Explicitly, they argue that an increase in longevity – and by extension the proportion of seniors – affects equilibrium in two ways. Initially, there is a negative effect caused by an increase in the proportion of older people. This is offset, however, by the increase in the support for education funding among younger adults. These effects are found to be true in both single- and multi-district economies, like Canada (Gradstein & Kaganovich, 2004).

Even if research shows that funding will not decrease, this does not mean that the current system is sustainable. As previously discussed, Canadian public coffers will be increasingly constrained in the future due to a higher proportion of seniors who have decreased their participation in the labour force and pay less in taxes while using more government-provided services. Maintaining a similar proportion of education spending in the future may not be optimal for Canadian society. Solutions that reduce costs while maintaining a high quality of education, such as the previously discussed policy approaches above, are important in properly responding to the challenges that an ageing population brings. Multiple studies argue for a comprehensive review of public financing in light of ageing populations around the world (Adhami et al., 2023; Jackson et al., 2017; Pan et al., 2022). A change in education policy may be appropriate given Canada's future demographic makeup.

Conclusion

This paper discusses the effects of an ageing Canadian population on the education system. It situates Canada's system to understand how it transformed into the system which exists today. It then explains why an ageing population is of concern to Canada's public education system, elaborating on the future fiscal constraints. It outlines three possible policy approaches to consider when assessing the challenges that publicly funded education in Canada will face over the course of the next few decades. Notably, a voucher system would allow for increased competition, though it may not work in all regions and may exacerbate already-existent academic disparities among students. A mix of public and private funding of education would enable parents to directly contribute to their children's success on an ability-to-pay basis and ensure that an optimal level of education is provided through government subsidies. The downside, however, is that inequalities may be widened by private contributions, and that government subsidies may not be sufficient to truly take into account the benefits of public and accessible education. Finally, simply keeping the current structure comes with its own benefits and challenges.

Ultimately, the goal of this paper is to inform rather than to prescribe. It attempts to situate the current issue and to provide options with their respective benefits and challenges. Ageing populations are a complex issue faced by many countries around the world. While similar in nature, the challenges are as diverse as the possible policy solutions. Further research could provide a broader analysis of the proposed policy approaches. It is also relevant to propose further policy solutions to this issue, both in the Canadian and international context. As with any policy, there is no one good solution to an issue. It is much more important to inform those taking the decision on the pros and cons of various policy options to ensure that preferences, morals, and constraints are appropriately considered.

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POLICY BRIEFS

A Case for Modifying Closed Work Permits for Temporary Foreign Workers in Canada

Sena Gladza, Queen's University, MPA

ABSTRACT

Over the last decade, Canada's temporary migration system has increasingly functioned as an absorption tool for the labour market amidst shocks. The government has opted to expand migration options and quotas during periods of labour shortage and contracted these numbers in response to economic strain or political pressures. While this flexibility offers short-term remedies to efficiently solve gaps in the labour market, this model, very intentionally, shifts the economic risks associated with downturns to be disproportionately borne by Temporary Foreign Workers (TFWs). This paper briefly explores the structure of Canada's TFW program, ethical implications of delaying policy change, and offers recommendations for improving the TFW program's design to effectively balance labour market flexibility and domestic demands, with necessary worker protections and long-term system resilience

Context

Canada's current migration model prioritizes responsiveness to shifts in the labour market over institutional resilience, effectively externalizing the costs of economic volatility onto temporary migrants. The structural design of Canada's employer-specific "closed" or "tied" work permits legally restricts workers to a single employer, reducing labour mobility and exposing vulnerable workers to further precarity in the face of market changes or exploitation despite compliance enforcement measures. As labour demand fluctuates across economic cycles, this design removes the workers' autonomy, preventing them from transitioning within the same sector amidst layoffs, or after rejecting unsafe or unfair work. Reforming work permits would shift the system from one that absorbs shocks through worker displacement, to one that manages economic downturns through the reallocation of labour.

Background

TFW's represent a relatively small share of the national labour force comprising approximately 1% of the workforce, yet remain highly concentrated within specific industries such as agriculture, food processing, construction, and healthcare (Employment and Social Development Canada, 2025). Entry into Canada's Temporary Foreign Worker Program (TFWP) is governed primarily through the Labour Market Impact Assessment (LMIA) process administered by Immigration, Refugees, and Citizenship Canada (IRCC) and Employment and Social Development

Canada (ESDC). This framework enables employers to recruit foreign labour where domestic shortages are demonstrated, utilizing employer-specific issued work permits to address labour targets (Employment and Social Development Canada, 2019).

The existing LMIA and closed-permit structure successfully achieves flexibility for employers by restricting worker mobility across employers within the same occupation or region. Recent federal adjustments in immigration policy have increased scrutiny of LMIA applications, reflecting ongoing efforts to restructure temporary migration intake in response to changing labour, housing market, and political conditions (Luck, 2026). Despite this, tightening entry pathways without modifying permit mobility constraints reinforces cyclical volatility in Canada's supply of temporary labour.

