

The Limits of Reform: Abolition as an Access-to-Justice Intervention

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ABSTRACT

This article intervenes in access-to-justice scholarship by arguing that incarceration itself constitutes a foundational access-to-justice failure rather than a downstream procedural concern. The article draws on Canadian constitutional doctrine, sentencing jurisprudence, prison law scholarship, and comparative experience to demonstrate how pre-trial detention, restrictive bail practices, the scarcity of legal aid, and prison isolation undermine meaningful legal participation. Canadian courts have increasingly recognised the constitutional significance of pre-trial liberty, restraint in bail conditions, and the harms associated with prolonged administrative segregation; however, these doctrinal developments

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have not dismantled the structural conditions producing those harms.¹

Using the illustrative example of Ali, a composite figure grounded in documented Canadian bail and prison realities, the article demonstrates how incarceration constrains legal agency from the earliest stages of criminal proceedings. Although the presumption of innocence formally governs the pre-trial process, underfunded legal aid systems and restrictive release regimes limit its practical force. Extended detention, restricted access to counsel, and the risk of employment loss and family separation exert pressure to resolve proceedings quickly, often through guilty pleas. Following conviction, institutional isolation and administrative discretion further intensify punishment while remaining difficult to challenge meaningfully.

The article argues that reform-oriented interventions frequently stabilize rather than dismantle the harm caused by the carceral state. At the same time, it acknowledges that some reforms have produced measurable improvements, including reduced reliance on money bail and increased constitutional scrutiny of segregation practices. The article ultimately advances abolition not as a purely moral aspiration, but as a legally grounded response to persistent access-to-justice failures embedded within the Canadian criminal legal system. It argues that systems structurally organised around confinement cannot be fully reconciled with a substantive conception of access to justice grounded in meaningful legal agency.

I. INTRODUCTION

The Canadian criminal legal system has been subject to sustained reform efforts aimed at improving fairness, efficiency, and procedural access. Despite these interventions, individuals already marginalised by race, poverty,

¹ *R v Antic*, 2017 SCC 27 at paras 1, 67-72 [Antic]; *R v Myers*, 2019 SCC 18 at paras 1-4, 45-47 [Myers]; *Canadian Civil Liberties Association v Canada (Attorney General)*, 2019 ONCA 243 at paras 4-5, 100-108 [Canadian Civil Liberties].

and social exclusion continue to experience criminalisation as a process that constrains rather than enables legal agency. This article advances a central claim: if access to justice is treated as a substantive legal principle, abolition should be understood as a necessary intervention rather than a radical abstraction.²

The experiences described throughout this article are not hypothetical anomalies. Canadian courts have repeatedly recognised that pre-trial detention implicates serious liberty interests, particularly where detention impairs an accused person's meaningful participation in legal proceedings. In *Myers*, the Supreme Court of Canada described pre-trial detention as a serious deprivation of liberty and confirmed the importance of automatic, timely detention review under section 525 of the *Criminal Code*.³ Similarly, in *Antic*, the Court reaffirmed that release, rather than detention, is the constitutional starting point of the bail process and emphasised that the Crown must justify more restrictive forms of release under the ladder principle.⁴

The illustrative example of Ali synthesises recurring realities documented throughout Canadian bail and prison jurisprudence. It is intended as a composite example rather than a single decided case. Ali, a young Black man arrested in Toronto on suspicion of a non-violent offence, is detained pre-trial because he cannot satisfy proposed release conditions or retain private counsel. Although presumed innocent, he remains incarcerated while awaiting a bail hearing. Limited access to counsel, employment instability, and the pressures associated with detention increase the likelihood of a guilty plea in exchange for release. Following conviction, Ali is placed in institutional isolation through administrative decision-making processes that are formally reviewable but practically difficult to challenge. His experience reflects structural dynamics

² Trevor CW Farrow, "What is Access to Justice?" (2014) 51:3 Osgoode Hall LJ 957 at 964-68.

³ *Myers*, *supra* note 1 at paras 1-4, 44-47; RSC 1985, c C-46, s 525.

