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Policy+ is an undergraduate peer-reviewed student journal published by the Brian Mulroney Institute of Government at St. Francis Xavier University.

The journal provides a venue for undergraduate publication covering a wide array of interdisciplinary topics surrounding public policy and governance at the local, provincial, federal, and international level. Editions come out annually, and submissions are accepted year-round.

The mission of *Policy+* is to highlight student academic excellence by publishing undergraduate academic work across an array of disciplines with a common grounding in public policy and governance.

Policy+ would like to congratulate the graduating members of the Editorial Board, Liam Smith and Rory Jakubec. We wish them all the best in their future studies. They rest easy knowing that *Policy+* is in good hands with the future editorial board.

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LETTER FROM THE EDITOR



Rory Jakubec

STFX CLASS OF 2025

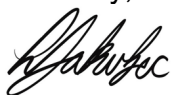
Over the past academic year, the new editorial board, consisting of students from second to fourth year, has been working diligently to prepare the 2024 edition of *Policy+*. This edition showcases articles from Edmonton, Alberta, to Antigonish, Nova Scotia. From the Opioid Crisis to the Canadian Online Streaming Act, this edition also demonstrates the wide-variety of policy issues found within Canada.

This edition would not have been possible without all the new members of the editorial board, who committed themselves to learning new skills and working hard to ensure that each author was putting forward the most polished paper possible. These members put in many hours of work, often at busy times during the school year. I would like to sincerely thank all of the members for joining the board and putting so much effort into this edition.

I would also like to thank Dr. Anna Zuschlag, who supported me throughout this entire process. Dr. Zuschlag provided me invaluable advice and assistance in learning the role of editor. Dr. Zuschlag also provided tremendous support to the editorial board, always stepping in to answer questions when needed.

The editorial board takes great pride in presenting the second edition of *Policy+*, exemplifying the Mulroney Institute and *Policy+*'s dedication to highlighting student academic excellence. We are proud to present a strong second edition to follow the inaugural issue and look forward to the continuation of the tradition of highlighting undergraduate research for many years to come.

Sincerely,



Rory Jakubec
Editor, *Policy+* (2024–25)

Op-Ed: National Decriminalization of User Amounts of Opioids Would Save Lives

Robson Underwood

ABSTRACT

Since the declaration by the Federal Government in 2016 of an opioid crisis, to this past year, over 50,000 Canadians have died from opioid-related causes, underscoring the necessity of a radical strategy to combat drug addiction and lessen harm. The financial burden of opioid-related harm on Canada is significant, with billions lost in productivity and high criminal justice costs. Stigma towards opioid users is misdirected in marginalized communities, exacerbated by over-policing and criminalization, which creates fear and deters individuals from seeking help. Despite concerns that decriminalization may increase crime and overdose rates, evidence from Portugal shows that harm reduction strategies can improve public health without escalating drug use. The proposed federal decriminalization of user amounts of opioids seeks to reduce stigma and encourage rehabilitation by removing criminal penalties for possession.

Since the 2016 declaration by the Federal Government of an opioid crisis, to this past year (2024), 50,928 Canadians have died from opioid-related causes, underscoring the necessity of a radical strategy to combat drug addiction and lessen harm.¹ Over-policing, as well as increased criminalization, has caused stigma and fear that deters many from seeking help, especially those in lower-income or marginalized communities.² The financial impact of opioids on the Canadian Government is the third highest of all substances, with a cost of \$7.1 billion lost from 2007 to 2020, with 75 percent of losses resulting from loss of productivity from individuals overdosing at a young age.³ The criminal justice costs that pertain to the criminalization of opioids, which include policing, courts and correctional services, are also the third highest, with a cost of \$1.13 billion in

¹ Public Health Agency of Canada, "Apparent Opioid and Stimulant Toxicity Death: Surveillance of Opioid and Stimulant-related Harms in Canada," <https://health-infobase.canada.ca/substance-related-harms/opioids-stimulants/>.

² Aaron Cohen, Sandeep P. Vakharia, Julie Netherland, and Cassandra Frederique, "How the War on Drugs Impacts Social Determinants of Health Beyond the Criminal Legal System," *Annals of Medicine* 54, no. 1 (2022): 2024–2038, <https://doi.org/10.1080/07853890.2022.2100926>.

³ Canadian Substance Use Costs and Harms Scientific Working Group, "Canadian Substance Use Costs and Harms 2007–2020," <https://csuch.ca/documents/reports/english/Canadian-Substance-Use-Costs-and-Harms-Report-2023-en.pdf>.

2020 alone.⁴ While a variety of individuals and organizations argue that decriminalization only increases crime and opioid toxicity deaths, such as the Senate of Canada's Special Committee on Illegal Drug Use, there is a dire need to decriminalize user amounts of opioids.⁵

The opioid crisis and the varying stigmas and social implications associated are in part rooted in its criminalization. Statistics Canada reports that in 2019, there were 4,688 individuals charged with opioid possession, excluding individuals who had been charged with trafficking and production.⁶ A significant rate, as the charges for first-time simple possession carry penalties of up to three years imprisonment.⁷ Individuals who have been

Decriminalization of user amounts of opioids aims to shift the focus from punishment to harm reduction, allowing individuals to seek help without fear of legal repercussions.

incarcerated and charged often experience increasing rates of stigmatization, especially youths who have been charged with possession of illicit substances.⁸ Those who use non-medical opiates are often perceived as more blameworthy, dangerous, and lacking character.⁹ It has also been shown that the general stigma towards

opiate users is predominantly directed towards marginalized communities, where retributive approaches to reducing increasing abuse rates are disproportionately affecting those populations.¹⁰

As new exemptions have now been put into place in British Columbia (the so-called opioid crisis epicentre) since January 2023, as part of the new provincial pilot program to

⁴ Canadian Substance Use Costs and Harms Scientific Working Group, "Canadian Substance Use."

⁵ Louise Casavant and Claire Collin, Special Senate Committee on Illegal Drugs (37th Parliament, 1st Session), *SenCanada*, https://sencanada.ca/en/content/sen/committee/371/ille/library/collin-e#_ftn38.

⁶ Statistics Canada, "Police-reported crime for selected drug offences, Canada, 2018 and 2019," *Canadian Centre for Justice and Community Safety Statistics*, (2020), <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00010/tbl/tbl03-eng.htm>.

⁷ *Controlled Drug and Substances Act*, SC 1996, C - 19, <https://laws-lois.justice.gc.ca/eng/acts/c-38.8/fulltext.html>.

⁸ Health Canada Expert Task Force on Substance Use, "Recommendations on Alternatives to Criminal Penalties For Simple Possession of Controlled Substances," (2021), <https://www.canada.ca/content/dam/hc-sc/documents/corporate/about-health-canada/public-engagement/external-advisory-bodies/reports/report-1-2021/report-1-HC-expert-task-force-on-substance-use-final-en.pdf>.

⁹ Bruce L. Perry, Bernice A. Pescosolido, and Amy C. Krendl, "The Unique Nature Of Public Stigma Toward Non-Medical Prescription Opioid Use and Dependence: A National Study," *Addiction* 115, no. 12 (2020): 2317–2326, <https://doi.org/10.1111/add.15069>.

¹⁰ Carl L. Hart and Matthew Z. Hart, "Opioid crisis: Another Mechanism used to Perpetuate American Racism," *Cultural Diversity & Ethnic Minority Psychology* 25, no. 1 (2019): 6–11, <https://doi.org/10.1037/cdp0000260>.

decriminalize user amounts of drugs, why have no other provinces followed in these progressive footsteps?¹¹ Of all the opioid toxicity deaths in Canada, British Columbia and Alberta present as the provinces with the highest rates, yet each has taken very different steps in addressing this crisis. While British Columbia focuses on decriminalization and harm reduction, Alberta remains focused on safe supply.¹² Both approaches to the opioid crisis have a focus centred on rehabilitative practices.

However, there remains a key component of Alberta's approach that supports overdose rates. The "Alberta Approach" insists that there still needs to remain a stigma surrounding illicit use.¹³ Nevertheless, stigmatization of opioid users not only has been shown to reduce the likelihood of rehabilitation, but it also causes the stigma to be predominantly directed towards marginalized communities because of the ignorant notion that these communities have higher rates of usage.¹⁴

The goals and objectives of the federal decriminalization of user amounts of opioids in Canada are centred around addressing drug stigmatization and improving public health outcomes. Removing criminal charges for drug possession minimizes the harmful consequences faced by individuals who use drugs, such as stigmatization and marginalization. Decriminalization of user amounts of opioids aims to shift the focus from punishment to harm reduction, allowing individuals to seek help without fear of legal repercussions. This does not legalize or decriminalize the trafficking, dealing or production of any illicit substance. As there are varying concerns around decriminalization, our focus should be directed towards Portugal who has taken very progressive steps in addressing drug toxicity. National decriminalization of all illicit substances was implemented by the Government of Portugal in legislation in 2001, shifting their focus to expanding treatment and harm reduction services. Portugal, over the past two decades, has not shown an increase in drug use since the implementation of decriminalization in 2001 and has shown a decrease in adolescent drug use, which one could infer positive longitudinal implications from.¹⁵

¹¹ "Decriminalization in B.C.," BC Centre for Disease Control, n.d., <http://www.bccdc.ca/health-info/prevention-public-health/decriminalization-in-bc>.

¹² Tony Lambert, "Despite Soaring Death Rate from Opioids, Alberta Steers Away From Harm-Reduction Approach," *CBC News*, (2023), <https://www.cbc.ca/news/canada/edmonton/alberta-approach-opioid-crisis-1.6750422>.

¹³ Lambert, "Despite Soaring Death Rate."

¹⁴ Hart and Hart, "Opioid Crisis."

¹⁵ United Nations Office on Drugs and Crime, "Approaches to Decriminalizing Drug Use & Possession," *Drug Policy Alliance* (2015),

https://www.unodc.org/documents/ungass2016/Contributions/Civil/DrugPolicyAlliance/DPA_Fact_Sheet_Approaches_to_Decriminalization_Feb2015_1.pdf.

For individuals who believe that decriminalization leads to more addiction and violence, evidence suggests the contrary; in fact, the interactions between drug users and criminal organizations, resulting in violence and crime, are a result of the criminalization of opiate and illicit substances.¹⁶ It is common for individuals who have been charged with possession to have increased difficulty finding employment, causes many to resort to crime.¹⁷ All of this presents yet another by-product of the misinformed public and misconception surrounding opiate use, as well as implications for a need to decriminalize. The opioid crisis is rampaging throughout Canada; thousands are losing their lives because of toxic and unsafe supply. The criminalization of opioids is resulting in the stigmatization of marginalized communities and the incarceration of thousands, as well as costing the Canadian Government billions of dollars. All these factors provide a reason for the national decriminalization of user amounts of opioids.

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¹⁶ Michael Lyman, *Organized Crime*, 7th ed. (Pearson, 1996).

¹⁷ Robert Apel and Jody Horney, "How and Why does Work Matter? Employment Conditions, Routine Activities, and Crime Among Adult Male Offenders," *Criminology*, (2017), <https://onlinelibrary.wiley.com/doi/10.1111/1745-9125.12134>.

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Robson Underwood is a third-year honours student in the Applied Forensic Psychology program at St. Francis Xavier University. With extensive experience gained through several research assistantships, he has focused on topics such as extreme violence, youth legal comprehension, sexual offending, and anxiety-related disorders. A recipient of the Alanna Jenkins Legacy Award for his work in criminal justice and mental health research, Robson plans to pursue a PhD in Clinical Forensic Psychology.

Between Evidence and Politics: Narrative-Driven Policy Responses to the Canadian Opioid Crisis

Anna Hancin

ABSTRACT

Canada's opioid crisis has resulted in over 40,000 apparent opioid toxicity deaths between 2016 and 2023, with the majority occurring in Ontario, Alberta, and British Columbia (BC). Despite mounting evidence supporting harm reduction strategies, opioid-related policy decisions remain heavily influenced by political narratives rather than empirical research. This paper examines how provincial governments in Ontario, Alberta, and BC have shaped opioid policies and the extent to which political discourse impacts evidence-based policymaking. Using a comparative case study approach, this analysis explores key policy shifts from 2006 to 2024, revealing significant variations in provincial responses. Findings indicate that while BC has embraced harm reduction, Alberta has focused on recovery-oriented approaches and Ontario lacks a coherent strategy. Despite these differing approaches, opioid-related deaths continue to rise, highlighting the need for a unified, evidence-based response. This study underscores the importance of depoliticizing public health crises and prioritizing data-driven interventions in opioid policy reform.

INTRODUCTION

The Canadian opioid epidemic saw 40,642 apparent opioid toxicity deaths between January 2016 and June 2023.¹ In 2016, Canada saw 2,831 apparent opioid toxicity deaths. In 2022, that number rose to 7,525 new deaths, adding to a total of 36,672 deaths between 2016 and 2022.² Canada has demonstrated a significant increase in the rates of accidental opioid toxicity deaths since the Public Health Agency of Canada (PHAC) began surveillance of opioid-related harms in 2016.³ Canada has experienced a rise in opioid use alongside a decrease in access to opioid use supports. This situation was worsened during the COVID-19 pandemic which created barriers to opioid-related

¹ Public Health Agency of Canada, "Opioid- and Stimulant-Related Harms in Canada," Government of Canada, December 2023, <https://health-infobase.canada.ca/substance-related-harms/opioids-stimulants/>.

² Public Health Agency of Canada, "Opioid- and Stimulant-Related Harms in Canada."

³ Public Health Agency of Canada, "Opioid- and Stimulant-Related Harms in Canada."

poisoning prevention efforts and support for individuals using opioids.⁴ The dramatic increase in opioid-related deaths demonstrates a need for increased harm-reduction services and long-term policy changes. According to PHAC, 90 percent of all Canadian opioid toxicity deaths between January 2016 and March 2022 occurred in Ontario, Alberta, and British Columbia (BC).³ In 2023, the same three provinces made up 88 percent of accidental opioid toxicity deaths in Canada from January to September.⁴ The significant increase in opioid-related deaths demonstrates a need for expanded harm-reduction services and long-term policy changes.

Numerous authors have provided evidence-based foundations for sound opioid public policy, detailing the importance of preventing opioid-related harms and reducing opioid toxicity deaths.⁵ It has been shown that effective opioid policy should target the main cause of overdose deaths by preventing at-risk individuals' exposure to illicit toxic drug supply.⁶ Such policies preventing exposure include medical opioid prescriptions and drug decriminalization.

Public policy to address opioid addiction is strongly associated with the evolution of ideas, narratives, and discourses, rather than scientific evidence. Governments often lack a unified understanding of the opioid crisis and, as a result, fail to develop evidence-informed consensus regarding best approaches to the crisis. In their Canadian cross-country study of harm reduction policies, Wild et al. found that evidence-based considerations are often less influential than political considerations regarding public health-focused opioid policy implementation.⁷ Similarly, Strike et al. determined that scientific evidence and public narratives are misaligned when framing and defining the opioid epidemic, causing uncertainty among public opinion and policy stakeholders.⁸

⁴ Molly Hutchinson, Éric Lavigne, and Zachary Patterson, "Opioid Use in the Era of COVID-19: A Multifaceted Study of the Opioid Epidemic in Canada," *Frontiers in Pharmacology*, 14 (May 25, 2023): 1–16. <https://doi.org/10.3389/fphar.2023.1122441>.

³ Public Health Agency of Canada, "Opioid- and Stimulant-Related Harms in Canada."

⁴ Public Health Agency of Canada, "Opioid- and Stimulant-Related Harms in Canada."

⁵ Hutchinson et al., "Opioid Use in the Era of COVID-19," 1-16; Carol Strike, et al., "Increasing Public Support for Supervised Injection Facilities in Ontario, Canada," *Addiction* 109, no. 6 (June 2014): 946–53, <https://doi.org/10.1111/add.12506>.

⁶ Benedikt Fischer, "The Continuous Opioid Death Crisis in Canada: Changing Characteristics and Implications for Path Options Forward," *The Lancet Regional Health - Americas* 19 (February 2023), <https://doi.org/10.1016/j.lana.2023.100437>.

⁷ T. Cameron Wild, "Canadian Harm Reduction Policies: A Comparative Content Analysis of Provincial and Territorial Documents, 2000–2015," *International Journal of Drug Policy* 45 (2017): 9–17. <https://doi.org/10.1016/j.drugpo.2017.03.014>.