In these contexts, temporary migrant workers function as structurally embedded labour inputs as opposed to supplementary labour. Despite offering a targeted labour supply for specific employers, this model limits intra-sectoral labour reallocation during economic contraction, restricting the redeployment of available workers, increasing reliance on repeated LMIA applications and contributing to avoidable production losses in labour-dependent industries.

The effects of this immigration model are unevenly distributed across stakeholders in Canada's immigration system. Employer-specific permits generate distinct incentives and risks for employers, workers, and governments, shaping

how economic volatility is absorbed across the system. Under the current model, the Federal government assumes responsibility for monitoring individual employer compliance through inspections and oversight conducted by ESDC. The federal government has also moved to reduce the national immigration intake quotas, especially concerning LMIA and TFW's in recent years. By opening work permits for TFW's to transition within the industry, the federal government could potentially reduce the administrative costs tied to repeated LMIA applications and backlogs, in addition to effectively reallocating labour within sectors without increasing TFW intake numbers.

Employer specific work permits help employers reduce the turnover risks associated with hiring foreign workers, however, they can also disincentivize employers from improving working conditions as the options for TFW's searching for new employment are legally limited. Opening work permits could potentially foster competition in sectors where TFW's are in high demand and would cushion employers from facing potential labour shortages amidst reduced LMIA quotas.

Migrant workers remain structurally dependent on the employer tied to their permit intentionally, to sustain the system by restricting labour mobility. In 2023, amidst growing concerns from advocacy groups, the UN Special Rapporteur on contemporary forms of slavery denounced Canada's closed work permit model for exposing TFW's to economic shocks without offering a clear path to residency (Canadian Council for Refugees, 2026). As of February 2026, the Ontario Superior Court of Justice has allowed a class action lawsuit against the provincial attorney general raised by former migrant farm workers citing abuse and exploitation in the Seasonal Agricultural Workers (SAWP) and TFW programs to proceed (Keung, 2026). Modifying the existing TFWP would not only be productive for the economy, it would also support Canada's ongoing commitment to championing human rights.

The Scope of State Responsibility

Migrant workers entering Canada through TFWP's, by design, seamlessly fit the framework for the "Perfect Immigrant" in any capitalist state, as explained by Dr. Cindy Hahamovitch (2003):

They offered employers foreign workers who could still be bound like indentured servants but who could also be disciplined by the threat of deportation. They placated trade unionists who feared foreign competition by promising to restrict guest workers to the most onerous work and to expel them during economic downturns. And they assuage nativists by isolating guestworkers from the general population. Finally, states got development aid from poor countries in the form of ready workers, without the responsibility of having to integrate those workers or pay for their welfare. The perfect immigrant was born. (p. 73)

Regardless of Canada's pro-immigrant national campaigns and public statements from politicians, like any sovereign nation, domestic issues and the population take precedent. The ideal immigrant is one that allows the capitalist or potentially capitalist neoliberal state to utilize them as a means of achieving market goals as labour pieces, in exchange for individuals from the global south or peripheral economies' pursuit of opportunities, especially to earn wages in a core economy. TFWP's are a unique economic tool, in that their meager wages and maintained degree of autonomy distinguish them from slaves, and the temporal nature of their labour contracts distinguish them from indentured labourers who typically received some form of permanent residence upon completing their working relationship. TFWP's do all of the labour while being owed none of the responsibility allotted to typical labourers of the state (Binford, 2013).

According to the Amnesty International report, "Canada Has Destroyed Me: Labour Exploitation of Migrant Workers in Canada" (2025), despite the TFWP being in violation of several of Canada's international labour, civil and economic rights commitments, this system is not a departure from Canada's often overlooked sordid history of racial discrimination, Indigenous persecution, and structural racism. Rather, the federal government's decision to maintain the TFWP in its current form is a distinct message to the Global South, Indigenous Canadians, and the broader category of racialized Canadians that Canada's true perception of their value is measured solely by their economic output after deducting

their estimated burden, effectively reduced to mere economic costs, by giving TFW's no social value. At its core, to appease all domestic stakeholders, this "state-brokered compromise" (Binford, 2013) is fundamentally reliant on unequal economic exchange as coined in Cedric Robinson's work on the inherently racialized nature of capitalism.