⁴ *Antic*, *supra* note 1 at paras 1, 67-72.

repeatedly identified within Canadian criminal legal scholarship and constitutional litigation.⁵

Carceral harm is not confined to the moment of sentencing. Incarceration shapes the capacity to exercise legal rights from the earliest stages of the criminal process. Pre-trial detention restricts access to counsel, limits the ability to gather and preserve evidence, and exerts pressure to resolve proceedings quickly. Post-conviction confinement further intensifies punishment through discretionary institutional practices, including segregation, that are largely insulated from meaningful legal scrutiny. Treating incarceration as a neutral endpoint of lawful process obscures how deeply it structures legal participation itself. More broadly, Canadian access-to-justice scholarship has long recognized that legal disadvantage is experienced unevenly and often limits meaningful engagement with legal institutions in practice⁶ This understanding aligns with substantive Canadian access-to-justice scholarship, which conceptualizes access to justice not merely as formal procedural access, but as the capacity to meaningfully engage legal institutions.⁷

The harms of confinement extend beyond the fact of imprisonment. Prison decision-making can deepen punishment through practices such as isolation, imposed under broad administrative discretion and subject to limited external oversight. Canadian prison law scholarship has demonstrated that segregation functions as an administrative mechanism that can substantially increase the severity of imprisonment, particularly when isolation is prolonged or indeterminate.⁸ Canadian courts have increasingly recognised constitutional concerns associated with these practices. In *British Columbia Civil Liberties Association v Canada (Attorney General)*, the British Columbia Supreme Court concluded at first

⁵ Lisa Coleen Kerr, “The Chronic Failure to Control Prisoner Isolation in US and Canadian Law” (2015) 40:2 Queen’s LJ 486 at 489–92, 497–503.

⁶ Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Department of Justice Canada, 2009) at 6–9, 56 online: <justice.gc.ca> [perma.cc/Z3SA-ZHLS]).

⁷ Farrow, *supra* note 2 at 964–68.

⁸ Kerr, *supra* note 5 at 489–92, 497–503.

instance that prolonged and indefinite solitary confinement violated sections 7 and 15 of the *Charter*.⁹ On appeal, the British Columbia Court of Appeal upheld significant section 7 findings concerning procedural fairness and prolonged or indefinite administrative segregation, while varying aspects of the trial judgment.¹⁰ Likewise, the Ontario Court of Appeal in *Canadian Civil Liberties* held that administrative segregation exceeding 15 consecutive days violated section 12 of the *Charter*.¹¹

These harms are not distributed evenly. Canadian sentencing jurisprudence has repeatedly acknowledged that Black and Indigenous people experience disproportionate criminalization and harsher sentencing outcomes.¹² The Supreme Court of Canada in *R v Gladue* and *R v Ipeelee* recognised that colonialism, systemic discrimination, and over-incarceration must inform sentencing analyses involving Indigenous accused persons.¹³ At the same time, proportionality-driven sentencing frameworks constrain the extent to which racial injustice can function as meaningful mitigation.¹⁴ Appellate engagement with anti-Black racism has expanded the framework without consistently producing corresponding changes in outcome.¹⁵

Prosecutorial discretion further entrenches inequality, as charging and negotiation decisions that remain largely insulated from review play a decisive role in shaping case trajectories and

⁹ 2018 BCSC 62 at paras 609–11; *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

¹⁰ *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 228 at paras 101, 166–70, 194 [*British Columbia Civil Liberties*].

¹¹ *Canadian Civil Liberties*, *supra* note 1 at paras 4–5, 100–108.

¹² Danardo S Jones, “Paradoxical Race Visibility in Canadian Sentencing Law” (2024) 102:2 *Can Bar Rev* 419 at 420–23.

¹³ 1999 CanLII 679 (SCC) at paras 64–69 [*Gladue*]; 2012 SCC 13 at paras 59–60 [*Ipeelee*].

¹⁴ Maria C Dugas, “Addressing Anti-Black Racism in Sentencing: A Critical Comparison of *R v Anderson* and *R v Morris*” (2024) 102:3 *Can Bar Rev* 644 at 656–66.