⁸ Carol Strike, Tara Marie Watson, Gillian Kolla, Rebecca Penn, and Ahmed M. Bayoumi, "Ambivalence about Supervised Injection Facilities among Community Stakeholders," *Harm Reduction Journal* 12, no. 26 (August 21, 2015), <https://doi.org/10.1186/s12954-015-0060-3>.

Wild et al. noted that there is an abundance of health and economic research demonstrating the benefits of harm reduction approaches to the epidemic, however, such evidence is less influential than politically-driven narratives, which cause wide variation in policy planning and organization throughout the provinces.⁹

The lack of public understanding and poor coordination of the epidemic across government departments and agencies prevents health-centred responses to the epidemic.¹⁰ Despite the emerging evidence-based frameworks supporting harm reduction interventions, provinces have been slow to adopt such frameworks. Instead, narrative-driven frameworks influence policy responses to the opioid epidemic, often in

The frequent back-and-forth efforts of governments in implementing the two main approaches to the crisis – a health care approach and a criminalization approach – cause public confusion regarding the perceived best-response to the epidemic.

opposition of an evidence-based approach. The development and implementation of public policy to address opioid dependency is often focused on the how of responding, as policymakers leverage scientific uncertainty as a tool to defend the interests of the political party in power.¹¹ The frequent back-and-forth efforts of governments in implementing the two main approaches to the crisis—a health care approach and a criminalization

approach—cause public confusion regarding the perceived best-response to the epidemic. As a result, there are significant conflicts emerging about the various policy approaches, making policy responses reactive rather than proactive, based on evidence and stakeholder engagement.¹² Government narratives regarding opioid policy are frequently changing depending on the learnings or framing of opioid policy responses by different policy actors, therefore promoting a reactive rather than a proactive policy approach.¹³ This paper will compare provincial opioid policies in Ontario, Alberta, and

⁹ Wild et al., "Canadian Harm Reduction Policies," 9–17.

¹⁰ Wild et al., "Canadian Harm Reduction Policies," 9–17.

¹¹ Bianca R. Ziegler, Alexander JD Wray, and Isaac Luginaah, "The Ever-Changing Narrative: Supervised Injection Site Policy Making in Ontario, Canada," *International Journal of Drug Policy* 74 (2019): 98–111, <https://doi.org/10.1016/j.drugpo.2019.09.006>.

¹² Kristen A. Morin, Joseph K. Eibl, Alexandra M. Franklyn, and David C. Marsh, "The Opioid Crisis: Past, Present and Future Policy Climate in Ontario, Canada," *Substance Abuse Treatment, Prevention, and Policy* 12, no. 45 (November 2, 2017), <https://doi.org/10.1186/s13011-017-0130-5>.

¹³ Ziegler et al., "The Ever-Changing Narrative: Supervised Injection Site Policy Making in Ontario, Canada," *International Journal of Drug Policy* 74 (2019): 98–111, <https://doi.org/10.1016/j.drugpo.2019.09.006>.

BC, as they are the provinces most impacted by the opioid epidemic. Despite varying approaches to the crisis, Ontario, Alberta, and BC's opioid-related deaths continue to increase.

METHODOLOGY AND THEORETICAL FRAMEWORK

This paper seeks to answer the following questions: How does a provincial government change affect opioid policy? To what extent is narrative-driven policy interfering with the implementation of evidence-based policies to address opioid addiction? To answer these questions, this paper adopts a comparative case study to analyze policy in the three provinces most impacted by the opioid crisis. This analysis considers key policy approaches within the timeframe from 2006-2024. 2006 was chosen as the starting point for the analysis, following the election of Prime Minister Stephen Harper and the Harper Government's implementation of the federal National Anti-Drug Strategy in 2007, with key provincial policies examined up to May 2024. As previously stated, Ontario, Alberta, and BC were selected for this case study, as they are the three provinces the most impacted by opioid-related harms and deaths in Canada.¹⁴

COMPARATIVE PROVINCIAL POLICY ANALYSIS

British Columbia

2006 – 2017: Liberal

Under BC's Liberal government, Gordon Campbell served as premier from 2001 to 2011 and Christie Clark from 2011 to 2017. Following the election of the 2006 Conservative government, the Harper government was hesitant to continue funding Insite, North America's first legal supervised safe injection site (SIS) opened in Vancouver in 2003.¹⁵ Insite was created to reduced unsafe injection practices, public disorder, overdose deaths and HIV/Hepatitis while increasing uptake of addiction services.¹⁶ As a result, the Harper Government renewed Insite's funding until 2008 "under duress" and in part as a response to their political ally BC Premier Gordon Campbell's strong urging.¹⁷ Following signals that the Harper Government would not renew Insite's funding in the future, the Vancouver Area Network of Drug Users and the Portland Hotel Society launched lawsuits

¹⁴ Public Health Agency of Canada, "Opioid- and Stimulant-Related Harms in Canada."

¹⁵ Carey Doberstein, "Insite in Vancouver: North America's First Supervised Injection Site," *Policy Success in Canada: Cases, Lessons, Challenges* (July 2022): 56–74. <https://doi.org/10.1093/oso/9780192897046.003.0004>.

¹⁶ Dan Small, "Fighting Addiction's Death Row: British Columbia Supreme Court Justice Ian Pitfield Shows a Measure of Legal Courage," *Harm Reduction Journal* 5 (October 28, 2008): 3, <https://doi.org/10.1186/1477-7517-5-31>.

¹⁷ Doberstein, "Insite in Vancouver."

against the Government of Canada to prevent Insite's closure. The lawsuit's two main arguments were regarding federalism, as provinces have exclusive jurisdiction over healthcare, and that Insite's closure violated section 7 of the Charter, the guarantee of life, liberty, and security of the person.¹⁸ The Supreme Court ruled that a failure to extend Insite's exemption under the *Controlled Drugs and Substances Act* (CDSA) violated section 7 of the Charter, permitting Insite to continue its operations.

Under Liberal Premier Christie Clark, BC became the first province to declare a public health emergency in response to the significant increase in drug-related overdoses and deaths on April 14, 2016.¹⁹ Provincial Health Officer Dr. Perry Kendall declared a public health emergency under the *Public Health Act* to exercise emergency powers, allowing

Under Liberal Premier Christie Clark, BC became the first province to declare a public health emergency in response to the significant increase in drug-related overdoses and deaths on April 14, 2016.

medical health officers to collect more robust, real-time overdose data to allow for immediate identification of risks and an increasingly proactive response to warn and protect people who use drugs.²⁰ In July 2016, BC enhanced its overdose response programs

by announcing the creation of the Joint Task Force on Overdose Response, headed by Provincial Health Officer Dr. Kendall and director of police services Clayton Pecknold.²¹ The task force is responsible for leading an integrated response to the opioid emergency across public health and public safety sectors.²² The task force focuses on short-term and long-term policies to address the immediate needs of the public health emergency in addition to a larger improvement of treatment system capacity and effectiveness.

The Campbell and Clark Provincial governments acted as national opioid policy leaders in the emerging opioid crisis. The Campbell government's support of local initiatives, such as Insite, was tremendously successful in promoting safe consumption and harm reduction practices due to the collaborative and evidence-based approach to the crisis

¹⁸ Doberstein, "Insite in Vancouver."

¹⁹ BC Gov News, "Provincial Health Officer Declares Public Health Emergency," *Government of British Columbia*, April 14, 2016, <https://news.gov.bc.ca/releases/2016HLTH0026-000568>.

²⁰ BC Gov News, "Provincial Health Officer Declares Public Health Emergency."

²¹ BC Gov News, "Joint Task Force Mobilized to Scale up Overdose Response," *Government of British Columbia*, July 27, 2016, <https://news.gov.bc.ca/releases/2016PREM0082-001361>.

²² BC Joint Task Force on Overdose Prevention and Response, "Third Progress Update: B.C.'s Public Health Emergency Progress Update on B.C.'s Response to the Opioid Overdose Crisis," *B.C.'s Opioid Overdose Response*, January 2017, <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/overdose-response-progress-update-jan2017.pdf>.

while remaining resilient in response to political challenges. Furthermore, the Clark government's declaration of the opioid crisis as a public health emergency set a precedent in Canada by defining the crisis as a matter of public health.

2017 – Present: New Democrat

Despite the change from a Liberal government to a New Democratic Party (NDP) Government in BC, Premier John Horgan built on Clark's healthcare approach to the opioid crisis. On September 29, 2017, Horgan announced new province-wide action to help prevent overdoses, allocating \$322 million in funding from 2017 to 2020 toward a community crisis innovation fund, increased rapid-access community treatment, broader access to no-cost naloxone kits (temporary antidote to opioid overdoses), support for front-line workers, and a public awareness campaign targeting those most at-risk of an overdose.²³ Furthermore, \$31.3 million was allocated to critical enforcement and public safety initiatives specifically targeting traffickers of the illicit drug supply line.²⁴

Under Premier David Eby's NDP government from 2022 to the present, the federal government and BC government collaborated to take a decriminalization approach to the opioid crisis for the first time in Canada. Under the CDSA, adults in BC are not subject to criminal charges for the personal possession of small amounts of certain illegal drugs. Health Canada is granting this exemption from January 31, 2023, to January 31, 2026.²⁵ The province's collaboration with the federal government to decriminalize personal possession of certain illicit drugs removes barriers and decreases stigma for individuals seeking opioid-related health care.

Alberta

2006 – 2015: Progressive Conservative

Under Alberta's Progressive Conservative government, Ralph Klein served as premier from 1992 to 2006, Ed Stelmach from 2006 to 2011, Alison Redford from 2011 to 2014, Dave Hancock in 2014, and Jim Prentice from 2014 to 2015. Under Premier Klein's Progressive Conservative government in April of 2005, Bill 202, the *Protection of Children Abusing Drugs Act* (PChAD), was passed, allowing parents to make their children (under

²³ Government of British Columbia, "Premier John Horgan Announces Provincewide Action to Help Prevent Overdoses," *BC News Release*, September 29, 2017.

https://archive.news.gov.bc.ca/releases/news_releases_2017-2021/2017PREM0089-001647.htm.

²⁴ Government of British Columbia, "Premier John Horgan Announces Provincewide Action."

²⁵ Government of British Columbia, "Decriminalizing People Who Use Drugs in B.C.," Province of British Columbia, September 14, 2023, <https://www2.gov.bc.ca/gov/content/overdose/decriminalization>.

the age of 18) who are addicted to drugs spend five days in a detox centre.²⁶ PChAD took effect on July 1, 2006, and is a law that “helps children under the age of 18 whose use of alcohol or drugs will likely cause a significant psychological or physical harm to themselves or others.”²⁷ With collaboration between legal guardians, courts, and addiction and mental health counsellors, PChAD allows a legal guardian to ask the court for a PChAD Protection Order for their child. In 2024, the Protection Order allows a child to be “taken involuntarily to a Protective Safe House for up to 15 days for detoxification, stabilization, and assessment.”²⁸

Following Klein’s criminal and recovery-oriented approach to drug dependency, Premier Ed Stelmach’s Progressive Conservative government announced in November 2007 that it was getting “tough on crime and its cause”.²⁹ Premier Stelmach stated, “My government will increase the number of police officers on the street, target repeat

Premier Stelmach stated, “My government will increase the number of police officers on the street, target repeat offenders, and work to bolster public confidence in the justice system.”

offenders, and work to bolster public confidence in the justice system.”³⁰ Stelmach’s Crime Reduction and Safe Communities Task Force was implemented to establish stricter law enforcement and expand anti-drug legislation. Heather Forsyth, Chair of the Task Force and MLA for Calgary-Fish

Creek in 2007 stated: “During each task force visit, Albertans were very vocal that drug and alcohol triggers much of the crime in their communities. Communities recognized that apart from strong enforcement, enhanced treatment and services are needed for those people suffering from addictions and mental illnesses.”³¹

Premier Klein and Premier Stelmach’s Progressive Conservative governments approached addiction as a criminal issue, expanding punitive legislation and creating

²⁶ “Bill to Force Teens into Treatment Passed,” *CBC News*, April 15, 2005.

<https://www.cbc.ca/news/canada/calgary/bill-to-force-teens-into-treatment-passed-1.566456>.

²⁷ Alberta Health Services, “PChAD 101: Protection of Children Using Drugs (PChAD) Program,” *Alberta Health Services*,

<https://www.albertahealthservices.ca/amh/Page2547.aspx#:~:text=The%20Protection%20of%20Children%20Abusing,effect%20on%20July%201%2C%202006>.

²⁸ Alberta Health Services, “PChAD 101.”

²⁹ Government of Alberta, “Government Gets Tough on Crime and Its Causes: Work to Begin Immediately on Task Force Recommendations,” *Alberta News Release*, November 6, 2007,

<https://www.alberta.ca/release.cfm?xID=22466160E88D8-FFD4-F737-A04BA2EF500996CE>.

³⁰ Government of Alberta, “Government Gets Tough on Crime and Its Causes.”

³¹ Government of Alberta, “Government Gets Tough on Crime and Its Causes.”

recovery-oriented legislation. These Progressive Conservative governments had a no-tolerance policy for drug use alongside investment into the criminal justice system.

There is a lack of literature regarding drug and opioid policy from 2011 to 2015. The high turnover of provincial leadership – three premiers in four years – may account for the lack of public policy response. However, the Progressive Conservative criminal justice approach to drug policy and the no-tolerance attitude for drug use persisted from Premier Klein to Premier Prentice.

2015 – 2019: New Democrat

Premier Rachel Notley served as Alberta's NDP premier from 2015 to 2019. In 2015, the Alberta Community Council on HIV (ACCH) began the Community-Based Take Home Naloxone program, funded by Alberta Health at seven community-based organizations with a part-time nurse providing training and kit distribution.³² In November 2017, the program was renamed the Alberta Community Council on HIV Take-Home Naloxone program (ACCHN) project and was expanded to provide a full-time outreach worker and nurse at each of the seven sites. A report by the ACCH outlines the benefits of the ACCHN program, detailing that since 2015, there have been 9,251 overdose reversals from naloxone kit use, saving an estimated 925 lives.³³ Furthermore, ACCHN is highly cost-effective due to its low operating costs, such as naloxone kits and staff, compared to the high operating costs avoided in the health care system, such as emergency medical services and hospitalization. The report details take-home naloxone saves \$2,742 in opioid death-related costs for every dollar spent.³⁴

Two years after assuming office, the Notley government declared a public health crisis in May 2017 in response to Alberta's increasing number of opioid toxicity deaths. As a result, an additional \$30 million was dedicated toward health efforts alongside the creation of the Opioid Emergency Response Commission, consisting of medical, police, community, and Indigenous representatives, to address the crisis.³⁵ Declaring a public health crisis is less influential than declaring a public health emergency; however, a public health crisis allows the health minister to coordinate their powers to deal with the public health crisis.

³² Alberta Community Council on HIV, "A Report on the Effectiveness of the Community-Based Take Home Naloxone Program," *ACCH Report*, 2020, <https://northreach.ca/wp-content/uploads/2020/06/2020-05-20-A-Report-on-the-Community-Based-Take-Home-Naloxone-Program-Effectiveness.pdf>.

³³ Alberta Community Council on HIV, "Effectiveness of the Community-Based Take Home Naloxone Program."

³⁴ Alberta Community Council on HIV, "Effectiveness of the Community-Based Take Home Naloxone Program."

³⁵ Karen Bartko, "Alberta Declares Opioid Public Health Crisis, Announces \$30M Increase and New Panel to Address Deaths," *Global News*, May 31, 2017, <https://globalnews.ca/news/3491715/aggressive-opioid-plan-to-be-unveiled-by-alberta-government/>.