The paramount question for the modern Canadian government is centred on determining the extent to which the federal government will continue to play both sides of the scheme, declaring itself a champion for equity and equality, while sustaining systems reliant on global racial hierarchies and further internalizing them by continuing to enable a sector of employers fostering conditions that enable contemporary slavery in its TFWP in the name of economic stability (Amnesty International, 2025). Among its international obligations, Canada, as a party to the International Convention on the Elimination of All Forms of Racial Discrimination, has an obligation to protect people from all types of racial discrimination (Amnesty International, 2025). While under both federal and provincial laws, most contemporary forms of racial discrimination are prohibited, the comprehensiveness of the laws and protections in place surrounding racial discrimination is often called into question, especially considering the innumerable lawsuits and public outcries at instances of racial injustice across the country. In March of 2026, the United Nations General Assembly voted to recognize the transatlantic slave trade of African individuals as "the gravest crime against humanity" (Chibelushi, 2026), to begin the process of effectively addressing slavery and its consequences. Canada found itself among the 52 countries in abstention, and while a formal statement has yet to be released offering what would likely be a statement similar to that of the UK or US Ambassador's, pinning the decision on the premise that atrocities ought either never be ranked or be rectified by the innocent taxpayers of the present, racialized Canadian scholars theorize this is intentional.

Canada cannot publicly condemn slavery in all forms without addressing the ways in which the federal government continues to enable modern slavery, not to mention the nation's sordid history with its Indigenous peoples, laced with an ongoing culture of over policing Indigenous and racialized peoples. It is therefore in Canada's best

interest to critically reassess how its contemporary migration systems work to potentially reproduce historical patterns of unequal exchange and racial hierarchy, moving beyond symbolic commitments towards legitimate policy commitments and phased change.

Policy Options & Recommendation

If the Federal Ministry of Immigration, Refugees, and Citizenship were to transition from the existing model for the federal TFW programs, the following policy options surrounding the reform of work permits would potentially increase long-term productivity, equity, and reduce administrative burden strengthening both the sector and Canada's position as a major global economy, focused on equitable development and fiscal sustainability:

1. Expanding employer-specific permits to a regional or sector-based permit would allow increased worker mobility within defined labour markets. This policy option would aid in reducing TFW vulnerability while working to address regional labour shortages.
2. Extending work authorizations during periods of economic strain or sectoral collapse to offer automatic status stabilization during economic downturns would aid in reducing the loss of legal status following job displacement and the overall precarity of being a TFW in Canada.
3. Offering accelerated pathways to permanent residency for TFW's employed in essential sectors, such as healthcare, after a defined period of continuous labour.
4. Releasing a statement on behalf of the Federal government, publicly condemning all forms of slavery, reaffirming Canada's commitment to abolishing contemporary slavery and taking meaningful steps towards reconciling Canada's own history of slavery and racial hierarchies.

The recommendations addressing permit expansions, work authorization extensions, and permanent residency pathways offer strategic revisions to the TFW program to increase sectoral mobility for temporary foreign workers while still ensuring their presence in the country addresses some issues of labour supply. The final recommendation sets the tone for the federal government to begin to address the broader

implications of Canada's current policy: the reason for expressing an apology is to initiate a resolution of this conflict. Although acknowledging the wrongdoing and issuing a formal apology are among the principles for repairing an internationally recognized wrongful act, as laid down by the UN International Law Commission (2001), and although there may be increasing demand from victim communities on perpetrator states for official recognition of their past political transgressions, it is usually at the initiative of the states to fulfill this and apologize for their past misdeeds. (Demir, 2026, p. 292)

The federal government publicly condemning human rights violations it has silently enabled for years to make a definitive stance against the moral wrong that is slavery in all forms would reflect a meaningful step towards progress and reconciliation. Merely revising the program would demonstrate an acknowledgement of the wrongs of the past without taking accountability or ownership. Canada champions itself as a defender of human rights, a solace for enslaved African Americans who sought freedom through the Underground Railroad – whose reputation and accolades for progressiveness are increasingly called into question the longer the government fails to address this issue.

Conclusion

The outlined recommendations should be implemented as part of an administrative overhaul of the federal program, centred on modernization, equity, and fiscal sustainability. The proposed policy changes would ideally be approached in two phases, the first to prioritize practically restructuring the TFWP to offer migrants increased labour mobility and potential pathways to permanent residency while still working to fill labour gaps, and then to formally address the harmful practices and injustices enabled by the former program structure.

A combined approach that would incorporate both sector and regionally based open-work permits with targeted permanent pathways to residency for long-term workers in essential sectors would broadly address the current concerns with the current TFW program model. Employing this policy option would preserve the flexibility of the labour market while aligning with long term demographic needs among TFWs. Long-term, this would support federal efforts to improve the Canadian labour market's resilience to economic volatility while making good on international commitments to human rights.