¹⁵ *Ibid.*

sentencing exposure.¹⁶ These dynamics are structural rather than episodic. They reflect broader political and economic structures that govern racialized populations through criminalisation, complicating access-to-justice narratives that frame inequality as a procedural defect rather than a structural feature of criminal legal governance.¹⁷

Reform initiatives typically respond to these concerns through incremental adjustment, including refining statutory language, introducing review mechanisms, or reorganising administrative processes. Abolitionist scholarship cautions that such reforms can entrench carceral power by enhancing its legitimacy while leaving underlying structures intact.¹⁸ This article does not treat abolition as a purely rhetorical or aspirational concept. Rather, it approaches abolition in three related senses: first, as a critique of institutional arrangements that reproduce legal exclusion; second, as an interpretive lens for analysing failures of access to justice; and third, as a framework for non-carceral legal reform aimed at reducing institutional reliance on confinement.

II. PRE-TRIAL DETENTION, BAIL, AND ACCESS TO JUSTICE

Pre-trial detention occupies a central yet under-examined position within access-to-justice scholarship. Although the presumption of innocence formally governs bail decision-making, the pre-trial stage frequently operates as a form of coercive state control that shapes an accused person's practical ability to participate in legal proceedings.¹⁹ The Supreme Court of Canada has repeatedly recognised that unnecessary detention undermines

¹⁶ Jonathan Thompson, "Prosecutorial Discretion and Equality After Fraser", (2023) 114 *Supreme Court L Rev* (2nd) 233 at 241-47.

¹⁷ Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press, 2015) at 18-21.

¹⁸ Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007) at 28-31.

¹⁹ Myers, *supra* note 1 at paras 1-4, 45-47.

constitutional protections guaranteed under section 11(e) of the *Charter*. In *Antic*, the Court reaffirmed the “ladder principle,” requiring courts to impose the least restrictive form of release appropriate in the circumstances unless the Crown shows why a less onerous form of release is inappropriate.²⁰

Individuals detained before trial face immediate barriers to meaningful legal participation, including restricted access to counsel and heightened pressure to resolve matters quickly.²¹ These pressures are not incidental; they are built into the structure of pre-trial confinement. In *Myers*, the Supreme Court did not directly decide the issue of guilty-plea coercion. Still, it recognised the seriousness of pre-trial detention and interpreted section 525 to promote meaningful and timely detention review.²²

These barriers are compounded by chronic underfunding of legal aid. Legal Aid Ontario reports persistent service constraints, including high demand, limited coverage, and disproportionate representation of Indigenous and Black clients within the criminal legal aid system.²³ Even where eligibility has been expanded, legal aid continues to operate as a rationed resource rather than a guarantee of timely legal assistance. The result is a pre-trial landscape in which procedural rights exist formally but are difficult to exercise in practice.

While these dynamics also raise constitutional concerns, this article situates pre-trial detention primarily as an access-to-justice failure. The central problem is not only doctrinal non-compliance but also the erosion of meaningful legal participation, where detention, delay, and resource scarcity convert formal rights into practical impossibilities. This understanding aligns with substantive Canadian access-to-justice scholarship, which conceptualises access to justice as the capacity to meaningfully engage legal institutions

²⁰ *Antic*, *supra* note 1 at paras 67–72.

²¹ *Myers*, *supra* note 1 at paras 1–4, 45–47.

²² *Ibid.*

²³ Legal Aid Ontario, *2024-2025 Annual Report* (Toronto: Legal Aid Ontario, 2025) at 11, 13, 19–29, online (pdf): <legalaid.on.ca> [perma.cc/7X5Q-YF36].

rather than merely access them formally.²⁴ It also reflects broader institutional frameworks advanced by the Action Committee on Access to Justice in Civil and Family Matters, which emphasise a user-centred and systemic approach to justice reform.²⁵

Coercion does not disappear when release is granted. Bail conditions frequently extend carceral control beyond jail walls through surveillance, reporting obligations, and behavioural restrictions that are difficult to navigate.²⁶ In *R v Zora*, the Supreme Court recognised the dangers associated with unrealistic or unnecessary bail conditions, particularly where conditions are not clearly articulated, minimal in number, necessary, reasonable, least onerous, and sufficiently linked to the accused's risks under section 515(10).²⁷ The Court's reasoning supports the broader concern that unnecessary or unrealistic conditions can widen criminalisation even where the accused has been released.²⁸

Prosecutorial discretion plays a decisive role at this stage. Prosecutors influence charge selection, resolution positions, and sentencing submissions while remaining largely insulated from judicial review.²⁹ Equality-focused scholarship demonstrates that these discretionary practices map onto patterns of racial overrepresentation and disadvantage.³⁰ From an access-to-justice perspective, the problem is not that bail occasionally fails, but that pre-trial structures routinely convert vulnerability into legal disadvantage.