2019 – Present: *United Conservative*

Under a United Conservative Party (UCP) government, Jason Kenney served as premier from 2019 to 2022 and Danielle Smith from 2022 to the present day. In response to the BC government's focus on decriminalization, UCP premier of Alberta, Jason Kenney, claimed that decriminalization would have negative outcomes, including an increase in drug consumption, violence, and trafficking.³⁶ Kenney also demanded that the federal government find "real solutions" to not make a "bad situation worse."³⁷

In July 2020, UCP-led provincial government announced that it was ending funding for Canada's busiest publicly accessible SIS in Lethbridge which provided supervised consumption and needle debris pickup services, alongside another SIS closure in Edmonton.³⁸ Following the sites' closures, the UCP government paid millions of dollars to private companies to operate treatment centres for addiction.³⁹

Various accredited medical associations have called upon the UCP-led provincial government to increase transparency and release credible opioid-related data. Following the Government of Alberta's review of supervised consumption sites in March 2020, its review process was found flawed and biased, according to a peer-reviewed journal article by Livingston (2021), which also states that peer-reviewed research has found no evidence linking supervised consumption sites to increased crime and argues that the report's magnitude of methodological flaws undermines the validity of its criminological claims, raising issues with the soundness of its conclusions.⁴⁰ Significant actors, such as medical professionals, are excluded from the provincial policy-making process regarding the opioid epidemic. Furthermore, the province lacks transparency in its decisions, demonstrated by withholding opioid-related data from the public.

Ontario

³⁶ "Alberta Should Follow B.C. in Decriminalizing Small Amounts of Drugs, Advocates Say," *CBC News*, June 1, 2022, <https://www.cbc.ca/news/canada/calgary/alberta-bc-drug-decriminalization-1.6473700>.

³⁷ "Alberta Should Follow B.C."

³⁸ Elissa Carpenter, "'People Will Die Needlessly,' Advocacy Group Says, as Closure Date Looms for ARCHES," *CBC News*, August 18, 2020, <https://www.cbc.ca/news/canada/calgary/arches-lethbridge-closure-ucp-supervised-consumption-alberta-overdose-1.5685924>; Taylor Lambert, "Despite Soaring Death Rate from Opioids, Alberta Steers Away from Harm-Reduction Approach," *CBC News*, February 18, 2023, <https://www.cbc.ca/news/canada/edmonton/alberta-approach-opioid-crisis-1.6750422>.

³⁹ Taylor Lambert, "Despite Soaring Death Rate from Opioids, Alberta Steers Away from Harm-Reduction Approach."

⁴⁰ James D. Livingston, "Supervised Consumption Sites and Crime: Scrutinizing the Methodological Weaknesses and Aberrant Results of a Government Report in Alberta, Canada," *Harm Reduction Journal* 18: 4 (2021), <https://doi.org/10.1186/s12954-020-00456-2>.

2006 – 2018: Liberal

Under Ontario's Liberal government, Dalton McGuinty served as premier from 2003 to 2011, then Kathleen Wynne from 2013 to 2018. On June 10, 2008, Ontario Premier McGuinty announced a \$5.5 million investment to assist "young people trying to beat drug and alcohol addiction in Ottawa", detailing the implementation of more beds, treatment, and outreach programs to "help young people achieve sobriety."⁴¹ McGuinty and the Minister of Health and Long-Term Care, George Smitherman, used very stigmatizing language and adopted a recovery-oriented approach to addiction. Smitherman explained the importance of providing Ontarians "the treatment they need to be healthy again," while McGuinty emphasized the importance of getting "on the road to recovery."⁴² In March 2012, the Ontario Minister of Health and Long-Term Care, Deb Matthews, formed the Expert Working Group on Narcotic Addiction to "advise on how to lessen the effects of opioid addiction and strengthen the existing addictions treatment system in Ontario."⁴³ On October 17, 2012, the McGuinty government announced new investments into opioid treatment programs and addiction treatment programs for pregnant women and mothers. The associated press release outlined that since 2003, McGuinty's Liberal government had increased funding by 58 percent for provincial addiction programs.⁴⁴

Throughout Wynne's time as premier, the Province of Ontario continued to face opioid-related harms and deaths at a significantly increasing rate. Under Premier Wynne, provincial opioid policy was often formed in response to open letters and recommendations from the medical community. As the opioid crisis expanded, the medical community collaborated to create calls to action for the premier's office, specifically to Premier Wynne and Minister of Health and Long-Term Care Dr. Eric Hoskins. The Ontario government under Wynne's leadership was responsive to pressure from the medical community and opioid policy formed under the Wynne government took a harm reduction and evidence-based approach informed through collaboration with medical

⁴¹ Ontario Newsroom, "Ontario Fights Substance Abuse," *Government of Ontario*, June 10, 2008, <https://news.ontario.ca/en/release/301/ontario-fights-substance-abuse>.

⁴² Ontario Newsroom, "Ontario Fights Substance Abuse."

⁴³ Ontario Newsroom, "Helping Ontarians Overcome Prescription Narcotic Addiction: McGuinty Government Strengthening Addiction Programs Across the Province," *Government of Ontario*, October 17, 2012, <https://news.ontario.ca/en/release/22325/helping-ontarians-overcome-prescription-narcotic-addiction>.

⁴⁴ Ontario Newsroom, "Helping Ontarians Overcome Prescription Narcotic Addiction."

professionals, as demonstrated by her investment into expanding harm reduction services following calls to action from numerous medical professionals.⁴⁵

August 29, 2017, the Ministry of Health and Long-Term Care announced \$222 million in additional funding over the next three years for the province's opioid crisis.⁴⁶ The funding aims to ensure that people who use opioids "have access to holistic supports that address the full spectrum of needs" by expanding "proven harm-reduction services," such as needle exchange programs, naloxone distribution, access to Rapid Access Addiction Medicine Clinics, and SIS.⁴⁷ The same week, an advocacy letter from over 700 health and community stakeholders was presented to Premier Wynne.⁴⁸ The letter, signed by doctors, nurses, harm reduction workers, and academics, called on the province to declare a public health emergency in response to the opioid crisis, detailing the devastating effects of the province's poor data collection and lack of resources.⁴⁹ Premier Wynne explained that she was not prepared to call a provincial emergency: "When there's an emergency declaration, you're usually dealing with a situation that has a beginning and a foreseeable end, whether it's a flood or fire. The challenge with the situation is this is not a situation

The letter, signed by doctors, nurses, harm reduction workers, and academics, called on the province to declare a public health emergency in response to the opioid crisis, detailing the devastating effects of the province's poor data collection and lack of resources

that has a foreseeable end. We're talking about a crisis that is going to be ongoing."⁵⁰

2018 – Present: Progressive Conservative

Premier Doug Ford's Progressive Conservative government, elected in 2018, does not define the opioid epidemic, but rather warns against

the misuse of opioids. The government instead states on its Understanding Opioids webpage that "misusing prescribed opioids (painkillers) or taking street opioids can lead

⁴⁵ Ontario Newsroom, "Ontario Providing Support to Those Affected by Opioid Crisis," *Government of Ontario*, August 29, 2017, <https://news.ontario.ca/en/release/46007/ontario-providing-support-to-those-affected-by-opioid-crisis>.

⁴⁶ Ontario Newsroom, "Ontario Providing Support."

⁴⁷ Ontario Newsroom, "Ontario Providing Support."

⁴⁸ Toronto Public Health, "Report for Information: Additional Overdose Response Measures," City of Toronto, September 18, 2017, <https://www.toronto.ca/legdocs/mmis/2017/hl/bgrd/backgroundfile-107060.pdf>.

⁴⁹ Allison Jones, "Ontario pledges \$222M more to fight opioid overdoses and deaths," *Global News*, August 29, 2017, <https://globalnews.ca/news/3704302/ontario-opioid-crisis-funding/>.

⁵⁰ Allison Jones, "Ontario Pledges \$222M More."

to addiction, overdose and even death.”⁵¹ It further outlines its focus on a “recovery-oriented approach” and its support for “evidence-based harm reduction by building on a recovery-oriented model to treatment,” however the government notes that “information is intended to reduce the harms related to drug use, including deaths. Not using drugs is your best defense.”⁵²

The Ford government’s lack of immediate policies has proven to be deadly to Ontarians, as half of those who died from opioid toxicity early in the pandemic had interacted with health care systems months before their deaths. Furthermore, one-in-four Ontarians who died from opioid toxicity were reported to have been discharged from a hospital a week prior to their death.⁵³ Although there is significant evidence demonstrating the need for improved province-wide policy action, the Ford government lacks a coherent policy to address the demand for more accessible treatments.

DISCUSSION

The Canadian opioid epidemic is an urgent public health crisis with rising rates of opioid toxicity deaths and opioid-related harms. BC, Alberta, and Ontario’s approaches to the crisis vary significantly, reflecting the importance of political, social, and economic factors in influencing public health policy. This paper has illuminated that despite each province’s varying approach to the opioid crisis, BC, Alberta, and Ontario continue to face increasing opioid-related harms and deaths. BC takes a collaborative harm reduction approach, Alberta takes a centralized recovery-oriented approach, and Ontario lacks direct policies to address the opioid epidemic immediately. Despite the provinces’ different approaches, there remains no significant decrease in opioid toxicity rates, indicating the need for increasingly comprehensive, coordinated, and accessible policies. BC’s opioid policies reflect a progressive shift toward a harm reduction-focused approach and demonstrate the importance of collaboration with provincial, local, and regional actors for policy development and implementation. Overall, the Canadian opioid epidemic requires immediate policy action from provincial governments with a focus on evidence-based harm reduction services, collaboration among key provincial stakeholders and interest groups, and transparency regarding the effectiveness of policy implementation.

Further research should focus on the broader social determinants of health and their impact on the opioid epidemic. A healthcare approach aims to immediately prevent deaths while approaching the crisis by identifying the role of the social determinants of

⁵¹ Government of Ontario, “Understanding Opioids,” May 29, 2023, <https://www.ontario.ca/page/understanding-opioids>.

⁵² Government of Ontario, “Understanding Opioids.”

⁵³ Liam Casey, “Large Number of Ontarians Who Died from Opioid Overdoses Recently Interacted with Health-Care System: Study,” *CBC News*, January 18, 2022, <https://www.cbc.ca/news/canada/toronto/ontario-opioid-deaths-health-system-interactions-1.6318859>.

health, which would allow for a broader understanding as to how and why people keep dying. A healthcare approach is not enough to combat the opioid crisis. Instead, an interdisciplinary and collaborative effort is required to broaden the understanding of the crisis.

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Canadian Freedom and the Online Streaming Act

Sierra Roth

ABSTRACT

Bill C-11, or the Online Streaming Act, received royal assent in April 2023, igniting debates about its potential obstruction of the freedom of expression. This article intends to weigh the implications of internet regulation in Canada, and whether it infringes upon freedoms against the benefit of Canadians. To evaluate C-11, I reviewed the history of Canadian broadcasting legislation, similar legislation in Australia, responses from corporations and Canadians alike, and the current outcomes of C-11. Through analyzing the pros and cons of C-11, I found that C-11 offered opportunities to reinforce Canada's unique identity and strengthen Canada's entertainment industry against the American media monopoly. Further, a constitutional comparison suggests through Section 27 that the Charter is interpreted for the preservation and enhancement of Canada's multicultural heritage; therefore, a limit on the freedom of expression to prioritize Canadian media for the purpose of protecting Canada's culture is not a considerable limit. As the digital age continues to progress, the question of Canadian internet regulation persists, inquiring how much the internet should be regulated for the protection of Canada.

INTRODUCTION

Bill C-11, or the *Online Streaming Act*, is a controversial bill which received Royal Assent from Parliament in April 2023. The contents of Bill C-11 sparked debates among everyday Canadians and companies alike regarding how much the government should regulate online media distribution. Bill C-11 proposed adjusting the authority of the Canadian Radio-television and Telecommunications Commission (CRTC) so that it may also regulate internet media.

Analyzing Bill C-11 reopens questions on how much limitation is justifiable on the freedom of expression. Those against the bill argue it is incompatible with the Charter, criticizing the government's limit on freedom. Those in support of the bill defend the update of the *Broadcasting Act* to suit present-day technology. In this essay, I plan to accomplish a measured response to Bill C-11, examining its past, present, and future in Canada; asking if allowing the CRTC authority over online media hinders the freedom of expression to a point where the regulation is no longer beneficial. I will argue that Bill C-

11's regulation of media reasonably prioritizes Canadian content to the benefit of Canadians and does not violate the freedom of expression.

BACKGROUND TO THE ONLINE STREAMING ACT

As an essential piece of Bill C-11, the CRTC is an "administrative tribunal that operates at arm's length from the federal government."¹ Thus, the CRTC has authority over media while working within the jurisdiction of the federal government. The most relevant historical legislations for Bill C-11 are the 1968 *Broadcasting Act* – which outlined the goal of Canadian broadcasting and created the CRTC – and its 1991 revision, under which the CRTC operates today.²

The 1968 Broadcasting Act wanted to ensure a national broadcasting system "effectively owned and controlled by Canadians."

In his book, *Broadcasting Policy in Canada*, former senior CRTC manager Robert Armstrong describes the 1968 *Broadcasting Act* as a response to the concern for Canadian identity in media, where American entertainment was predominant.³ The 1960s' growth of

cable television rendered previous policy inadequate; American programs rapidly popularized in Canada, threatening Canadian content.⁴ The 1968 Act states that radio frequencies are Canadian public property where a single broadcasting system operates, "comprising public and private elements."⁵ Section 2 of the Act declares that any conflict between nationalized and privatized broadcasting will be resolved in the public interest.⁶ Section 2 also declares the objective of the Act "to safeguard, enrich and strengthen...cultural, political, social and economic fabrics."⁷ With new broadcasting standards, the Act wanted to ensure a national broadcasting system "effectively owned and controlled by Canadians."⁸ The CRTC received authority from Parliament to issue broadcasting licenses, originally only allowed to Canadian operatives.⁹ Therefore, the Act

¹ Canadian Radio-television and Telecommunications Commission, "Canadian Radio-television and Telecommunications Commission," <https://crtc.gc.ca/eng/home-accueil.htm>.

² Michael Dewing, "Canadian Broadcasting Policy," *Background Paper*, August 6, 2014, https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201139E.

³ Robert Armstrong, *Broadcasting Policy in Canada*, 2nd ed. (Toronto, ON: University of Toronto Press, 2016), 38.

⁴ Armstrong, *Broadcasting*, 37.

⁵ Armstrong, *Broadcasting*, 41.

⁶ Armstrong, *Broadcasting*, 42.

⁷ Armstrong, *Broadcasting*, 42.

⁸ Armstrong, *Broadcasting*, 43.

⁹ Armstrong, *Broadcasting*, 43

prescribes the CRTC with the responsibility to promote Canadian content; prioritizing public interest over private. By 1970, the CRTC regulated the amount of Canadian content (CanCon) in broadcasting; television initially required 60 percent CanCon and radio required 70 percent CanCon.¹⁰ In future decades, the *Broadcasting Act* underwent changes to accommodate evolving technology.

Like the *Online Streaming Act*, the CRTC was critiqued for alleged government overreach. A 1970 CBC radio broadcast described Pierre Juneau – the first CRTC chairman – as “diabolical” to private broadcasters.¹¹ Disgruntled Canadians worried the CRTC’s regulations threatened isolationism through banning foreign programs.¹² During the broadcast, Liberal MP Jean Roy critiqued the CRTC for neglecting Canadian opinions of media.¹³ Similarly, private corporations heavily rejected CanCon requirements. William McGregor, president of the Canadian Association of Broadcasters (CAB), claimed the CRTC was causing the production of “programs like sausages ... the best meat seldom goes into sausages.”¹⁴ Thus, increasing CanCon would meet CRTC proportions without increasing quality. The CAB also disputed the constitutionality of the CRTC, challenging whether government had any right to interfere within the broadcasting market.¹⁵

In 1991, amendments were made to the *Broadcasting Act* following policy reflection, which remain in force today. Notably, amendments to section 2 of the Act added the promotion and preservation of English, French, and Indigenous languages; the recognition of media benefitting Canadian employment and programming; and the adaptability of legislation to changing technology. However, in a 1999 briefing, the CRTC declared it would not regulate digital media, worrying that regulation would limit internet innovation.¹⁶ Government interest in online regulation fluctuated throughout the 2000s, first arriving in the House of Commons as Bill C-10 on November 18, 2020 – Bill C-11’s predecessor.

Bill C-10 was introduced by Minister of Canadian Heritage and Liberal MP Steven Guilbeault.¹⁷ Bill C-10 intended to amend and modernize the *Broadcasting Act* to

¹⁰ Armstrong, *Broadcasting*, 44.

¹¹ CBC, “Archives: Criticism of CRTC’s 1970 Ruling,” October 28, 2023, <https://www.cbc.ca/player/play/1734899650>.