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Rejecting Colonial Legacies: Indigenous Consultation in Canadian Immigration Policy

Anyango Miguna, Queen's University, MPA

ABSTRACT

In a time when global displacement, labour shortages, demographic change, climate migration, and growing pressure on public institutions are becoming more prevalent issues, immigration policy has become increasingly central to Canada's economic and social development. However, policy development related to immigration remains largely centralized within the federal government, with few mechanisms for sustained Indigenous participation, despite immigration's direct impacts on indigenous lands, communities, labour markets, and governance. This paper argues that excluding Indigenous perspectives furthers enduring colonial policy structures and conflicts with Canada's constitutional obligations and commitments under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Through an assessment of policy options, including enhanced consultation and an indigenous advisory council, the paper concludes that shared decision-making offers the strongest framework for resilient and adaptive policymaking. Formally integrating Indigenous voices into immigration governance work to strengthen legitimacy, improve institutional responsiveness, and better equip Canada to navigate turbulent times.

Key Message

Canadian immigration policy operates on the settler-colonial assumption that the state holds exclusive authority over the land and who enters it, which largely excludes Indigenous perspectives and authority over the land. This exclusion creates tangible risks, such as immigration-driven population growth and economic plans that are implemented without consideration of the impacts on Indigenous rights, jurisdiction, and community goals. This paper proposes two feasible ways to bridge this gap: the formalization of Indigenous consultation processes within the Immigration, Refugees and Citizenship Canada (IRCC) framework or the establishment of a permanent Indigenous Advisory Council. Without action to involve Indigenous voices and perspectives in immigration processes and policy, the government risks perpetuating a core injustice of the Doctrine of Discovery and forgoing opportunities for immigration to support, rather than undermine, Indigenous self-determination and economic development.

Policy Context

The Doctrine of Discovery is a historical legal doctrine predicated on a notion of 'first discovery' of the Americas, granting settler colonialists sovereignty over the land (Lindberg, 2010). This theory of sovereignty by settlers acquired by discovery is entrenched in constitutional documents, treaties and is entrenched in legislation and habituated by its

incorporation into legislative regimes through assumptive applicability and the assumed inferiority of Indigenous peoples. This notion is apparent in Canadian immigration policy. The admission of immigrants into settler-colonial countries rests on the assumption that the settler state has the right to control who enters its territory and who can become a member of its territorial polity (Bauder & Mueller, 2021), an authority that was never ceded by Indigenous Nations. There is a lack of interest among policymakers and stakeholders in Indigenous perspectives on immigration policy and how Indigenous involvement in newcomer selection could be achieved, which is clear, as among the 94 recommendations made by the Truth and Reconciliation Commission of Canada (2015), only two address "newcomers to Canada" and none deal with immigration policy. Immigration plays a central role in Canada's economic development, with policies shaping population growth, service delivery, and employment in ways that directly impact Indigenous communities, without formal measures for consultation ensuring Indigenous participation in developing, implementing, or evaluating immigration policy. This exclusion has practical, documented consequences. Immigration policy is a key driver of Canada's population and economic growth, yet Indigenous communities are not formally consulted on policies that directly affect them:

- The federal government's Annual Immigration Levels Plans, which set targets for newcomers, are developed through public and stakeholder

consultations that have not historically included dedicated, formal engagement with Indigenous partners.

- The 2025 consultations on immigration levels final report included feedback from a total of 8,513 stakeholders and partners who were invited by email to participate in an online survey, 27% being not-for-profit, charitable, and non-governmental organizations, 23% from educational institutions, 22% from businesses, and <1% from Indigenous organizations (2025). While feedback from individual respondents, included improvement in ensuring meaningful inclusion of Indigenous voices in policy development (2025).
- Implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which requires free, prior, and informed consent for projects affecting Indigenous rights, has not been systematically applied to immigration policy, a significant area of federal action (United Nations, 2007).
- Indigenous partners emphasize the critical need to center diverse indigenous perspectives, avoiding a pan-indigenous approach and upholding the principles of fairness, inclusivity, and reconciliation in any measures supporting self-determination. By addressing historical injustices, respecting Indigenous legal orders, and fostering the capacity for communities to define their own membership and identity, Canada can take meaningful steps toward supporting Indigenous self-determination and fulfilling its commitments (Government of Canada; Indigenous Services Canada, 2026).
- Indigenous organizations like the Assembly of First Nations (AFN) have highlighted the need for inclusion in federal policymaking, yet their specific input on immigration programs remains absent from public IRCC consultation records. The AFN advocates for the co-development of policies and programs that increase the exercise of inherent and treaty rights, title, and jurisdiction by First Nations governments (2024), which include immigration policy.

This gap persists despite the Truth and Reconciliation Commission's calls to educate newcomers on Indigenous history and rights, underscoring a systemic failure to involve Indigenous

peoples in the very policies that shape newcomer settlement.

Key Stakeholders

Indigenous Communities and Governments such as First Nations, Métis, and Inuit communities and the Assembly of First Nations, Inuit Tapiriit Kanatami, and Métis National Council whose rights, lands, and economic futures are impacted by immigration and settlement patterns and who, in their capacity, advocate for their communities through political advocacy, legal challenges, and direct nation-to-nation negotiation with Canada.