²⁴ Farrow, *supra* note 2 at 964–68.

²⁵ Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 2013) at 4–6, online (pdf): <cfj-fcj.org> [perma.cc/KG2G-7N5A].

²⁶ Malcom M Feeley & Jonathan Simon, “The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications” (1992) 30:4 *Criminology* 449 at 457–63.

²⁷ *R v Zora*, 2020 SCC 14 at paras 79–90 [*Zora*].

²⁸ *Ibid.*

²⁹ Thompson, *supra* note 16 at 241–47.

³⁰ *Ibid.*

Recent legislative developments reinforce this concern. Bill C-14, framed as bail reform, expands reverse-onus provisions and restrictive release mechanisms. The Criminal Lawyers' Association has cautioned that these amendments risk worsening Canada's existing crisis of detention, particularly for Indigenous and other marginalised accused persons.³¹ Rather than addressing the structural drivers of pre-trial detention, contemporary reform continues to manage perceived risk through confinement.³²

III. PRISON CONDITIONS AND SEGREGATION AS ACCESS-TO-JUSTICE FAILURES

Access-to-justice concerns do not end at conviction. Post-conviction prison conditions shape the lived reality of punishment and can insulate serious harm from legal accountability.³³ Segregation occupies a particularly acute position within this framework. Although formally characterised as an administrative measure, segregation functions as a discretionary mechanism that can significantly intensify punishment.³⁴ Its effects are punitive even where its legal classification is administrative.³⁵

Canadian prison law scholarship has demonstrated that segregation decisions are made through internal administrative processes marked by limited transparency and constrained avenues for challenge.³⁶ Responsibility is diffused across institutional actors, making it difficult for incarcerated individuals to contest either the

³¹ Criminal Lawyers' Association, Position Paper: Bill C-14 (Toronto: Criminal Lawyers' Association, 2025) at 1-3, 7-11, online (pdf): <sencanada.ca> [perma.cc/X89V-6AYL].

³² Department of Justice Canada, State of the Criminal Justice System: Impact of COVID-19 on the Criminal Justice System (2022) (Ottawa: Department of Justice Canada, 2022) at 5, Text Box 1 at 9, online (pdf): <justice.gc.ca> [perma.cc/C6PP-3QPR].

³³ Kerr, *supra* note 5 at 489-94.

³⁴ *Ibid.*

³⁵ *Ibid* at 494.

³⁶ *Ibid* at 497-500.

decision to segregate or the conditions imposed.³⁷ In this sense, segregation operates as a site where legal accountability is systematically weakened.³⁸

Recent federal reporting confirms that these concerns persist despite legislative reform. Public Safety Canada's review of Structured Intervention Units indicates that isolation-like conditions continue in practice even where administrative segregation has been formally abolished.³⁹ The report also identifies continuing concerns regarding oversight, accountability, and the psychological effects of prolonged separation, particularly for individuals with mental health vulnerabilities.⁴⁰

These findings are significant because they illustrate the limits of reform-oriented responses to segregation. Canadian courts have recognised serious constitutional concerns associated with prolonged and indefinite isolation, and legislative reforms such as Bill C-83 were introduced in response to that litigation. Yet the persistence of isolation-like conditions within Structured Intervention Units suggests that institutional practices may survive even where legal terminology changes. The concern advanced here is therefore not that constitutional litigation or statutory reform lacks value, but that reforms centred primarily on administrative redesign may leave the underlying structures of confinement substantially intact.