¹² “Archives: Criticism of CRTC’s 1970 Ruling.”

¹³ “Archives: Criticism of CRTC’s 1970 Ruling.”

¹⁴ “Archives: Criticism of CRTC’s 1970 Ruling.”

¹⁵ “Archives: Criticism of CRTC’s 1970 Ruling.”

¹⁶ CRTC, “Archived – Public Notice CRTC 1997-197,” December 17, 1999, <https://crtc.gc.ca/eng/archive/1999/PB99-197.HTM>.

¹⁷ Isabelle Brideau, Gabrielle de Billy Brown, Francis Lord, and Marion Menard, “Legislative Summary of Bill C-10: An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts,”

encompass online streaming media, such as Netflix and Spotify, under CRTC jurisdiction.¹⁸ Bill C-10's amendments added "online undertakings" as a broadcasting class and updated the Act to better include Canadian multiculturalism.¹⁹ Guilbeault argued that leaving internet media to itself threatens to reinforce the status quo against the preservation of CanCon – especially as digital technology is the predominant way Canadians stay informed, entertained, and in contact.²⁰ Internet broadcasters – acting outside regulation – thereby benefit from Canadian consumers with "no obligation to give back."²¹ Bill C-10 inevitably failed to pass due to Parliament's dissolution.

Bill C-10's controversy rose during its time in Parliament. While Bill C-10 originally excluded user-generated content, the exclusion clause was removed in April 2021.²² Guilbeault argued this would better facilitate regulation, promising safeguards for individual Canadians not provided to broadcasters.²³ Michael Geist, a professor at the University of Ottawa, argued that removing the clause was against the freedom of expression, where regulating social media use limited "basic speech."²⁴ Conservative MP Alain Rayes was a common critic of Bill C-10, defending the "freedoms of Canadians who post their content online."²⁵ These criticisms repeat themselves against Bill C-11, where the freedom of expression is a recurrent concern in online media regulation.

THE ONLINE STREAMING ACT'S ROYAL ASSENT

Bill C-11, or the *Online Streaming Act*, was introduced to the House of Commons in February 2022 by Minister of Canadian Heritage and Liberal MP Pablo Rodriguez. The Act maintained some of the same amendments of Bill C-10, but with alterations, including specifying that regulation would not apply to a "user of the service, unless the programs

Legislative Summary, December 14, 2020,

https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C10E.

¹⁸ Brideau et al., "Legislative Summary of Bill C-10."

¹⁹ Bill C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, 2nd sess., 43rd Parliament, June 21, 2021, SC 1991. <https://www.parl.ca/DocumentViewer/en/43-2/bill/C-10/third-reading>.

²⁰ Canada, *House of Commons Debates*, November 18, 2020.

<https://www.ourcommons.ca/DocumentViewer/en/43-2/house/sitting-31/hansard#11015128>.

²¹ Canada, *House of Commons Debates*, November 18, 2020.

²² Anja Karadeglija, "Ottawa's Move to Regulate Video Posts on YouTube and Social Media Called 'Assault' on Free Speech," *National Post*, April 26, 2021, <https://nationalpost.com/news/politics/ottawas-move-to-regulate-video-posts-on-youtube-and-social-media-called-assault-on-free-speech>.

²³ Karadeglija, "Ottawa's Move."

²⁴ Karadeglija, "Ottawa's Move."

²⁵ Karadeglija, "Ottawa's Move."

are prescribed by regulation.”²⁶ In clarifying Bill C-10, section 2 of the Act greater specifies that online users do not carry the burden of broadcasters and will not be regulated as such – a commitment to maintaining the freedom of expression.²⁷ The *Online Streaming Act* provided greater consideration for diversity representation, including minority languages and marginalized groups.²⁸ The Act also enforced programs to equitably contribute production and presentation to Canadian resources if a program could not ensure Canadian predominance.²⁹ Additions to section 3 declared that broadcasters must take responsibility for implementing the policy expectations.³⁰

While the *Online Streaming Act* exempts social media users from CRTC regulation, a social media service producing content on its own platform remains subject to the Act as the CRTC is authorized to determine which social media programs are subject to regulation.³¹ The Act extends CRTC authority over online broadcasters to respect Canadian standards, requiring online media services to include CanCon proportions, but with tweaked requirements as online media use differs from broadcasting airtime.³² The CRTC’s enforcement abilities include license suspensions and fines, possibly utilizing public hearings to evaluate the scope of a violation.³³ The CRTC is not required to consult their respective minister for every choice, and has “all the powers of a superior court of record”³⁴ – therefore, the CRTC is the primary implementer, applicator, and enforcer of the Act.

The *Online Streaming Act* received Royal Assent on April 27, 2023.³⁵ At its third reading in the House, the Liberals, NDP, and Bloc Quebecois parties entirely voted “yea” for passing Bill C-11, whereas the Conservatives and Greens entirely voted “nay.”³⁶ In the final House debate, Liberal MP Chris Bittle assured there would be no blockade of usual media consumption, defending the Act’s prioritization of Canada’s artistic innovation,

²⁶ Bill C-11, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, 1st sess., 44th Parliament, April 27, 2023, SC 1991. <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-11/royal-assent>.

²⁷ Brideau et al., “Legislative Summary of Bill C-11.”

²⁸ Bill C-11.

²⁹ Bill C-11.

³⁰ Brideau et al., “Legislative Summary of Bill C-11.”

³¹ Brideau et al., “Legislative Summary of Bill C-11.”

³² Brideau et al., “Legislative Summary of Bill C-11.”

³³ Brideau et al., “Legislative Summary of Bill C-11.”

³⁴ Brideau et al., “Legislative Summary of Bill C-11.”

³⁵ Canada, Senate of Canada, “Vote Details: Government Motion to Concur in Message from House of Commons on Senate Amendments to Bill C-11,” (Ottawa, April 27, 2023), <https://sencanada.ca/en/in-the-chamber/votes/details/605960/44-1>.

³⁶ Canada, House of Commons, “Vote No. 292: 44th Parliament, 1st Session,” (Ottawa, March 30, 2023), <https://www.ourcommons.ca/Members/en/votes/44/1/292?view=result>.

coast-to-coast connection, and CanCon's economic benefits.³⁷ Conservative MP Blake Richards argued the Act gave the CRTC too much power to decide what media was "Canadian enough," and censor what was "unCanadian."³⁸ Richards argued the Act demonstrated government mistrust of Canadians, preventing social media from being a "free market of ideas, content, and information."³⁹ The House debates reveal the opposition arguments as concerned with freedom infringement. The supportive arguments defend the updated approach to developing technology, and the need for online broadcasters – like traditional broadcasters – to contribute their fair share to Canada.

THE RESULTS AND FUTURE OF THE *ONLINE STREAMING ACT*

The CRTC is currently finalizing the regulatory plan to facilitate the *Online Streaming Act*.⁴⁰ Since the Act's Royal Assent in 2023, the CRTC has undertaken fifteen consultations on their regulatory plan to modernize Canada's broadcasting framework across three key themes: high-quality Canadian content, a sustainable broadcasting system, and clear and predictable rules.⁴¹ These included hearings with the public, businesses, and organizations on how companies will offer services and any impact on streaming prices.⁴² In 2025, the CRTC finalized public consultations on CanCon for television and online streaming, the modernization of radio processes, and the market dynamics and sustainability of Canadian broadcasting.⁴³ The CRTC is currently undergoing a consultation on audio policy until April 7, 2025, and plans for eight more consultations throughout the remainder of the year.⁴⁴

As the CRTC processes their public consultations, they continue to publish decisions as they are made, including the roll out of policies within the *Online Streaming Act's* amendments.⁴⁵ At present, some decisions have been released by the CRTC based on

³⁷ Canada, *House of Commons Debates*, June 20, 2022, <https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-92/hansard>.

³⁸ Canada, *House of Commons Debates*, June 20, 2022.

³⁹ Canada, *House of Commons Debates*, June 20, 2022.

⁴⁰ CRTC, "Regulatory Plan to Modernize Canada's Broadcasting System," February 24, 2025, <https://crtc.gc.ca/eng/industr/modern/plan.htm>.

⁴¹ CRTC, "Regulatory Plan."

⁴² CRTC, "Regulatory Plan."

⁴³ CRTC, "Regulatory Plan."

⁴⁴ CRTC, "Calendar and list of activities," February 20, 2025, <https://crtc.gc.ca/eng/industr/modern/calend.htm>.

⁴⁵ Government of Canada, "CRTC Requires Online Streaming Services to Contribute to Canada's Broadcasting System," June 4, 2024, <https://www.canada.ca/en/radio-television-telecommunications/news/2024/06/crtc-requires-online-streaming-services-to-contribute-to-canadas-broadcasting-system.html>.

consultation outcomes. On September 29, 2023, the CRTC established a registration exemption order for online broadcasters, exempting broadcasters who have less than \$10 million in annual Canadian revenues, and those whose single activity consists of providing video game or audiobook services – “for the sake of clarity, users that upload content on social media platforms are not subject.”⁴⁶ Nearly six months later on March 21, 2024, the CRTC announced the implementation of new broadcasting fees in response to consultations that suggested a “fair balance” between the fees of traditional broadcasters and online streaming services.⁴⁷ Under the new policy, online broadcasters are expected to pay annual fees calculated based on their Canadian revenue and the costs of the regulatory activity upon their services.⁴⁸

The CRTC’s most recent major decision on the *Online Streaming Act* occurred on June 4, 2024. The decision required any online streaming service unaffiliated with Canadian broadcasters and generating more than \$25 million annually in Canada to contribute 5% of those revenues to select funds.⁴⁹ These funds include the Canadian Media Fund, Independent Local News Fund, and Indigenous Screen Office Fund, and intend to set a foundation for online streaming services’ meaningful participation in the Canadian broadcasting system.⁵⁰ The contributions order upset big streaming companies such as Netflix and Disney Plus, who appealed to the Federal Court of Appeal in December 2024.⁵¹ While the CRTC expects the contribution payments on August 31, 2025, the Federal Court of Appeal agreed to hear the case in June 2025, thereby delaying payment until the court process is finished.⁵² The reaction of Big Tech demonstrates the consistent theme of corporations seeing greater regulation as an obstacle of their business.

While the *Online Streaming Act* is relatively new, media regulation is an important issue to Canadians, who are moderately in favour of greater internet regulation. In May 2022, Nanos Research released a nation-wide poll on internet regulation, finding that two-thirds of Canadians supported or somewhat supported regulation on streaming services

⁴⁶ CRTC, “Broadcasting Regulatory Policy CRTC 2023-329 and Broadcasting Order CRTC 2023-330,” September 29, 2023, <https://crtc.gc.ca/eng/archive/2023/2023-329.htm>.

⁴⁷ CRTC, “Broadcasting Regulatory Policy CRTC 2024-65,” March 21, 2024, <https://crtc.gc.ca/eng/archive/2024/2024-65.htm>.

⁴⁸ “Broadcasting Regulatory Policy CRTC 2024-65.”

⁴⁹ CRTC, “Broadcasting Regulatory Policy CRTC 2024-121,” June 4, 2024, <https://crtc.gc.ca/eng/archive/2024/2024-121.htm>.

⁵⁰ “Broadcasting Regulatory Policy CRTC 2024-121.”

⁵¹ Anja Karadeglija, “Court Hits Pause on Global Streamers’ Upcoming Canadian Content Payments,” *CityNews Montreal*, December 24, 2024, <https://montreal.citynews.ca/2024/12/24/court-hits-pause-on-global-streamers-upcoming-canadian-content-payments/>.

⁵² Karadeglija, “Court Hits Pause.”

to support CanCon.⁵³ Three-fifths of Canadians also supported or somewhat supported government regulation to restrict online hate speech and the *Online Streaming Act* terms.⁵⁴ Nanos chief data scientist Nik Nanos argued that Canadians offered a “cautious green light” to greater internet regulation, recommending the government to tread lightly, as significant portions of Canadians responded with uncertainty or

“Regulations must adapt to allow Canadian culture to flourish in the digital age.”

disagreement.⁵⁵ While most survey participants support internet regulation, the absence of an absolute majority implies that some Canadians do not see greater regulation as a limit on their freedoms.

Online creators have expressed concerns regarding the *Online Streaming Act*. Throughout 2022, the Standing Committee on Canadian Heritage (SCCH) hosted meetings regarding the Act, collecting input from various stakeholders, such as members of the public, Big Tech representatives, and media-focused associations. YouTuber J.J. McCullough argued that Canadian YouTubers are right to worry that their success may dwindle if they do not make “Canadian enough” content, or lack the favour of government.⁵⁶ In April 2023, Canadian content creator Nathan Kennedy took part in parliamentary hearings, expressing worry that if his content does not meet CanCon requirements, his discoverability will be limited; that content creators are “collateral damage” in the Act.⁵⁷ Other creators also voiced the possibility of moving to the United States to protect their careers, worrying about the Act’s vague language impeding their ability to accurately predict its effect on their future careers.⁵⁸ Concerned for their livelihoods, creators critiqued the Act’s negative impact on their freedoms.

While some creators argued against the *Online Streaming Act*, other media-focused Canadians see its benefits and argued in favour of greater regulation. In his own SHHC

⁵³ Nanos Research, “Two in Three Canadians Are Good with Streaming Services Like Netflix, Amazon Prime and Disney+ Financially Supporting the Creation of Canadian Content in the Same Way Canadian Broadcasters Do,” *The Globe and Mail*, released May 2022, <https://nanos.co/wp-content/uploads/2022/05/2022-2131-Globe-April-Populated-report-Streaming-with-tabulations.pdf>.

⁵⁴ Nanos Research, “Two in Three Canadians.”

⁵⁵ Michelle Carbert, “Majority of Canadians Support Federal Government’s Plan to Regulate Internet, Poll Shows,” *The Globe and Mail*, May 10, 2022, <https://www.theglobeandmail.com/politics/article-liberal-internet-regulation-bill-c-11/>.

⁵⁶ Canada, Standing Committee of Canadian Heritage, *CHPC Committee Meeting*, June 1, 2022, <https://www.ourcommons.ca/documentviewer/en/44-1/CHPC/meeting-29/evidence>.

⁵⁷ The Canadian Press, “As Content Creators Await the Passing of Bill C-11, Some Say It’s Still Too Ambiguous,” *CTV News Ottawa*, April 10, 2023, <https://www.ctvnews.ca/politics/as-content-creators-await-the-passing-of-bill-c-11-some-say-it-s-still-too-ambiguous-1.6349475>.

⁵⁸ The Canadian Press, “As Content Creators Await the Passing of Bill C-11.”

meeting, Gord Sinclair of The Tragically Hip relayed the importance of protecting Canadian culture in media and promoting the next generation of Canadian entertainers within the dominance of online streaming.⁵⁹ Sinclair stated that “regulations must adapt to allow Canadian culture to flourish in the digital age,” especially after the pandemic forced closures of venues and performances.⁶⁰ In the same meeting, Dr. Sara Bannerman, the Canada Research Chair in communication policy and governance at McMaster University, suggested that the government can hold online platforms accountable, as platforms and their algorithms are not neutral, and instead serve their business interests.⁶¹

The *Online Streaming Act* has notably upset Big Tech. YouTube claims the Act’s requirements may create an environment where content creators must make themselves “Canadian enough” to gain traction.⁶² TikTok argues that such regulation will end up impacting “digital-first creators”⁶³ – those who primarily produce content for digital platforms, like YouTubers. In their own SCCH meetings, representatives from Disney,⁶⁴ Netflix, and YouTube argued that their companies already contribute to Canada’s media landscape, and urge for a more balanced approach than the Act.⁶⁵ As corporations with profit motive, Big Tech unsurprisingly rejects the Act’s regulations. Big Tech gains revenue from its users and notoriously breaks regulations across the globe. In recent years, the EU caught Google subverting competition and copyright laws, and the American government charged fines to Facebook and TikTok for privacy breaches.⁶⁶ In 2012, the Greenlining Institute investigated Big Tech’s tax payments in the United States, finding that the Fortune 500’s top 30 tech companies paid an average 19.9 percent tax rate compared to the 35 percent American corporate income tax rate.⁶⁷ As corporations, they may feel that

⁵⁹ Canada, Standing Committee on Canadian Heritage, *CHPC Committee Meeting 28*, May 31, 2022, <https://www.ourcommons.ca/DocumentViewer/en/44-1/CHPC/meeting-28/evidence>.