Federal Government Organizations, such as Immigration, Refugees and Citizenship Canada (IRCC), Canada Border Services Agency (CBSA), and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). Which are each respectively responsible for setting and implementing immigration policy, facilitating legitimate travel and trade, and supporting Indigenous self-determination and implementing UNDRIP. The Minister of IRCC has the authority to implement new consultation mechanisms or advisory structures. The IRCC would lead the engagement strategy and be responsible for pursuing legislative amendments to the Immigration and Refugee Protection Act; CBSA would collaborate on policy options and operational implementation at the border, and CIRNAC would provide guidance on the legal duty to consult obligations and support distinctions-based engagement (i.e., First Nations, Inuit, Métis)

International Comparative Cases

Canada, Australia, and New Zealand are uniquely suited for comparison due to their shared characteristics as settler-colonial states, colonized by Great Britain, with common legal and parliamentary systems and significant Indigenous populations. Despite these similarities, each nation has approached the constitutional recognition of Indigenous people and their corresponding legal suits to consult differently. Australia and New Zealand are signatories and supporters of UNDRIP, which includes Article 19, stating that states shall consult with the Indigenous peoples concerned through their own representative institutions before adopting and implementing legislative or administrative measures that may affect them; however, it is considered a non-legally binding instrument (United Nations

Declarations on the Rights of Indigenous Peoples Act, 2021). As opposed to Canada, which adopted the United Nations Declaration on the Rights of Indigenous Peoples Act, mandating the federal government to align laws with UNDRIP, co-develop an action plan with Indigenous peoples, and produce annual progress reports.

Comparison of Canada, Australia, and New Zealand

	Canada	Australia	New Zealand
Constitutional Recognition	Yes (Section 35 of the Constitution Act)	No	Yes (Treaty of Waitangi, 1840)
Legal duty to consult	Yes	No	Yes
Dedicated Indigenous policy ministry	Yes (CIRNAC)	Yes (National Indigenous Australians Agency)	Yes (Te Puni Kōkiri)
Treaty with Indigenous peoples	Yes, various historic and modern treaties	Treaty for Victoria (Signed in 2025, Australia's first and only treaty with Indigenous people)	Treaty of Waitangi
Indigenous input on immigration policy	No	No	No

No country currently has incorporated mechanisms for indigenous input on immigration policy, programs, or level planning. Canada is the furthest along in advancing indigenous self-determination and economic development in developing one through its strong legal foundations.

Policy Options

Option 1: Formalize Indigenous Consultation within Existing IRCC Processes

Expand the department's current public consultation framework to include a mandate and resource-dedicated engagement with Indigenous partners on all immigration initiatives that may impact Indigenous rights or communities (e.g., Levels Plans, regional settlement strategies).

One advantage of formalizing Indigenous consultation within the existing IRCC processes is the low cost and administrative feasibility. This option would leverage existing IRCC consultation infrastructure, requiring minimal additional bureaucracy in the process. This would also contribute to quick implementation/intake, which would be enacted through a ministerial directive or policy update. This option would also achieve the objective of increasing Indigenous input on immigration policy by creating a foundation for dialogue, as it would open a mandatory entry point for Indigenous input.

However, this policy option also presents several challenges. Formalizing Indigenous consultation within existing IRCC processes as an advisory role would leave Indigenous input as non-binding, and said advice may be sought inconsistently, leaving the risk that immigration policies and decisions that directly impact Indigenous peoples would not have Indigenous consultation or input. There is also a risk that this process could become a procedural "checkbox" exercise without meaningful influence on decisions. Leading it to become additional red tape without any meaningful impact. Furthermore, the limited authority of the policy option means that it does not address the underlying imbalance of power in federal decision-making on immigration.

Option 2: Establish a Permanent Indigenous Advisory Council on Immigration

Create a statutory or ministerially appointed council, composed of representatives from First Nations, Métis, and Inuit governments and organizations, to provide structured, ongoing advice to the Minister of IRCC on policy, programs, and level planning.

Establishing a permanent Indigenous advisory council on immigration would create a structured and consistent body that ensures a permanent, institutionalized voice for Indigenous perspectives. This would improve accountability as the government would have a body to report to and

consult with, enhancing policy coherence. Finally, this policy option would clearly and meaningfully recognize Indigenous sovereignty, and the council's Indigenous-led composition respects the right of Indigenous peoples to self-govern in matters affecting them.

Despite these benefits, the advisory council would not have any decision-making power, as the recommendations would remain non-binding and subject to government discretion. Federal jurisdiction over immigration is exclusive, and the council's role must be carefully framed as advisory to respect constitutional divisions of power. Additionally, there would be a moderate cost and additional complexity to this policy option as it requires dedicated secretariat support, member remuneration, and sustained resourcing.