IV. REFORM, RENAMING, AND THE STABILIZATION OF CARCERAL HARM

Reform is often presented as a responsible compromise between abolition and punitive expansion. When harms become visible, the typical response is to refine procedures, rename

³⁷ *Ibid* at 501–504.

³⁸ *Ibid* at 504–506.

³⁹ Public Safety Canada, *Solitary Confinement and the Structured Intervention Units in Canada's Penitentiaries: The Final Report of the SIU IAP* (Ottawa: Public Safety Canada, 2024) under headings “The Panel's Conclusions”, “Some Final Thoughts”, online: <publicsafety.gc.ca> [perma.cc/RUQ5-FD37].

⁴⁰ *Ibid* under heading “Some Final Thoughts”.

practices, and introduce additional layers of review.⁴¹ Some reforms have produced measurable improvements. Canadian bail jurisprudence has strengthened constitutional protections surrounding release, while segregation litigation has increased judicial scrutiny of prison conditions. These examples matter because they demonstrate that reform can reduce specific forms of harm, even if it does not fully dismantle carceral structures. Yet reform-oriented scholarship continues to caution that incremental change may leave the broader architecture of confinement intact.⁴²

This distinction between symbolic reform and material change is central to the argument advanced here. Certain reforms reduce identifiable harms, while others primarily reorganise the administration of confinement without reducing institutional dependence on it. The concern advanced by abolitionist scholarship is therefore not that all reform is futile, but that reforms preserving the underlying architecture of carceral control frequently stabilize rather than dismantle it.⁴³ This narrower claim is important because critiques of abolition often argue that less dramatic institutional reforms may partially ameliorate the harms identified throughout this article.

Responses to segregation illustrate this tension clearly. Rather than eliminating isolation in substance, reforms have relied on administrative redesign that re-describes isolation while leaving its material effects largely unchanged.⁴⁴ Bill C-83 exemplifies this dynamic. While framed as a response to solitary confinement, it replaced administrative segregation within Structured Intervention Units while preserving institutional authority to separate prisoners under a revised statutory architecture.⁴⁵ The concern, therefore, is not merely technical non-compliance, but substantive continuity.

⁴¹ Terry Skolnik, “Criminal Justice Reform: A Transformative Agenda” (2022) 59:3 Alberta LR 631 at 632–39.

⁴² *Ibid.*

⁴³ Gilmore, *supra* note 18 at 242–45.

⁴⁴ Kerr, *supra* note 5 at 519–22.

⁴⁵ Bill C-83, *An Act to amend the Corrections and Conditional Release Act and another Act*, 1st Sess, 42nd Parl, 2019 (assented to 21 June 2019), SC 2019, c 27.

Canadian constitutional doctrine itself reflects this tension. Courts increasingly recognise the harms associated with detention, overbroad release conditions, and prolonged segregation.⁴⁶ Yet, remedies often remain institutionally narrow, administratively absorbed, or limited to procedural correction rather than structural transformation. Abolitionist analysis does not reject constitutional doctrine outright; rather, it interrogates the limits of legal remedies when institutional systems continue to reproduce harms already recognised by courts.

V. COMPARATIVE PERSPECTIVES ON REFORM AND ABOLITION

The jurisdictions discussed below are not selected for doctrinal similarity, but because they illustrate how reform operates across distinct legal systems while producing structurally similar outcomes. These examples are useful not because they map perfectly onto Canadian law, but because they demonstrate recurring institutional tendencies relevant to Canadian criminal legal governance.

In the United States, New York State's 2020 bail reforms substantially reduced the use of money bail and pre-trial detention without increasing violent crime.⁴⁷ These reforms demonstrate that detention rates can be reduced through legislative intervention.⁴⁸ At the same time, racial disparities in detention persisted, and subsequent political responses reinstated detention-oriented mechanisms for a broader range of offences.⁴⁹ For Canadian purposes, the example demonstrates that measurable reductions in

⁴⁶ *Canadian Civil Liberties*, *supra* note 1 at paras 4-5, 100-108.