⁶⁰ Standing Committee on Canadian Heritage, *CHPC Committee Meeting 28*.

⁶¹ Standing Committee on Canadian Heritage, *CHPC Committee Meeting 28*.

⁶² Robin Levinson-King, “Bill C-11: Why Is YouTube Mad at Canada?” *BBC News Toronto*, May 2, 2023, <https://www.bbc.com/news/world-us-canada-65420133>.

⁶³ Marie Woolf, “TikTok Warns People Posting Videos Will Be ‘Collateral Damage’ of Bill C-11,” *The Globe and Mail*, September 21, 2022, <https://www.theglobeandmail.com/politics/article-tiktok-warns-people-posting-videos-will-be-collateral-damage-of-bill-c-11/>.

⁶⁴ Canada, Standing Committee on Canadian Heritage, *CHPC Committee Meeting*, May 30, 2022, <https://www.ourcommons.ca/documentviewer/en/44-1/CHPC/meeting-24/evidence>.

⁶⁵ Standing Committee on Canadian Heritage, *CHPC Committee Meeting 28*.

⁶⁶ Rys Farthing and Dhakshayini Sooriyakumaran, “Why the Era of Big Tech Self-Regulation Must End,” *Australian Quarterly* 92, no. 4 (2021): 6-7, <https://www.jstor.org/stable/27060078>.

⁶⁷ Samuel S. Kang and Tuan Ngo, “Tech Untaxed: Tax Avoidance in Silicon Valley, and How America’s Richest Company Pays a Lower Tax Rate than You Do,” *The Greenlining Institute*, April 2012, <https://www.cob.calpoly.edu/directory/wp-content/uploads/sites/8/2017/12/Tax-Avoidance-in-Silicon-Valley.pdf>.

their freedom to conduct business is impeded by the Act, however, Big Tech companies regularly demonstrate poor cooperation with regulations.

Bill C-18, or the *Online News Act*, is another example of media regulation to suit current technology, receiving Royal Assent on June 22, 2023.⁶⁸ The Act regulates Canadian news businesses that operate online and “digital news intermediaries” (DNIs), which are online services that make news available – especially Meta and Google.⁶⁹ Clause 6 of the Act recognizes the imbalance between DNIs and news businesses, thereby attempting to remedy DNI’s control over online news.⁷⁰ The CRTC has the authority to exempt DNIs from regulatory action if they take responsibility to satisfy the Act’s criteria, such as negotiating with Canadian news businesses to decide how to reproduce and fairly compensate diverse areas of Canadian news.⁷¹ Similar to the *Online Streaming Act*, the *Online News Act* is currently undertaking public consultations to inform its implementation, announcing new orders and policies as decisions are made.⁷² Their final consultations from summer and fall 2024 are now closed for comments.⁷³

The *Online News Act* has been criticized by Google and Meta. Google argued the Act would burden Canadians’ search for news and hinder journalists attempting to reach audiences.⁷⁴ In June 2023, Google announced that once regulations begin, they will remove Canadian news links from their search pages, as the Act creates a “link tax” to prioritize Canadian news.⁷⁵ Google’s remark on a “link tax” refers to the new requirement for DNIs to enter bargaining processes with news businesses to determine and execute fair compensation if the DNI hosts their link.⁷⁶ Consequently, DNIs may face fines for continuing to host news businesses links without entering and completing respective bargaining processes.⁷⁷ Meta reacted similarly, declaring the only way to “reasonably comply” with the Act is to end international and domestic news availability in Canada on

⁶⁸ Laurence Brosseau, Gabrielle de Billy Brown, and Marion Menard, “Legislative Summary of Bill C-18: An Act Respecting Online Communications Platforms That Make News Content Available to Persons in Canada,” *Legislative Summary*, October 13, 2022,

https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/441C18E.

⁶⁹ Brosseau et al., “Legislative Summary of Bill C-18.”

⁷⁰ Brosseau et al., “Legislative Summary of Bill C-18.”

⁷¹ Brosseau et al., “Legislative Summary of Bill C-18.”

⁷² CRTC, “Building a Bargaining Framework for the Online News Act,” August 24, 2023,

<https://crtc.gc.ca/eng/industr/info.htm>.

⁷³ CRTC, “Building a Bargaining Framework.”

⁷⁴ Kent Walker, “An Update on Canada’s Bill C-18 and Our Search and News Products,” *Google: Canada Blog*, June 29, 2023, <https://blog.google/intl/en-ca/company-news/outreach-initiatives/an-update-on-canadas-bill-c-18-and-our-search-and-news-products/>.

⁷⁵ Walker, “An Update on Canada’s Bill C-18.”

⁷⁶ Brosseau et al., “Legislative Summary of Bill C-18.”

⁷⁷ Brosseau et al., “Legislative Summary of Bill C-18.”

its platforms.⁷⁸ As regulations impede on business action, corporations interpret regulation as a hindrance to free operation. The greater the hindrance, the less likely a corporation is willing to operate in Canada, as shown in Big Tech's responses to the *Online Streaming Act* and *Online News Act*.

ARGUMENTS IN FAVOUR OF THE *ONLINE STREAMING ACT*

The *Online Streaming Act* demonstrates the controversial balance between regulation and the freedom of expression – therefore, how much can freedom be regulated before the benefits of regulation are overpowered by a constitutional infringement. As with all regulations, there are pros and cons; the pros may be the increase of CanCon in digital media and the enhancement of Canadian culture, while the cons may be the price of freedom.

A pro of the *Online Streaming Act* is that it provides an opportunity to prioritize CanCon within an industry that leans American. Without any media regulation, Canadian entertainment would be undermined by American exports. In a letter of support for the Act, the Writer's Guild of Canada (WGC) writes that Canadian domestic television was not naturally created by the market but was enforced by broadcasting policy.⁷⁹ Therefore, to support high-risk Canadian-made content such as children's programming, broadcasting regulation is needed in Canada.⁸⁰ The *Broadcasting Act*, alongside the *Online Streaming Act*, allows Canadian media, even if not profitable to the wider industry, to exist and succeed in Canada. While streaming services profit from Canadian users, they fail to adequately support Canadian media, doing little to "give back" to Canada's industry. Through the *Online Streaming Act*, services such as Netflix or Spotify will be prompted to support Canadian artists, thereby giving back to Canada while already profiting off Canadian consumers.

Another positive of the *Online Streaming Act* is its solidification of Canadian culture as being unique from the United States, as Canada and the United States have different political, cultural, and economic fabrics. Allowing unregulated domination of American media would nullify Canadian culture in entertainment, as American media is more profitable than Canadian. In a free entertainment market, Canadian media would not be able to establish itself. The decline of traditional broadcasting has left a larger space for American media to occupy in the unregulated digital realm. The WGC argues that while

⁷⁸ Meta, "Changes to News Availability on Our Platforms in Canada," June 1, 2023, <https://about.fb.com/news/2023/06/changes-to-news-availability-on-our-platforms-in-canada/>.

⁷⁹ WGC, "Why the WGC supports Bill C-11 – FAQs," <https://www.wgc.ca/node/355212>.

⁸⁰ WGC, "Why the WGC supports Bill C-11."

there is nothing wrong with American content, there comes a problem when American content is the main content consumed by Canadians – “culture and society reflect each other and Canada is not the United States.”⁸¹ Therefore, consuming American media does not reflect the Canadian cultural realm. The *Online Streaming Act* helps to solidify Canadian culture as something unique in the digital age, leading to a cohesive experience among Canadian consumers.

ARGUMENTS AGAINST THE *ONLINE STREAMING ACT*

Canadian culture as something unique in the digital age, leading to a cohesive Regulation is not without its drawbacks. A con of the *Online Streaming Act* is that companies are less likely to work in Canada with increased regulation, as they have to abide by harsher legislation to benefit from the Canadian market. If companies withdraw from Canada, Canadians may end up being deprived of online services accessed by other countries. Big Tech’s response to the *Online News Act* demonstrates the unlikelihood of companies to work within Canadian internet regulatory policies. Meta’s response to the *Online News Act* has already negatively affected smaller news organizations that do not have the means to platform themselves separate from social media. In a 2023 interview, Maureen Googoo, the owner of an Atlantic Indigenous news outlet, stated her worries about Meta pulling Canadian news from its platform.⁸² Googoo’s independent site depends on traffic generated on Meta sites and sharing; if she loses revenue following Meta’s blockade, her service to Indigenous communities would fall short.⁸³ Therefore, the increasing internet legislation in Canada has already deterred Big Tech companies and services within Canada, impacting everyday Canadians.

The most recognizable con of the *Online Streaming Act* is its limit on the freedom of expression, as some Canadians perceive greater media regulation as an infringement on their freedoms. Geist argues that the CRTC’s commitment to the freedom of expression is flimsy within the Act.⁸⁴ Geist recalls a conflict between Radio-Canada and the CRTC regarding the use of the N-word in a broadcast.⁸⁵ In 2020, Radio-Canada commentators used the N-word multiple times in a broadcast when discussing the dismissal of a Concordia University professor who read the word aloud in class; the CRTC claimed Radio-

⁸¹ “Why the WGC supports Bill C-11.”

⁸² Oscar Baker III, “Meta’s Removal of Canadian News Impacting Indigenous Media and Communities,” *CBC*, August 11, 2023, <https://www.cbc.ca/news/indigenous/meta-canadian-news-removal-1.6933829>.

⁸³ Baker III, “Meta’s Removal.”

⁸⁴ Michael Geist, “CRTC Ruling Signals How Bill C-11 Could Be Used To Regulate Internet Content,” June 30, 2022, <https://www.michaelgeist.ca/2022/06/crtc-ruling-signals-how-bill-c-11-could-be-used-to-regulate-internet-content/>.

⁸⁵ Geist, “CRTC Ruling.”

Canada violated the *Broadcasting Act*'s tenet of multiculturalism, forcing the broadcaster to issue an apology.⁸⁶ In June 2023, the Federal Court of Appeal granted Radio-Canada an appeal from the CRTC's decision.⁸⁷ However, Geist argues that this demonstrates the CRTC's too-broad ability to regulate content composition rather than just the proportion of CanCon, thereby violating the freedom of expression.⁸⁸ Geist believes this implicates the regulation of online media programs, which naturally require broader regulation.⁸⁹ Traditional broadcasting regulation corresponds to airtime, whereas online media is user-based.

AUTHOR'S ARGUMENT

While Canadians, associations, and companies alike express different views regarding the *Online Streaming Act*, my research has demonstrated that the prioritization of Canadian media in the digital sphere does not infringe upon the freedom of expression and instead benefits the Canadian media industry and protects Canadian culture.

The *Online Streaming Act* is a protectionist measure, meaning the typical pros and cons of protectionism are relevant in assessing the Act. The Bank of Canada argues that consumers often purchase the cheapest goods, and under protectionism, these are often goods made within the country – however, these goods are not necessarily of the best quality.⁹⁰ Thus, Canada's economy cannot rely on protectionist legislation. Protectionist industries result in "restricted supply, reduced variety, and significantly higher prices,"⁹¹ writes University of Toronto professors Bernardo Blum and Walid Hejazi. However, I think the protectionism of the CRTC is not harmful to Canadians nor Canadian entertainment. Canada is smaller than the American entertainment magnate and is easily overshadowed. In 2016, America was a third of the global entertainment industry, generating \$632 billion USD in 2015.⁹² However, despite Canada's entertainment shortcomings on the global

⁸⁶ CRTC, "Broadcasting Decision CRTC 2022-175," June 29, 2022, <https://crtc.gc.ca/eng/archive/2022/2022-175.htm>.

⁸⁷ Richard Raycraft, "CRTC Erred in Its Decision on Radio-Canada N-Word Broadcast, Court Finds," *CBC News*, June 9, 2023, <https://www.cbc.ca/news/politics/crtc-erred-n-word-borad-court-rules-1.6870974>.

⁸⁸ Raycraft, "CRTC Erred."

⁸⁹ Raycraft, "CRTC Erred."

⁹⁰ Stephen Murchison and Alex Churnoff, "Trading Up," Bank of Canada, November 7, 2023, <https://www.bankofcanada.ca/2018/09/trading-up/>.

⁹¹ Bernardo Blum and Walid Hejazi, "Protectionism Won't Help the Canadian Economy in A Future Pandemic or Emergency," *Rotman Insights Hub*, February 2022, https://www-2.rotman.utoronto.ca/insightshub/economics-trade-policy/Resilient_supply_chains.

⁹² International Trade Administration, "2016 Top Markets Report Media and Entertainment," October 2016, https://legacy.trade.gov/topmarkets/pdf/Media_and_Entertainment_Executive_Summary.pdf.

scale, the CRTC reports a 1.2% broadcasting revenue increase between 2021 and 2022.⁹³ As the *Broadcasting Act* offers protection and growth of the Canadian entertainment industry, it also helps to protect Canadian culture. Therefore, protectionist legislation on Canadian media is beneficial to Canadians as it protects Canadian culture, consumers, and entertainment workers without simply a profit motive. Culture is not something that can be quantified like trade goods, thus, protectionist legislation – such as the Act – is notable to maintain and enhance Canadian culture. The Act benefits Canadians without greatly compromising the freedom of expression, as prioritizing CanCon does not prevent access to outside content.

It is beneficial for Canadians to be primarily aware of their own country through media, as this enhances Canadian “belonging.” I believe the *Online Streaming Act*’s increased CRTC authority is justifiable through connecting Canadians to Canada. Present-day, most Canadians have online access and use the internet daily. Therefore, as digital media is currently most popular, giving the CRTC authority over online broadcasting would continue to enhance Canadian culture while traditional broadcasting declines. While some may suggest Canada and the United States are similar, Canada is not the United States, thus, regulations should be in place to protect Canada’s connection to its own culture. Prioritizing CanCon in digital media benefits Canadians as they become entwined with their own nation, rather than feeling alienated by foreign, albeit popular, American media. Further, prioritizing CanCon does not ban the consumption of other media and is thereby not a serious limit to the freedom of expression.

Examining similar policy suggests the beneficial outcomes of the *Online Streaming Act*. Australia saw success in comparable legislation, the 2021 *Digital Mandatory Bargaining Code*, which regulates internet content.⁹⁴ To promote Australian news sustainability, the Code balances the relationship between Australian news businesses and designated digital platforms, such as Google and Meta.⁹⁵ To subject a digital platform to the Code, the Australian Treasurer must assess whether the platform is contributing to Australian news sustainability or is maintaining a power imbalance.⁹⁶ Initially, Google and Meta

⁹³ CRTC, “Annual Highlights of the Broadcasting Sector 2021-2022,” September 7, 2023, <https://crtc.gc.ca/eng/publications/reports/policymonitoring/2023/rad.htm#a0>.

⁹⁴ Australia Competition and Consumer Commission, “News Media Bargaining Code,” November 7, 2023, <https://www.accc.gov.au/by-industry/digital-platforms-and-services/news-media-bargaining-code/news-media-bargaining-code>.

⁹⁵ Australia Competition and Consumer Commission, “News Media Bargaining Code.”

⁹⁶ Australia Competition and Consumer Commission, “News Media Bargaining Code.”

began to withdraw their services from Australia but retracted.⁹⁷ Currently, such platforms have bargained with Australian news businesses – therefore, the Code’s desired impact stemmed from threat of regulatory crackdowns.⁹⁸ Due to the Code’s success in its first year, the Australian Treasury concluded that news businesses were able to fund more journalists and business operations.⁹⁹ Similarly, as of June 2024, Google applied for an exemption from the *Online News Act*, as they have come to an agreement with the Canadian Journalism Collective to fairly compensate Canadian news businesses, despite initially reacting harshly.¹⁰⁰ The CRTC granted Google the exemption as the platform had met the requirements of the Act,¹⁰¹ solidifying a similar outcome from similar legislation in Australia, thereby suggesting potential benefits for local journalism in the future. While Big Tech has previously declared that online media regulation will harm journalists and news consumers alike, the Code has proved to be beneficial for Australian news sustainability and Canada may likely receive similar success in online media regulation.