Analysis and Recommendation

Table 1: Criteria-based comparison

Criteria	Option 1 (Formalized Consultation)	Option 2 (Advisory Council)
Indigenous Autonomy	Low; the process is controlled by the IRCC	High; Indigenous-led body
Policy Influence	Low; advisory role	Medium; structured, and ongoing
Feasibility	High; utilizes existing systems.	Medium; requires a new structure
Alignment with UNDRIP	Low; inconsistent engagement	High; embodies partnership

Option 2 is the recommended course of action. While more complex to establish, it directly tackles the policy's foundational gap by creating a durable, Indigenous-led mechanism for input. This moves beyond consultation toward a relational partnership, better aligning with Canada's commitments to UNDRIP and reconciliation. It offers a clearer line of accountability and greater

potential to align immigration policy with Indigenous economic goals and rights.

This advisory committee would be modeled after the Indigenous Advisory Committee (IAC) under the Impact Assessment Act. The IAC provides the Impact Assessment Agency of Canada with expert advice for the development of key policy and guidance on the impact assessment system. Members of the committee are nominated and made up of First Nations, Inuit, and Métis individuals, helping to ensure that the committee provides a broad perspective of the unique rights, interests, priorities, and circumstances of the Indigenous peoples in Canada. Although Indigenous persons are not a monolith and such a committee cannot fully represent the voices and opinions of all Indigenous persons in Canada, an advisory council gives an opportunity for Indigenous voices broadly to be heard and considered in this process.

Based on the IAC model, an Indigenous Advisory Council for the IRCC would have the following characteristics:

- **Mandate:** Provide expert advice to the Minister of IRCC on immigration policy, programs, and levels planning, and identify how immigration can support Indigenous economic development.
- **Scope:** Advice on immigration matters, but not to replace the legal duty to consult with individual impacted Indigenous communities.
- **Reporting:** Public records on immigration policy recommendations, levels planning input, and economic development strategies.

Regarding membership and appointments to the advisory council, this would be done by the Minister of the IRCC. Members would serve as experts in their own personal and/or professional capacity, not as representatives of their Indigenous groups, communities, or organizations. However, the council will seek to have representation from all three Indigenous groups (First Nations, Inuit, and Métis) to ensure an inclusive perspective of the unique rights, interests, priorities, and circumstances of the Indigenous peoples in Canada. Membership on the committee will include five-year terms with the possibility of reappointment.

System Interaction with Key Stakeholders

- **Minister of the IRCC:** The Minister of the IRCC would receive structured and ongoing advice from the Indigenous Advisory Council. The minister is not obligated to follow this advice but must be able to demonstrate that it was considered.
- **IRCC:** The IRCC would host the council's representative/s, implement feasible advice, and provide a formal response to the Council on how its recommendations were used. The council would provide expert advice on all aspects of the IRCC's mandate.
- **CIRNAC:** As the council's role as an advisory body does not fulfill the Crown's legal duty to consult under section 35, CIRNAC remains responsible for all section 35 duty to consult processes for an IRCC action that could impact Indigenous or treaty rights.
- **Indigenous Governments & Organizations:** Indigenous governments and organizations would continue to advocate for their communities through political advocacy, legal challenges, and direct nation-to-nation negotiation with Canada. Members of the committee would serve in their personal capacity as experts, not representatives of a specific indigenous organization or group. Option 1, while a faster first step, risks perpetuating tokenistic engagement and would likely fail to produce the systemic shift required.

Challenges and Considerations

- This would require expanding the Immigration and Refugee Act to account for the advisory council and its mandate and responsibilities.
- Advisory committees have no formal or binding authority to make decisions. This risks that the council or actions recommended by the council will be purely symbolic and not foster real change.
- First Nations, Inuit, and Métis peoples have distinct needs and separate processes may be required to account for them, which may increase the complexity and time required to fulfil the mandate of the committee.

- The current IRCC focus regarding Indigenous participation and UNDRIP recommendations focuses on mobility, not levels planning or economic development. This would require a significant policy shift.
- There are no current comparable advisory committees on immigration in comparable countries like Australia or New Zealand, making Canada a leader in this area. Australia and New Zealand also do not have a duty to consult with their Indigenous populations or anything comparable.

Risks of Inaction

- **Continued Rights Infringement:** Immigration policy will remain misaligned with Indigenous rights, governance, and worldviews, actively undermining reconciliation efforts.
- **Economic Misalignment:** Missed opportunities to harness immigration for Indigenous-led economic development, workforce planning, and community growth.
- **Increased Jurisdictional Conflict:** Unilateral federal settlement and population growth decisions will fuel tensions over land use, resource allocation, and self-governance.