⁴⁷ Olive Lu et al, *Bail Reform in Action: Pretrial Release Outcomes in New York State, 2019-2020* (New York City: Data Collaborative for Justice at John Jay College, 2022) at 5, 33-36, online (pdf): <[datacollaborativeforjustice.org](https://datacollaborativeforjustice.org/perma.cc/FHR2-F3K5)> [perma.cc/FHR2-F3K5]. The study noted that other factors including the Covid-19 pandemic could also explain the changes in bail and pre-trial detention (*Ibid* at 34).

⁴⁸ *Ibid* at 5, 33-36.

⁴⁹ *Ibid* at 31, 33-36.

detention do not necessarily eliminate racialized pre-trial disadvantage.

Similar dynamics are visible in the United Kingdom. The introduction of separation centres within high-security prisons was framed as a humane alternative to solitary confinement. However, inspection reports from His Majesty's Inspectorate of Prisons document continued reliance on isolation-like conditions, prolonged confinement, and significant psychological harm.⁵⁰ As in Canada, reform altered the language of confinement without eliminating its material effects.

Canadian reforms reflect comparable patterns. Bail and segregation reforms have focused primarily on administrative reconfiguration rather than dismantling institutional capacities that reproduce racialized and systemic harm. Comparative experience, therefore, suggests that these outcomes are not jurisdiction-specific failures but recurring features of reform strategies centred on managing rather than reducing confinement.

VI. ABOLITION AS AN ACCESS-TO-JUSTICE INTERVENTION

Abolition is frequently mischaracterised as a moral or ideological position external to legal analysis. Within access-to-justice discourse, it is often treated as aspirational rather than operational.⁵¹ This framing obscures the legal work abolitionist critique performs. Abolition interrogates the limits of legal reform where law repeatedly fails to constrain institutional harm.⁵²

Importantly, abolition in this article is not advanced as a purely symbolic critique of incarceration. The argument advanced here is that systems structurally organised around confinement cannot be

⁵⁰ HM Inspectorate of Prisons for England and Wales, *Annual Report 2021-22* (London: HM Inspectorate of Prisons, 2022) at 38–39, online (pdf): <assets.publishing.service.gov.uk> [perma.cc/73DR-Z2P5].

⁵¹ Canadian Friends Service Committee, *From Harm to Healing: Transforming the Justice System* (Toronto: Canadian Friends Service Committee, 2015) at 1–3, online: <quakerservice.ca> [perma.cc/V7EB-3SRY] [CFSC].

⁵² Gilmore, *supra* note 18 at 242–45.

fully reconciled with a substantive conception of access to justice grounded in meaningful legal agency. Abolition, therefore, refers to the long-term dismantling and replacement of carceral institutions, while also recognising that transitional reforms may operate within existing legal frameworks in the interim. In this sense, abolition functions both as a critique of institutional arrangements that undermine legal agency and as a framework for reducing institutional dependence on confinement over time. This clarification addresses concerns that abolition may otherwise appear rhetorically powerful yet doctrinally indeterminate.

Canadian constitutional law already recognises many of the harms identified throughout this article. Section 11(e) bail jurisprudence recognises the importance of pre-trial liberty and restraint in conditions of release.⁵³ Section 12 doctrine recognises that prolonged administrative segregation may constitute cruel and unusual treatment.⁵⁴ Section 7 doctrine has also been used to scrutinise procedural unfairness and prolonged or indefinite administrative segregation in federal prisons.⁵⁵ *Gladue* jurisprudence likewise recognises the systemic over-incarceration of Indigenous peoples and requires courts to account for the effects of colonialism and structural disadvantage during sentencing.⁵⁶ More recently, appellate courts have also recognised the relevance of anti-Black racism in sentencing. In *R v Morris*, the Ontario Court of Appeal accepted that systemic anti-Black racism and social context evidence may bear on both moral blameworthiness and the sentencing process more broadly.⁵⁷

Despite these developments, important limitations remain. Constitutional remedies frequently operate after harm has already occurred, while sentencing frameworks continue to preserve incarceration as a legitimate institutional response. Administrative law principles governing correctional decision-making similarly

⁵³ *Antic*, *supra* note 1 at paras 1, 67–72.

⁵⁴ *British Columbia Civil Liberties*, *supra* note 10 at paras 95, 166–70; *Canadian Civil Liberties*, *supra* note 1 at paras 4–5, 100–108.