Allowing the CRTC authority over online media is beneficial as it creates a system of checks and balances with media companies. The CRTC has regulated traditional broadcasters within Canada, declaring they must contribute back to the Canadian industry. The *Online Streaming Act* will extend these expectations to online broadcasters. If a company wishes to benefit from Canadian consumers, Canadian consumers should expect to benefit from the company; a transaction rather than leeching, as a corporation should not expect to purely profit. While the Act has complicated Canadian relations with Big Tech, who claim they are already supporting Canadian industries, it is not unreasonable for a country to expect a corporation to fairly contribute back. Regulation ensures there is an equal playing field between consumers and the companies themselves. Therefore, rather than hindering Canadian freedoms past benefit, regulating online media ensures that Canadians and Canadian culture are prioritized over Big Tech’s profit motives.

Canadians themselves are mostly in favour of protecting Canadian culture through regulating media, thereby matching the *Online Streaming Act*’s intentions. As mentioned, Nanos’ research confirms that most Canadians accept wider regulation of internet

⁹⁷ Australia, the Treasury of Australia, “News Media and Digital Platforms Mandatory Bargaining Code: The Code’s First Year of Operation,” (Canberra: Review, November 2022), <https://treasury.gov.au/sites/default/files/2022-11/p2022-343549.pdf>.

⁹⁸ Australia Competition and Consumer Commission, “News Media Bargaining Code.”

⁹⁹ Australia, the Treasury of Australia, “News Media and Digital Platforms Mandatory Bargaining Code.”

¹⁰⁰ CRTC, “Online News Decision CRTC 2024-262,” October 28, 2024, <https://crtc.gc.ca/eng/archive/2024/2024-262.htm>.

¹⁰¹ CRTC, “Online News Decision CRTC 2024-262.”

streaming services to promote CanCon.¹⁰² Prior to the Act, two Angus Reid surveys demonstrated the approval of Canadian broadcasting policy and Canadian cultural protection. In 2015, 80 percent of Canadians held a favourable view of the CBC, and 64 percent, a favourable view of the CRTC.¹⁰³ In 2016, 83 percent of Canadians believed their culture is unique, 61 percent believed Canadian culture needs government protection, and 60 percent believed CanCon rules should be “reviewed and updated.”¹⁰⁴ While arguments against the Act suggest that it infringes upon the freedom of expression, Canadians generally accept further regulation to promote their culture in media, including in online media, and are thereby unlikely to view the *Online Streaming Act* as an infringement on their freedom of expression.

The *Online Streaming Act* seeks to protect Canadian culture, just as the Charter of Rights and Freedoms constitutionally promotes the prioritization of Canadian culture. Section 2 of the Charter declares Canadians have the “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.”¹⁰⁵ Section 27 of the Charter declares that the “Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.” From these two sections, I conclude that enabling CRTC jurisdiction over online media does not present a hindrance to the rights and freedoms of Canadians. Rather, the Charter itself commands its own interpretation through the recognition and preservation of Canada’s multiculturalism. Therefore, as the Act regulates online media to prioritize CanCon, one’s freedom of expression is not violated nor is the media blocked from producing freely; our rights and freedoms must be interpreted through a lens of protecting and enhancing Canadian culture. The Charter is part of Canada’s constitution, which represents the people as part of a democratic state. Therefore, the Act suits Canada as a democratic society.

CONCLUSION

The *Online Streaming Act* remains a controversial bill which placed online broadcasters under the jurisdiction of the CRTC and the goals of the *Broadcasting Act*. In this essay, I examined the history of Bill C-11, including the 1968 creation of the CRTC, the 1991 *Broadcasting Act*, until reaching the present-day *Online Streaming Act*. Critics of the Act see it as a limit on freedom, while supporters hailed its added contribution to the

¹⁰² Nanos Research, “Two in Three Canadians.”

¹⁰³ Angus Reid Institute, “Culture, the CBC & the CRTC: Both Institutions Get Good Marks, but Future Relevance Seen as a Challenge,” March 11, 2015, <https://angusreid.org/canadian-culture/>.

¹⁰⁴ Angus Reid Institute, “Not Netflix, Sans Spotify: Canadians Back Continued CRTC regulation, but Not for Online Content,” June 3, 2016, <https://angusreid.org/heritage-minister-cancon-review/>.

¹⁰⁵ Canadian Constitution Act, R.S.C. 1982, c. 11, s. 1, <https://laws-lois.justice.gc.ca/eng/const/page-12.html>.

Canadian media landscape. While the tangible results of the *Online Streaming Act* are not yet known, the topic of my paper is important for future considerations in understanding how much the internet should be regulated by government.

From my analyses of the past, present, and future implications of the *Online Streaming Act*, I was able to draw my own conclusion on my research question. I conclude that allowing the CRTC authority over online media reasonably prioritizes Canadian content to the benefit of Canadians and Canada and does not violate the freedom of expression.

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Addressing Toronto's Crisis in Rental Housing: Municipal Policy Analysis for the Prospect of Affordable Rental Housing

Jacob Cruchet

ABSTRACT

While often framed as a simple issue of supply and demand, Toronto's rental affordability crisis is deeply rooted in shifts within Canada's political economy — specifically, the transition from housing as homeownership to housing as an asset class. This process, driven by the financialization of housing under Canada's neoliberal policy regime, has fostered an inflated and increasingly inaccessible rental market. Given the City of Toronto's limited capacity to reverse federal and provincial housing policy, this paper explores municipal-level interventions to mitigate reliance on unaffordable market rentals. Through a policy analysis framework, three alternatives are evaluated: (1) expanding inclusionary zoning requirements through a regulatory and incentive structure, (2) increasing rental subsidies via a Toronto Affordable Housing Trust Fund, and (3) implementing a large-scale social housing development plan. These options are assessed based on effectiveness, cost feasibility, and equity, ultimately concluding that an affordable housing trust—funded by an enhanced vacant homes tax—offers the most pragmatic and impactful solution for improving rental affordability in Toronto.

INTRODUCTION

The difficulty of addressing complicated social issues, sometimes called “wicked problems,” is well documented in the realm of policy analysis.¹ Jurisdictions overlap, benchmarks of success become muddled, and solutions may lead to more problems — resulting in a network of complicated, long-lasting and pervasive social issues, with no obvious solution in sight. In Toronto, but in the rest of Canada as well, one issue in particular exemplifies this complexity above all others. Reaching its boiling point in the last two years, and existing at the forefront of Canadians' minds for much longer than that, this problem is Canada's housing crisis.

¹ W. J. Rittel and Melvin M. Webber. “Dilemmas in a General Theory of Planning,” *Policy Sciences* 4, no. 2 (1973): 12, <https://www.jstor.org/stable/4531523>.

While housing and rent unaffordability is affecting all of Canada, it should not be mistaken as possessing geographic uniformity — in other words, its prevalence varies from province to province, region to region, municipality to municipality, and so on. The city of Toronto, in particular, faces some of the highest housing and rental costs in all of Canada, making it profoundly challenging for lower or middle-income individuals and families to find affordable housing.² Furthermore, through an inter-jurisdictional framework — but with a focus on municipal options — this paper aims to provide three policy solutions to enhance Toronto's rental housing affordability, addressing both the short and long-run solutions to the problem. This analysis will be structured into three sections: a) understanding the historical context and significance of rental affordability in Toronto, as well as Canada as a whole; b) identifying three policy options that will assist in increasing Toronto's rental affordability, and c) evaluating each of these options based on a common set of performance criteria, ultimately recommending the optimal policies to implement.

CONTEXTUALIZING (UN)AFFORDABILITY: FROM PAST POLICIES TO PRESENT CHALLENGES

In March of 2023, the City of Toronto released an annual report outlining its housing needs, critical information, and plans for policy implementation.³ The report's conclusions were staggering. In 2021, a year before housing prices peaked in the Greater Toronto Area (GTA),⁴ one in five households met the Core Housing Need (CHN) designation,⁵ while over 7000 individuals were reported living homeless.⁶ Even more shocking, however, were the report's findings on rental households. In 2021, "The share of households renting their home increased to 48 percent," and "nearly half of renters [were] burdened by spending over 30percent of their income on shelter costs."⁷

² WOWA, "Toronto Housing Market Report," January 5, 2024, <https://wowa.ca/toronto-housing-market>.

³ City of Toronto, "Toronto Housing Data Book," City of Toronto, City of Toronto, March 28, 2023, <https://www.toronto.ca/city-60-government/data-research-maps/toronto-housing-data-hub/toronto-housing-data-book/>.

⁴ Canadian Rental Housing Index, "Rental Statistics at a Glance: Toronto," Tableau Software, 2021, https://public.tableau.com/views/Snapshot21CD/CRHI_CommunityProfileSnapshot2?:embed=y&&:showVizHome=n&:tabs=n&showShareOptions=true&:apiID=host0#navType=0&navSrc=Parse.

⁵ "Core Housing Need" Refers to a Designation Created by the Canadian Mortgage and Housing Corporation (CMHC) to Describe Dwellings "Considered Unsuitable, Inadequate or Unaffordable" by the Crown Corporation, CMHC, "Understanding Core Housing Need."

⁶ City of Toronto, "City of Toronto Housing Data Book," 28-29, 35.

⁷ City of Toronto, "City of Toronto Housing Data Book," 29, 40.

Indeed, this report is not unique in its findings. In Q4 of 2022, The Canadian Centre for Policy Alternatives released a publication underscoring similar problems. Focusing on the gap between minimum wages and the median rental price in Toronto, the publication concluded that an individual would require an hourly wage of \$33.62 while working a full-time job to afford a one-bedroom apartment in the GTA.⁸ This rental wage is more than twice the rate paid by the minimum wage. In other words, two adults working full-time, minimum-wage jobs would be unable to rent a typical one-bedroom apartment. As the publication concludes, “minimum-wage earners are extremely unlikely to escape core housing need. They are likely spending too much on rent, living in units that are too small, or, in many cases, both.”⁹ Moreover, it is only logical to characterize Toronto’s rental situation as dire. As these reports indicate, there is, without a doubt, a crisis in affordability occurring.

One can either view the affordability crisis as the result of current supply and demand imbalances, or one can view the affordability crisis as rooted in historical, underlying political and economic forces.

Time and time again, the Toronto housing crisis—and the broader affordability crisis occurring in Canada as a whole—is framed as a simple supply and demand issue.¹⁰ Certainly, supply and demand are critical components in determining the price of rent in Canada; no one should be disputing this claim. However, it would be naive to treat supply and demand as the *cause* of

this affordability crisis alone, as supply and demand are in turn *caused* by external forces—forces which, as this paper will demonstrate, are political and economic in nature. Two alternative explanations thus arise. One can either view the affordability crisis as the result of current supply and demand imbalances, or one can view the affordability crisis as rooted in historical, underlying political and economic forces. Of course, these perspectives are not mutually exclusive, but characterizing them separately offers heuristic value in understanding the potential solutions that may be proposed in

⁸ David Macdonald and Ricardo Tranjan, “Can’t Afford the Rent: Rental Wages in Canada,” *Canadian Centre for Policy Alternatives* (2023), 14, <https://policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2023/07/cant-afford-the-rent.pdf>.

⁹ Macdonald and Tranjan, “Can’t Afford the Rent: Rental Wages in Canada,” 15.

¹⁰ Murtaza Haider, and Stephen Moranis, “More Homes Should Be the Solution to Canada’s Housing Shortage, but Some Argue the Opposite,” *The Financial Post*, October 19, 2023, <https://financialpost.com/real-estate/canada-needs-more-homes-despite-supply-skeptics>.”; Pete Evans, “Housing Supply Picture Improving but Canada Still Needs 3.5 Million More New Homes by 2030, CMHC Says,” *CBC News*, September 13, 2023, <https://www.cbc.ca/news/business/cmhc-housing-report-1.6965250>.

response to this crisis. Furthermore, we can characterize these seemingly alternative perspectives into more digestible labels, short-run and long-run approaches, respectively.

Contextualizing rental affordability in this “short-run” framework is a comparatively easier endeavour than it is for any “long-run” equivalent. Toronto’s rental affordability is, simply, at a historic low, is driving a cost-of-living crisis, and is the result of excess housing demand dominating suboptimal housing supply.¹¹ This conclusion is not difficult to make, but it is another question altogether to inquire into the *causes* of the supply and demand imbalance. This inquiry, however, is necessary, as “long-run” solutions to Toronto’s rental affordability crisis are equally as important—for the sake of risk mitigation and sustainable city development—as the sometimes commonsensical, short-run alternatives.

THE POLITICAL ECONOMY OF CANADA’S HOUSING HISTORY

As this paper begins to explore a long-run approach to understanding rental housing unaffordability, it is necessary to examine the complicated threads of public and market governance that have moulded the landscape that allowed supply and demand to reach current levels. Examining the origins of this crisis utilizes a nuanced approach to policy decision-making, one that extends beyond the scope of market imbalances while relating Toronto’s housing needs to persistent historical developments that shaped the real-estate market in Canada as a whole, across numerous decades.

By “public and market governance” this paper refers to the rational decisions made by both government and businesses that have influenced the course of the real estate market; however, this phrase also refers to shifts in the behaviours of entire industries, such as the financial sector. Examples of this governance include government regulation and deregulation, corporate mergers, business developments, and the financial sector pivoting away from a ‘homeownership’ based understanding of the real estate market to a fundamentally different “asset” based perspective, to name only a few.

Prior scholarship has identified these governance mechanisms in great detail, combining analysis of government policy with analysis of the financial and real-estate markets’ behaviours into a plethora of research that functions as a crux to examine the interplay between these two seemingly alternative spheres. This intersection can be most properly labelled ‘political economy’—drawing parallels to the conventional use of the term in prior decades of research. Certainly, the political economy of an evolving housing market

¹¹ Toronto, “Toronto Housing Data Book,” 2023.

is best understood through the component processes that substantively impact its development. In Canada, two of these processes are particularly relevant to the housing supply and demand witnessed in Toronto today, namely neoliberalism and financialization. David Harvey's definition of neoliberalism as "a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade" seems most adequate to serve as a familiar definition for most readers. The process of financialization is similarly defined as the "shift from industrial to finance capitalism,"

Through the regulation of the National Housing Act (NHA), Bill C-66 provided the CMHC with the ability to insure "any kind of housing loan that it saw fit," resulting in a steady support for mortgage-backed securities and riskier loans to propagate the housing market.

which broadly refers to the ever-increasing role of the financial sector in moving beyond supplying capital for industry to becoming a source—and priority—of economic surplus generation in and of itself.

A particularly effective illustration of the long-run causes of the current supply and demand crisis in Toronto is expressed in Walks and Clifford's analysis of the "neoliberalization" of

housing policy in Canada. In this article, the authors describe the role that the Canadian Mortgage and Housing Corporation (CMHC) and Bill C-66 played in promoting the emergence of securitization in the Canadian housing market. Through the regulation of the National Housing Act (NHA), Bill C-66 provided the CMHC with the ability to insure "any kind of housing loan that it saw fit," resulting in a steady support for mortgage-backed securities and riskier loans to propagate the housing market. Additionally, the bill caused a "restructuring" of the CHMC, leading to a situation of "private investors who would supply new rental housing for lower-income households," instead of the CMHC bearing a larger responsibility. Together, these changes led to a unique supply and demand landscape across Canada; they provided a wedge in the door for the financial giants to control the distribution of unstable mortgages relatively risk-free, leading to a dramatic increase in the proportion of housing supply owned by large financial investors.

Even before this occurred, however, neoliberal-driven austerity measures in the 1970s and 1980s in the Federal Government resulted in the massive rollback of affordable and social housing units nationwide. The result was a newly-exposed, lower-income class of renters and homebuyers who were streamlined into the risky mortgage loans and securities provided by growing real estate and finance giants.

In another study, Martine August describes the accumulation of multi-family rental housing, such as apartment buildings, by finance capital in Canada. Describing the mechanism of acquirement as a “[transfer of rental units] from a non-financial operator to a financial vehicle, such as a REIT [Real Estate Investment Trust], private equity fund, institutional investor, or asset management firm,” August explains, in detail, how REITs alone increased from owning zero Canadian rental suites in 1996 to 164,498 in 2017. Additionally, between 2011 and 2017, the proportion of Canadian rental suites owned by Canada’s 20 largest landlords grew from 15.8 percent to 20.2 percent, indicating a continued trend in the financialization of Canada’s rental housing supply. Furthermore, this financialization leads to what August describes as “Value-added repositioning,” in which, upon acquiring ‘underperforming’ housing units, REITs increase their profitability by reducing expenditures—that is, by reducing staffing costs and rolling back service provision within large rental buildings—and increasing revenues, achieved through rental increases and the pursuit of “unit turnovers.” More important, however, is the provincial government policy that supported this transformation. For instance, the 1997 “Tenant Protection Act”—which is ironically described by August as “landlord-friendly”—allowed Ontario landlords to increase rents without restraint upon tenant turnover. Moreover, the act included additional provisions that allowed landlords to pass along “the costs of tax increases, security improvements, and major capital repairs” to tenants. These policy changes made it significantly more appealing to financial landlords and REITs to enter Ontario’s real estate markets, leading to the developments in supply ownership described above.