Conclusion

Formalizing Indigenous participation in immigration policy is a necessary step for meaningful reconciliation and prudent governance. Establishing a permanent Indigenous Advisory Council on immigration provides the most credible, structured, and respectful mechanism to ensure immigration supports Indigenous self-determination and prosperity. The Minister should mandate IRCC to begin design and partnership discussions for such a Council in the next policy cycle.

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Addressing Ontario's Nursing Shortage by Reducing Barriers for Internationally Educated Nurses

Varna Shivakumar, Queen's University MPA

ABSTRACT

Ontario is facing a critical nursing shortage, with understaffed hospitals affecting patients' and workers' well-being. Despite this shortfall, Internationally Educated Nurses (IENs) are not entering the workforce and are under-utilized in the system. The government has introduced policies to reduce barriers to entry, such as improved license processing and fee reimbursement for international workers. Still, these have been insufficient to address the lengthy registration process and the financial barriers to credentialing. This paper identifies policy options to address barriers, including establishing a permanent fee-reimbursement program, a centralized application portal, conditional licensing for IENs, and reforms to address nurse retention. The proposed framework has the potential to reduce the nursing shortage by incentivizing IENs to complete registration with the College of Nurses of Ontario and stay in the workforce through improved working conditions.

INTRODUCTION

The province of Ontario has the highest immigration rate among Canadian provinces, as it relies on immigration to sustain its workforce and growing industries. As Ontario's population continues to grow, the healthcare system's capacity must expand to meet patient demand. Currently, Ontario has the lowest nurse-to-population ratio among Canadian provinces, raising concerns about healthcare quality. It is projected that Ontario will face a shortage of 33,000 nurses by 2028 if left unaddressed (Financial Accountability Office of Ontario, 2023). This contributes to the exhaustion of the healthcare system. Nursing shortages have reduced hospital capacity, increasing emergency wait times and reliance on hallway medicine. Delays in adequate patient care worsen clinical outcomes and strain existing healthcare workers. Simultaneously, the College of Nurses of Ontario (CNO) application statistics show that over 7,000 IENs are currently in the application process but are not yet registered, and are therefore unable to practice (Canadian Federation of Nurses Union, 2025).

IENs, despite having the education, work experience, and interest in working in the Ontario nursing field, often either abandon plans of completing registration or fail to start the process in the first place. Factors such as registration expenses, licensing timelines, and a lack of clear, accessible information on registration requirements all contribute to IENs remaining unlicensed and, by extension, exacerbate the nursing shortage in the province.

Background and Policy Context

The province has taken several steps to address the complex credential recognition process, including:

- In 2022, Ontario passed Bill 98, Fairness for Ontario's Internationally Trained Workers Act. This legislation requires that registration practices for workers be transparent and impartial by requiring regulatory bodies to provide clear instructions for licensing and mandating regular review to reduce unnecessary barriers to entry (Legislative Assembly of Ontario 2022).
- To reduce the financial barriers for IENs to register in Ontario, the CNO introduced a short-term program, Ontario's Temporary Reimbursement of Fees Program, to reimburse applicants for expenses incurred through licensure. Expenses such as credential assessments, examination costs, and application fees are all eligible, but this program is set to expire in 2026 (Ontario Health, 2026).
- Ontario has strengthened the workforce through Bill 2, Protect Ontario Through Free Trade Within Canada Act, 2025. This bill requires the province to recognize credentials issued by other provinces, reducing duplication in the registration process. Through this legislation, nurses who are licensed to practice in one jurisdiction can more easily practice in Ontario (Legislative Assembly of Ontario 2025).

Policy Gaps and Implementations Challenges

Despite these efforts, a misalignment persists between nursing skills and workforce demand. IENs

with the appropriate education remain unlicensed, while employers continue to experience staffing shortages. Findings from World Education Services (WES) indicate that financial barriers and a lack of clarity in the registration process are the primary reasons why IENs do not receive credential recognition, resulting in an underutilization of nursing skills in Ontario (World Education Services 2023).

- **Costs:** On average, IENs spend over \$2,000 to complete the accreditation process. This poses a significant burden, as many IENs work low-paying jobs while navigating the complex system. Upfront fees make the process unaffordable, even when reimbursement is available after registration (College of Nurses Ontario 2023).
- **Lengthy Registration Process:** The credential system is a multi-step process which requires document verification, regulatory exams, and required coursework. While the CNO states that the process takes 12 months, IENs report that it actually takes several years, indicating a barrier to entry (Kupfer, 2025). Additionally, IENs must apply to the National Nursing Assessment Services (NNAS) as their initial step before applying to provincial regulatory bodies, a process which can take up to a year. When IENs later apply for provincial licensing, they must resubmit documents from the previous step, causing redundancy and delays for applicants (National Nursing Assessment Service 2024).
- **Lack of Information and Guidance:** A study by WES found that 50% of IENs in its Ontario sample had not started the accreditation process despite intending to practice, citing confusion and lack of clarity about navigating the registration requirements (World Education Services 2023).
- **Evidence of Practice:** The CNO has recently modified its policies on the evidence of practice (EOP). Although EOP used to include volunteer experience, as well as clinical and non-clinical, starting from January 2026, unpaid volunteer experience is not enough to meet EOP criteria (College of Nurses of Ontario 2026). This would pose an additional barrier to IENs who have completed volunteer work in their home countries, who now must seek paid opportunities that are more difficult to obtain.