⁵⁵ *British Columbia Civil Liberties*, *supra* note 10 at paras 154–65, 173.

⁵⁶ *Gladue*, *supra* note 13 at paras 64–69; *Ipeelee*, *supra* note 13 at paras 59–60.

⁵⁷ *R v Morris*, 2021 ONCA 680 at paras 96–100, 117–19.

provide procedural review without necessarily reducing institutional reliance on confinement itself. In this sense, abolitionist critique does not deny the value of doctrinal or procedural reform, but questions whether procedural safeguards alone can meaningfully constrain institutions structurally organised around confinement. The persistence of these dynamics suggests that doctrinal recognition alone does not fully resolve the underlying access-to-justice failures produced by incarceration.

Abolitionist scholarship emphasises that persistent carceral violence is not evidence of incomplete reform, but of structural design. Where incarceration continues to operate through discretion, isolation, surveillance, and coercion, reforms preserving these mechanisms do not meaningfully expand access to justice.⁵⁸ If access to justice requires meaningful legal agency, institutions that systematically erode agency through confinement cannot be rehabilitated through procedural reform alone.⁵⁹

Importantly, abolition does not require the immediate disappearance of all carceral institutions. It is concerned with dismantling punitive systems while developing non-carceral responses to harm. Distinguishing between reforms that entrench carceral power and non-reformist reforms that reduce its scope clarifies how abolitionist principles may operate within existing legal frameworks.⁶⁰ Canadian restorative and community-based justice initiatives demonstrate that accountability and safety can be pursued without reliance on incarceration, challenging claims that abolition is necessarily impractical.⁶¹ Indigenous-led restorative justice programs and diversion initiatives operating within and alongside the Canadian criminal legal system illustrate how legal responses to harm may function outside traditional carceral frameworks.

⁵⁸ Gottschalk, *supra* note 17 at 24-27.

⁵⁹ Skolnik, *supra* note 41 at 640-42.

⁶⁰ *Ibid.*

⁶¹ CFSC, *supra* note 51 at 1-4.

VII. CONCLUSION

This article has argued that incarceration cannot be treated as a neutral endpoint of the criminal process within access-to-justice analysis. Pre-trial detention and conditional release regimes convert vulnerability into disadvantage, prison conditions intensify punishment through administrative discretion, and reform efforts frequently stabilize rather than dismantle carceral harm. These dynamics reflect a system that manages inequality through confinement while presenting its outcomes as the product of neutral legal process.⁶²

This article nevertheless acknowledged that reforms have produced meaningful, though limited, improvements. Canadian constitutional litigation concerning segregation, developments in bail jurisprudence, and certain comparative reforms have reduced some forms of institutional harm. The difficulty is that these interventions have not dismantled the structural reliance on confinement, shaping access to justice throughout the criminal process.

Against this backdrop, abolition emerges not as an external critique of law, but as a demand that law account for the harms it continues to authorize. Where reform has repeatedly failed to secure substantive justice, access to justice requires confronting the structures that render legal participation illusory. Situating abolition within access-to-justice discourse shifts the debate away from feasibility and idealism and toward legal responsibility. Institutions systematically denying agency through confinement must fall within the scope of access-to-justice analysis.⁶³

This conclusion carries implications for Canadian courts, legislatures, correctional institutions, and legal aid systems alike. Courts remain important sites of constitutional accountability; legislatures determine the scope of detention and release; correctional institutions administer the conditions of confinement; and legal aid systems affect whether procedural rights can be meaningfully exercised in practice. If incarceration itself

⁶² Gottschalk, *supra* note 17 at 24-27.

⁶³ *Canadian Civil Liberties*, *supra* note 1 at paras 4-5, 100-108.

systemically undermines meaningful legal agency, then procedural reform alone cannot reconcile carceral systems with substantive access to justice. The limits of reform identified throughout this article suggest that confinement is not merely one obstacle to justice, but a structural feature of legal exclusion. Under those conditions, abolition emerges not as a rhetorical endpoint, but as a necessary response to the persistent inability of reform-oriented approaches to reconcile carceral systems with substantive access to justice.