Together, the intersection of federal and provincial governments, partnering with Canadian finance capital, paint a long-run picture of a Toronto housing affordability crisis rooted in financialization and neoliberalism—a crisis that manifests today as a lack of affordable housing and rental supply due to the concentrated ownership of housing amongst large financial landlords interested in elevating housing prices to increase the value of their “assets,” and leading to financial profits in the short-term.

REQUIRED ACTION

Children, the elderly, the homeless, part-time workers, and already susceptible marginalized groups such as Black Torontonians should be expected to face disproportionate rental insecurity, making this crisis worse for some rather than others.¹² Regarding housing insecurity and

¹² According to two reports from the Canadian Centre for Housing Rights (CCHR), “Members of racialized groups, newcomers, lower income people, single people, and people with disabilities report experiencing high rates of discrimination while living in their rental unit,” with racialized Torontonian’s being associated with a 14.34% lower response rate from landlords than their non-racialized counterparts. Additionally, CCHR found

population health, a robust body of research outlines the negative relationship between the two variables. For example, a 2011 study of the relationship between housing security and the health of young children in the United States supports this conclusion.¹³ The same conclusion is established in a meta-analysis of 22 studies outlining the relationship between housing insecurity and mental health amongst renters,¹⁴ while a separate meta-analysis further solidifies the connection with its examination of 47 studies observing the relationship between individuals facing eviction and their mental and physical health, drawing similar conclusions.¹⁵ It is only logical to conclude, therefore, that Toronto's rental affordability crisis extends beyond its effects on the cost of living, including in its reach the degeneration of many Torontonians' health.

DIAGNOSING THE PROBLEM

To effectively recommend *successful* policies that will address both the short and long-run of Toronto's rental affordability crisis, it is necessary to first develop an accurate definition of what the problem affecting Toronto *really* is.

Previously, this paper purposefully separated the short-run and long-run approaches to viewing this issue. However, to accurately visualize the landscape of Toronto today, it is necessary to bring these two approaches together. Recall that Toronto's rental affordability is at a historic low, is driving a cost-of-living crisis, and is the result of excess housing demand dominating suboptimal housing supply. This short-run analysis can now be fortified with the long-run analysis developed in the previous section. With this long-run perspective in mind, the definition of the problem should acknowledge supply imbalances as well as the composition of housing supply, that is, *who owns what*. Finally, the definition should account for the *financialization* that has transformed the housing market in Canada—leading to the normalization of houses as *assets*. This, however, is difficult to take into consideration, as municipalities have little ability to create policies

that callers who presented with accents considered racialized faced a 267% increase in discrimination when attempting to enter rental markets and exhibiting newcomer status. Canadian Centre for Housing Rights, Canadian Centre for Housing Rights, "Sorry, It's Rented: Measuring Discrimination Against Newcomers in Toronto's Rental Housing Market," November 2022, 41, <https://housingrightscanada.com/wp-content/uploads/2022/11/CCHR-Sorry-its-rented-Discrimination-Audit-2022.pdf>; Megan Earle, Gordon Hodson, and Sophie O'Manique, "Measuring Discrimination in Rental Housing Across Canada," Brock University and the Canadian Centre for Housing Rights, 2025, 28, 29, https://housingrightscanada.com/wp-content/uploads/2025/03/Report-Measuring-Discrimination-in-Rental-Housing-Across-Canada-M.Earle_G.Hodson_S.OManique-March-2025.pdf.

¹³ Diana Becker Cutts et al., "US Housing Insecurity and the Health of Very Young Children," *American Journal of Public Health* 101, no. 8 (August 2011): 1511, <https://doi.org/10.2105/AJPH.2011.300139>.

¹⁴ Mira Talmatzky et al., "Exploring the Association between Housing Insecurity and Mental Health among Renters: A Systematic Review," medRxiv, November 1, 2023, 30.

¹⁵ Hugo Vásquez-Vera et al., "The Threat of Home Eviction and Its Effects on Health through the Equity Lens: A Systematic Review," *Social Science and Medicine* 175 (February 1, 2017): 202–204, <https://doi.org/10.1016/j.socscimed.2017.01.010>.

that address changes initially created by provincial and federal governments. Furthermore, it is within the interest of Toronto to nudge its population into alternative housing solutions. We might ask the question, then: how can the municipality of Toronto, in an effort to improve citizens' health and alleviate the cost of living, reduce the reliance of low-income earners on—or protect low-income earners from—an inflated, unaffordable, and predacious rental market?

IMPROVING THE CITY OF TORONTO'S RENTAL HOUSING CRISIS: PROACTIVE POLICY ALTERNATIVES

Option 1: Dramatically Altering Inclusionary Zoning Requirements Through a Regulatory and Incentive Structure

In 2021, the City of Toronto updated its zoning practices toward a more inclusionary model, aiming to better support the development of affordable housing in the city.¹⁶ This change is progressive, introducing a provision requiring all new condominiums constructed to include affordable rental housing as 5–10 percent of all units.¹⁷ This policy, however, is not adequate; its effects will be beneficial, but marginal. Alternatively, this paper recognizes the necessity for aggressive policy to combat the rental affordability crisis. As such, it proposes the following:

1.1 *Amending the City of Toronto's inclusionary zoning bylaw to aggressively increase the required percentage of affordable rentals from 5–10 percent in condominiums to 15–25 percent across the Greater Toronto Area.*

Additionally, and recognizing the potential of the “missing middle” of affordable housing,¹⁸ this amendment includes the following as it pertains to middle-level housing;

1.2 *Requiring the City of Toronto's inclusionary zoning bylaw to aggressively increase the required percentage of affordable rentals in townhouses, stacked townhouses, and low-rise apartment buildings to 15–25 percent across the Greater Toronto Area.*

Finally, this paper recognizes the City of Toronto's failure to appeal to the basic mechanism of *incentives* in coercive policy.¹⁹ As such, in both the instances of mid-level and condominium housing;

1.3 *Any additional 1 percent increment in the stock of affordable housing units dedicated in new developments past the minimum of 15 percent will receive returns*

¹⁶ City of Toronto Planning and Housing Committee, BY-LAW 940-2021.

¹⁷ City of Toronto Planning and Housing Committee, BY-LAW 940-2021.

¹⁸ Parolek and Nelson, *Missing Middle Housing*; Popal, “Filling in the Housing Gaps.”

¹⁹ In Public Policy discourse, mechanisms, and specifically *basic* mechanisms, refer to “constructs that allow us to understand what really occurs inside the ‘black box’ of social processes, including policy target behaviour.” Capano and Howlett, “Causal Logics and Mechanisms in Policy Design,” 145.

through the form of municipal housing subsidies at a rate of 120 percent of the cost of developing the rental unit; and

- 1.4** *This subsidy ceases to apply as developers reach the upper threshold of 25 percent affordable rental units—in all developments of mid-level and condominium housing.*

As a whole, this amendment will both regulate and incentivize developers to reach an aggressive target of 15–25 percent affordable rental units in all newly developed mid-level and condominium housing across the Greater Toronto Area, thereby providing a greater number of Torontonians with access to affordable, protected rental solutions.

Option 2: Increasing Rental Subsidies Through a Toronto Affordable Housing Trust Fund, Sourced Through an Improved Vacant Home Tax

Currently, the City of Toronto does not possess an Affordable Housing Trust Fund, which is a fund of permanent revenue traditionally used to provide and preserve affordable rental housing units for low-income earners.²⁰ Furthermore, this paper proposes the implementation of the following:

- 2.1** *A City of Toronto Affordable Housing Trust Fund to be used for subsidies and grants to better support low-income renters in a predacious rental market.*

Additionally, this paper recommends that this Trust be developed and maintained through the collected revenue of Toronto's Vacant Home Tax.²¹ However, it should be recognized that, at the current Vacant Home Tax level of 1 percent revenue streams—currently between \$55–60 million annually—may be insufficient to address the needs of tens of thousands of struggling households.²² As such, this paper proposes:

- 2.2** *Amending the City of Toronto's Vacant Home Tax to increase its rate from 1 percent of property value to 3 percent of property value and;*²³

- 2.3** *Dedicate this Vacant Home Tax increase to the newly developed City of Toronto Affordable Housing Trust Fund.*

The following policy is developed with the clear purpose of assisting low-income renters in the Toronto area. Through the subsidies provided through the Affordable Housing Trust, renters will be sheltered from the predacious, financialized Toronto rental market,

²⁰Michael Shapcott, "An Affordable Housing Trust Fund for Toronto," February 3, 2014, <https://www.wellesleyinstitute.com/housing/whats-my-big-idea-an-affordable-housing-trust-fund-for-toronto/>; City of Los Angeles, Affordable Housing Trust Fund.

²¹Currently, Toronto taxes vacant homes—any unit that is uninhabited for a period of over six months—at a rate of 1 percent of their property value. This tax is designed to collect revenue for the City of Toronto while simultaneously improving housing supply. City of Toronto, "Vacant Home Tax."

²²In 2022, there were roughly 33,000 rental households in arrears—not paying rent—in the Toronto region. In total the sum of arrears reached \$74,870,000, far exceeding the Vacant Home Tax's annual revenue. City of Toronto, "City of Toronto Housing Data Book," 32.

²³By "vacant," this paper is referring a residential property that is left unoccupied for a period of over six months.

and through the increased Toronto Vacant Home Tax, real estate giants and landlords will be disincentivized from leaving units empty, allowing for more unit supply in Toronto's rental market.

France's "taxe sur les logements vacants" (TLV), or "Vacant Homes Tax," serves as a practical example of the benefits that these taxation schemes can produce. The tax targeted homes left uninhabited for over two years at a progressively increasing rate, the longer it was left uninhabited—from 10 percent of rental value after two years to 12.5 percent after the third year left vacant, and 15 percent after five years being without use.²⁴ As Segú (2020) concluded in their study of nearly every housing unit in France from 1995-2013, the TLV led to a percent decrease in vacancy rates, after controlling for other variables.²⁵ Furthermore, while a decrease in vacancy rates is not equivalent to an increase in general rental affordability, it nonetheless serves as a useful proxy due to the relationship between housing supply, demand, and prices.

Option 3: Aggressive Social Housing Development Plan

The third policy alternative proposed in this paper is an integrated public and non-profit-led ambitious social housing program, directed at creating a robust social housing landscape in Toronto, similar to that of Vienna.²⁶

As previous sections outlined, Canada's social housing programs and stock were significantly rolled back—almost to the point of complete elimination—in the '70s and '80s.²⁷ Furthermore, social housing models, and particularly Vienna's model of social housing,²⁸ illustrate superior levels of homelessness prevention and rental

²⁴ Mariona Segú, "The Impact of Taxing Vacancy on Housing Markets: Evidence from France," *Journal of Public Economics* 185 (May 1, 2020): 6-7, <https://doi.org/10.1016/j.jpubeco.2019.104079>.

²⁵ Segú, "The Impact of Taxing Vacancy on Housing Markets, 14-15."

²⁶ Susanne Marquardt and Daniel Glaser, "How Much State and How Much Market? Comparing Social Housing in Berlin and Vienna," *German Politics* 32, no. 2 (April 3, 2023): 361-80, <https://doi.org/10.1080/09644008.2020.1771696>. ; Michael Friesenecker, and Yuri Kazepov, "Housing Vienna: The Socio-Spatial Effects of Inclusionary and Exclusionary Mechanisms of Housing Provision," *Social Inclusion* 9, no. 2 (May 13, 2021): 77-90, <https://doi.org/10.17645/si.v9i2.3837>; Christoph Reinprecht, "Social Housing in Austria," In *Social Housing in Europe*, 61-73, 2014, <https://doi.org/10.1002/9781118412367.ch4>.

²⁷ Gideon Kalman-Lamb, "The Financialization of Housing in Canada: Intensifying Contradictions of Neoliberal Accumulation," *Studies in Political Economy* 98, no. 3 (September 2, 2017): 303, <https://doi.org/10.1080/07078552.2017.1393911>.

²⁸ In Vienna, roughly half of all rental units are social housing. Of this social housing stock, just below half are publicly owned. Reinprecht, "Social Housing in Austria," 35.

affordability.²⁹ Furthermore, following a model based on the Canadian Centre for Policy Alternative's recommendation for developing social housing in Manitoba,³⁰ this paper supports the following policy:

3.1. Establishing Toronto's Social Housing Assistance and Relief Plan (SHARP) which requires Toronto to develop 2000 new social housing units annually through an integrated municipal and not-for-profit collaboration in which;

3.1.1. At least 30 percent of all new social housing units developed must be owned and created by the City of Toronto; and

3.1.2. Tenants are required to pay a rent of \$688/month, adjusted to minimum wage laws in Ontario.³¹

Through this policy, low-income renters will be provided an alternative option to Toronto's predacious, private rental market. With SHARP developing social housing at rates tethered to Ontario's minimum wage, Toronto's rental crisis will gradually improve, as more Torontonians will have access to affordable living arrangements.

ASSESSING ALTERNATIVES

Introduction to Policy Evaluation Criteria

To effectively recommend the correct course of action for the City of Toronto, it is necessary to develop criteria for evaluation. Figure 1.0 provides a set of three general criteria that each policy alternative is assessed on. Furthermore, each criterion includes a measure of success,³² ranked *High, Medium, or Low*.

²⁹ O'Donnell, "Does Social Housing Reduce Homelessness?" 1723–1724; Fung, Parikh, and Zulauf, "The Crisis of Affordable Rental Housing in Toronto," 14.

³⁰ Bernas et al., "A Social Housing Action Plan for Manitoba," 30.

³¹ This calculation is derived through the following formula: $R = ((W \times 160) 0.25)$, where R = Monthly Rent, W = Minimum Wage, 160 = # hours worked per month, and 0.25 = the portion of income spent on rent, selected to not exceed the threshold for "affordable" rent. Government of Ontario, "Ontario Raising Minimum Wage to Support Workers"; City Planning Division and Housing Secretariat, "Official Plan Amendment on Updating the Definitions of Affordable Rental and Ownership Housing."

³² For example, if a policy recommends "Providing all citizens with a Jobs Guarantee," the criterion, *Feasibility: Cost*, may be assessed with the measure, "Costs associated with employing and training workers."

Figure 1.0: Establishment of Policy Criteria

Criterion	Measure	Low	Medium	High
Providing Torontonians with Protection Against, or Alternatives to, Expensive Private Rental Markets (Effectiveness)	<i>Increase in the availability of affordable rental units compared to baseline levels</i>	Minimal increase in the availability of affordable rental units compared to baseline levels	Considerable increase in the availability of affordable rental units compared to baseline levels	Exceptional increase in the availability of rental units compared to baseline levels
Minimize Cost to the City of Toronto (Feasibility: Cost)	<i>Costs to administer policy alternative versus the potential budget allocations and revenue sources available to the City of Toronto</i>	Costs to administer policy alternative is far greater than the potential budget allocations or revenue sources available to the City of Toronto	Costs to administer policy alternatives is foreseeably within, or marginally greater than, the potential budget allocations or revenue sources available to the City of Toronto	Costs to administer policy alternative are negligible or are offset by revenue sources available to the City of Toronto
Improving Access to Affordable Rental Housing Amongst Historically Marginalized Groups (Equity)	<i>Existence of barriers to marginalized groups accessing policy alternatives</i>	Policy alternative introduces or does little to address barriers to marginalized groups accessing affordable rental housing	Policy alternative addresses barriers to marginalized groups accessing affordable rental housing and, through its implementation, partially removes these barriers	Policy alternative addresses barriers to marginalized groups accessing affordable rental housing and effectively removes them

The criteria, *Effectiveness*, *Cost Feasibility*, and *Equity* have been selected to maximize this paper's success in achieving a foresight analysis of the potential alternatives' successes and failures, to ultimately conclude which—if any—alternatives are better than others.