Policy Recommendations

It is recommended that Ontario transform the current short-term reimbursement program into a permanent financial assistance program. By covering costs associated with certification, IENs' credential recognition process would be accelerated, and they would enter the labour force with reduced barriers. Ontario should also introduce a single credential system by creating an integrated portal that centralizes all the licensing steps. In this model, IENs would submit their documents to the NNAS once, and the national service would securely share them with the relevant provincial regulatory body, such as the CNO.

Additionally, the portal should be updated regularly to provide real-time application tracking, ensuring applicants have transparency into registration timelines, including internal application processes and outstanding documents. This approach would provide IENs with the required information and navigation support to efficiently complete the registration process and reduce delays. This approach can be modelled after Australia, where IENs apply solely to the Australian Health Practitioners Regulation Agency (AHPRA), which manages applications on behalf of the Nursing and Midwifery Board of Australia (Nursing and Midwifery Board of Australia 2023). This single application system eliminates duplication and improves the timelines of IENs registration.

Ontario could also implement conditional licenses, allowing IENs to work temporarily under the supervision of registered hospital staff. In practice, this would apply to IENs who have a pathway to immigration and are ready to take the registration exams in due time. Various jurisdictions have already implemented similar policies, most notably in Nova Scotia, where IENs may receive a temporary licence while actively completing licensing registration, allowing nurses to complete required training hours (Nova Scotia College of Nursing 2025). This option would allow nurses to gain work experience in an Ontario healthcare setting and become familiar with local clinical practices and standards. This approach would help them adapt to the Canadian healthcare context, while earning higher wages than non-nursing employment.

Moreover, Ontario should introduce measures to retain nurses, as introducing new workers will not solve the shortage if current staff continue to leave. A study conducted by the

Registered Practical Nurses Association of Ontario (2025) found that 48% of nurses were considering resigning from their jobs. Nurses have cited concerns such as salaries, since wages have not kept up with inflation; wages in 2022, when adjusted to inflation, are only comparable to 2010 salaries (Registered Nurses' Association of Ontario, 2026). To address this issue, Ontario should increase base compensation for nurses and financial incentives for working in high-demand settings, such as emergency rooms. While increasing compensation is beneficial, surveys of nurses have identified additional factors, such as unpredictable shifts and overtime, as contributing to nurses' resignations (Government of Canada, 2024). Hence, consulting nurses before finalizing shift lengths and frequencies will help reduce burnout and improve their subjective experiences.

Rationale and Expected Outcomes

These recommendations would work because they provide practical solutions for the four main problems contributing to low registration rates of IENs in Ontario: financial burdens, lengthy registration process, lack of accessible information, and evidence of practice. By creating a permanent reimbursement program, IENs would be assured that the expenses incurred during registration would be returned to them, at least in part. By centralizing registration through a single regulatory body, the NNAS, the process will be transparent and reduce duplicative work for the applicant. Additionally, conditional licensing would enable IENs to work in nursing roles in their prospective jurisdiction, earn wages, and fulfill the EOP criteria for proving work experience in Ontario. Despite the costs of these measures, they will result in long-term savings for the

government because Ontario is increasingly relying on private agency staffing to manage the nursing crisis. However, studies have found that this mode of staffing can cost three times as much as employing permanent staff (Longhurst, 2025). Hence, by investing in building a stable workforce in Ontario by integrating IENs and reducing barriers to entry, the province would reduce costs incurred through staffing nursing agencies while simultaneously improving the healthcare system.

Conclusion

Ontario's nursing shortage goes beyond supply issues. Rather, it is an ongoing policy problem. This is clear when analyzing the complex licensing requirements, the financial costs of registration, and the confusing guidelines that impede IENs from registering to work in Ontario's hospitals. Though the government has enacted a number of regulations to mitigate these hurdles, the shortage has not tapered off. Hence, addressing these issues requires policy coordination, such as introducing a permanent fee-reimbursement program and a centralized single application system. Conditional licensing for IENs preparing to register would reduce the shortage. By reducing financial and administrative barriers for nurses while prioritizing workload management, Ontario can align its available workforce skills with the appropriate industries. Such reforms would not only strengthen the labour force capacity, but would also support a sustainable healthcare system in the future.

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