The decision to include *Effectiveness* as a criterion is straightforward. The target of any policy aimed at achieving affordable rent is, evidently, to achieve affordable rent. It is logical, therefore, to rank this paper's top policy options on their ability to meet a measure of effectiveness—that is, their ability to *achieve* the goal that they are designed to achieve.

Similarly, the decision to include *Cost Feasibility* as a criterion is relatively self-explanatory. Through the Toronto Public-Service By-Law, the municipality agrees to “serve the public well,” and “use City property, services, and resources responsibly.”³³ In other words, the City of Toronto has a *fiduciary* responsibility to their citizens requiring them to manage their budget effectively. In this regard, policy alternatives that

³³ City of Toronto, “Toronto Public Service By-Law,” City of Toronto, City of Toronto, August 24, 2017, Toronto, Ontario, Canada. <https://www.toronto.ca/city-government/accountability-operations-customer-service/city-administration/toronto-public-service-by-law/>.

are exceptionally costly to the city, or alternatives that have no foreseeable budget feasibility should weigh heavily on its overall favourability.

The final criterion, *Equity*, is crucial in the consideration of housing policy. While this paper will fall short of a full Gender-based Analysis Plus (GBA+) analysis, it is critical to consider the intersectional nature of rental housing access. A growing body of literature—spanning both peer-reviewed research and advocacy-based reports—documents the significant barriers to housing access amongst racialized, 2SLGBTQIA+, and Indigenous peoples, as well as these groups' disproportionate precarity regarding housing stability and homelessness³⁴. Determining a policy's "success" should reflect this intersectionality; equity as a criterion is non-negotiable.

Evaluating Policy Alternatives

The following section will evaluate this paper's three proposed policy alternatives based on the criteria and measures above. *Figure 1.1* expresses this paper's findings.

³⁴ Melanie J. Andersen et al., "They Took the Land, Now We're Fighting for a House': Aboriginal Perspectives about Urban Housing Disadvantage," *Housing Studies* 33, no. 4 (May 19, 2018): 635–60, <https://doi.org/10.1080/02673037.2017.1374357>; Kathryn A. Dekruyf, Allison Moncrieff, and Thomas Kazakoff, "The Urban Indigenous Housing Experience of NIMBY-ism in Calgary, Alberta," *Aboriginal Standing Committee on Housing and Homelessness*, September 2019, <http://neighbourhoodchange.ca/documents/2019/11/belanger-urban-indigenous-housing-experience-of-nimby-calgary.pdf>; Sarah Prout Quicke and Charmaine Green, "Precarious Residence: Indigenous Housing and the Right to the City," *Geoforum* 85 (October 1, 2017): 167–77, <https://doi.org/10.1016/j.geoforum.2017.07.023>; Brodie Fraser et al., "LGBTIQ+ Homelessness: A Review of the Literature," *International Journal of Environmental Research and Public Health* 16, no. 15 (January 2019): 2677, <https://doi.org/10.3390/ijerph16152677>; Centre for Equality Rights in Accommodation, National Right to Housing Network, and Social Rights Advocacy Centre, "Housing Discrimination and Spatial Segregation in Canada," May 2021.; Erin Dej, John Ecker, and Natasha Martino, "Barriers to Accessing Social Housing Programs in Canada," *Housing Studies*, October 11, 2023, 1–22, <https://doi.org/10.1080/02673037.2023.2266396>.

Figure 1.1 Policy Analysis Matrix

Criteria	Impact on Affordable Rental Unit Availability	Cost Feasibility	Impact on Barriers to Marginalized Groups Accessing Affordable
Scoring Definitions	Low: Minimal increase in the availability of affordable rental units compared to baseline levels Medium: Considerable increase in the availability of affordable rental units compared to baseline levels High: Exceptional increase in the availability of affordable rental units compared to baseline levels	Low: Costs to administer policy alternative is far greater than the potential budget allocations or revenue sources available to the City of Toronto Medium: Costs to administer policy alternative is foreseeable within, or marginally greater than, the potential budget allocations or revenue sources available to the City of Toronto High: Costs to administer policy alternative are negligible or are offset by revenue sources available to the City of Toronto	Low: Policy alternative introduces or does little to address barriers to marginalized groups accessing affordable rental housing Medium: Policy alternative addresses barriers to marginalized groups accessing affordable rental housing and, through its implementation, partially removes these barriers High: Policy alternative addresses barriers to marginalized groups accessing affordable rental housing and effectively removes them
Policy 1 <i>Dramatically Altering Inclusionary Zoning Requirements</i>	Medium Availability of accessible rental housing should see a considerable increase based on the 10% and 15% increase in inclusionary zoning in condominium and middle-level housing, respectively.	Medium to Low Cost paid to developers (beyond minor administration costs) are likely considerable, as the higher cost threshold is equal to that of fully subsidizing 12% of city development. However, these costs may be offset by fees paid by developers who fail to reach the 15% of required affordable units.	Medium While affordable rental units will increase, these increases may not be applied equitably throughout the city. Nonetheless, this policy partially offsets discriminatory aspects of gentrification by ensuring at least 15% of new development is affordable.³⁵

³⁵ Racism is intimately linked to gentrification through its attack on affordable housing. See., Kent-Stoll, "The Racial and Colonial Dimensions of Gentrification," 4-5., for more on the relationship.

Policy 2 <i>Increasing rental subsidies through a Toronto Affordable Housing Trust</i>	High to Medium Availability of accessible rental housing should see an exceptional increase through \$100,000,000 of subsidization funds dedicated to low-income renters. Potential to cover all outstanding arrears. Ease of access issues or wait times may impair full utilization. ³⁶	High Cost of implementation fully covered through revenues generated by the <i>Vacant Home Tax</i> . ³⁷	Medium Potential for the City of Toronto to provide subsidies based on Race, Gender, Ethnicity, etc. Barriers remain due to structural racism and discrimination preventing marginalized groups from accessing rental units in the first place.
Policy 3 <i>SHARP (Social Housing Plan)</i>	High to Medium Availability of accessible rental housing increase exceptionally as social housing rent is tied to Ontario's minimum wage. The production of 20,000 social housing units substantively increases the supply of affordable social housing, as well as curbing high rental prices in the private sector. Ease of access issues or wait times may impair full utilization.	Low Exceptionally high costs only partially offset by rents paid by tenants. ³⁸	High SHARP effectively eliminates many of the barriers to accessing affordable rental housing by providing truly affordable homes, with potential development in all neighborhoods. By offering an alternative to market-based housing, social housing combats discrimination in markets. ³⁹

³⁶ Toronto's current subsidized housing program exhibits *extraordinarily* high wait times of over 7 years; City of Toronto, "Subsidized Housing Listings."

³⁷ See footnote [42] in *Proactive Policy Alternatives* for a breakdown of this calculation; City of Toronto, "City of Toronto Housing Data Book," 32; City of Toronto, "Vacant Home Tax."

³⁸ The estimated cost range of building 990,786 units of social housing in Canada is between \$196 to \$300 billion (Lafleur and Filipowicz, "Government Can't Do It Alone: Estimating the Cost of Building Enough Homes to Meet Canada's Core Housing Need," 112). Scaling this estimate down to the proposed plan to build 20,000 units in Toronto over a decade, the total cost of the SHARP plan would be between \$3.96 Billion and \$6.1 Billion. Yearly, this equates to \$396-\$601 million CAD—well beyond the expenses of policy alternatives.

³⁹ Baiocchi, "Communities Over Commodities: People-Driven Alternatives to an Unjust Housing System," 54-59.

Recommendation

Figure 1.1 illustrates the *effectiveness, cost feasibility, and equitable nature* of each policy alternative. Policy option 1, *Dramatically Altering Inclusionary Zoning Requirements*, is partially successful in all three criteria, illustrating a relatively effective, reasonably expensive, and partially equitable alternative. Policy option 2, *Increasing rental subsidies through a Toronto Affordable Housing Trust*, is noticeably effective and incredibly feasible from a cost perspective. However, it fails to fully address equitable concerns. Policy option 3, establishing Toronto's *Social Housing Assistance and Relief Plan* (SHARP) is noticeably effective and equitable, but incredibly costly.

In addressing the question, "How can the municipality of Toronto, in an effort to improve citizens' health and alleviate the cost of living, reduce the reliance of low-income earners on—or protect low-income earners from—an inflated, unaffordable, and predacious rental market?" this paper recommends policy option 2, *Increasing rental subsidies through a Toronto Affordable Housing Trust*. Through an integrated approach of taxes, subsidies, and a dedicated trust fund, this policy is equipped to assist the City of Toronto in combatting rental unaffordability to the greatest extent. Most importantly, however, this alternative is incredibly cost-feasible; implementation meets the fiduciary responsibility of the City of Toronto.⁴⁰

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⁴⁰ It should be noted, however, that establishing Toronto's SHARP policy is a viable solution *should the municipality receive additional funding from the provincial and federal governments*. In this case, the SHARP plan should be implemented.

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Menstrual Equity in Canada

Nicole Mitchell

ABSTRACT

Menstrual equity, defined as full and equal access to menstrual products, safe facilities, and comprehensive education, remains a critical yet underexplored issue in Canada. While discussions on women's health have extensively covered topics like abortion and reproductive rights, issues such as period poverty, paid menstrual leave, and the inclusion of transgender and non-binary individuals in menstrual health policies remain largely unaddressed. This research examines Canada's policy framework surrounding menstrual equity, analyzing existing initiatives, challenges, and future directions. It explores key areas for improvement, including comprehensive menstrual education to reduce stigmatization, increasing product accessibility for low-income and incarcerated individuals, addressing the cost burden of period products, and incorporating diverse gender perspectives. By comparing Canadian policies with those of countries like Japan and Spain, leaders in implementing menstrual leave and accessibility programs, this paper evaluates existing international best practices and their potential application in Canada. Additionally, the role of grassroots organizations and international advocacy efforts in advancing menstrual health as a human rights issue is explored. Ultimately, this research highlights the urgent need for policy reform at municipal, provincial, and federal levels to ensure menstruating individuals can manage their periods with dignity, fostering a more inclusive and equitable society.

INTRODUCTION

According to Plan International and Maru Matchbox's 2022 *Menstruation in Canada* report, more than 500 million people are affected by lack of access to menstrual supplies.¹ Menstrual equity refers to equitable and full access to menstrual products (pads, tampons, menstrual cups, etc.), the right to a safe and clean menstrual facility, and the rights associated with sexual and reproductive health and education. In the broad category of women's health or women in healthcare, menstrual equity is a relatively new concept and under researched topic, however, Canada has had some significant initiatives since 2021.² Period poverty refers to a lack of access to menstrual products or safe and clean facilities and has been addressed in research and in Canadian

¹ Plan International, "Menstruation in Canada," May 2022, https://www.multivu.com/players/English/9052951-menstrual-health-day-2022/docs/fullreport_1653478588214-747133049.pdf.

² House of Commons Canada, "Government Response to the Report of the Standing Committee on the Status of Women," https://www.ourcommons.ca/content/Committee/441/FEWO/GovResponse/RP12936347/441_FEWO_Rpt8_GR_PDF/441_FEWO_Rpt8_GR-e.pdf.

policies.³ Women's health has been addressed extensively on topics such as abortion and the need for sexual and reproductive education. However, there is a lack of research on topics like paid period leave and the transgender-male and non-binary persons perspectives.⁴ This essay delves into Canada's policy framework surrounding menstrual equity, examining what has been done, the challenges that have been faced, and the ongoing and future efforts that will help create a more equitable society that sees menstruators as an integral part. It seeks to determine how menstrual equity can be achieved in Canada and what that would look like. This research is focused on what policies or programs are being implemented in Canada in comparison with other countries, such as Japan and Spain, that make efforts to foster menstrual equity in their societies.⁵

Research must be done on the topic of menstrual equity so that progress can be made and stigma surrounding the topic can be reduced. This essay will consider menstrual equity in Canada by examining four main areas where policy can be improved: education, period accessibility, the cost of period products, and finally, the importance of transgender and non-binary perspectives. This essay will reflect on what is being done to reduce period poverty and promote menstrual equity outside of Canada, providing policy and legislative guidance for the Canadian government. This topic is important for women's health and for menstrual and gender equality. For the remainder of this essay, I will refer to those effected by these policies as menstruators or menstruating individuals, as not all who menstruate identify as female.

³ Government of Canada, "Menstrual Equity Fund Pilot," <https://women-gender-equality.canada.ca/en/funding/menstrual-equity-fund.html>; Government of Canada, "Requirements for Employers to Provide Menstrual Products in Federally Regulated Workplaces," <https://www.canada.ca/en/employment-social-development/services/health-safety/reports/employer-requirements-workplace-menstrual-products.html>.

⁴ Shelby Davies et al., "A Multimodal Qualitative Approach to Understanding Menstrual Health Equity among Adolescents and Young Adults," *Journal of Pediatric and Adolescent Gynecology* 17, no. 1 (2023): 1–7, <https://doi.org/10.1016/j.jpog.2023.07.010>; Anna Sofie Holst et al., "Experiences of Menstrual Inequity and Menstrual Health Among Women and People who Menstruate in the Barcelona Area (Spain): A Qualitative Study," *Reproductive Health* 19, no.1 (2022): 1-16, <https://doi.org/10.1186/s12978-022-01354-5>; Benjamin Lane et al., "Improving Menstrual Equity in the USA: Perspectives from Trans and Non-binary People Assigned Female at Birth and Health Care Providers," *Culture, Health & Sexuality* 24, no. 10 (2022): 1408-1422, <https://doi.org/10.1080/13691058.2021.1957151>; Reilly Lerner, "Recognizing Menstrual Equity as a Dimension of Equal Educational Opportunity," *Journal of Law & Education* 52, no.1 (2023): 226–263, https://sc.edu/study/colleges_schools/law/student_life/journals/jled/editions/_documents/2023_52_1/lerner_final.pdf

⁵ NDTV News, "The Global Push for Paid Menstrual Leave as Spain Brings in Law," February 16, 2023, <https://www.ndtv.com/world-news/the-global-push-for-paid-menstrual-leave-as-spain-brings-in-law-3789125>; Mohamad Danial bin Ab Khalil, "These Are the Countries that Offer Menstrual Leave," May 20, 2022, <https://www.ajobthing.com/resources/blog/these-are-the-countries-that-offer-menstrual-leave>.

WHAT ARE THE ISSUES?

The root problem of menstrual inequity is the systemic injustices and social taboos that surround menstruation. The result is insufficient education, restricted access to period products, unsafe environments, and ongoing stigmatization of periods.⁶ The following are areas that demonstrate gaps in Canadian policy.

Education and De-stigmatization

The lack of information about menstruation contributes to the stigmatization and lack of meaningful dialogue surrounding menstrual equity by spreading inaccurate or false information. The first step toward menstrual equity is an accurate and comprehensive education on menstruation and reproductive health.⁷ The areas of education that need

The root problem of menstrual inequity is the systemic injustices and social taboos that surround menstruation

to be addressed are stigma education, period preparation, and how gender can be factored in. Stigma education is when education is used as a tool to reduce the stigma of periods and menstruation more generally.⁸ Education addresses stigma by normalizing the topic of periods in youths and adolescents.⁹ Scholars have recommended that education start at an early age

so period questions and myths can be answered and dispelled.¹⁰ For those who menstruate, early education will help them feel more comfortable and less ashamed once their period begins. For those who do not menstruate, early education will help them understand periods and menstrual health in a neutral yet comprehensive way, leading to an unbiased normalization of menstruation, allowing periods to be seen as a natural bodily process, rather than as something to be hidden. The second area of education is its potential to improve preparedness and overall positive experiences surrounding menstruation.¹¹ When menstruators learn about periods and menstrual health in an academic setting, specifically one that has provided a safe space, they will learn hygienic practices and feel better equipped and empowered when they get their periods. Finally, it is important to include both transgender and non-binary perspectives in menstrual and

⁶ Allyson Crays, "Menstrual Equity and Justice in the United States," *Sexuality, Gender & Policy Journal* 3, no. 2 (2020): 134–147, <https://doi.org/10.1002/sgp2.12023>.

⁷ Holst et al., "Experiences of Menstrual Inequity," 3.

⁸ Crays, "Menstrual Equity and Justice in the US," 135; Davies et al., "A Multimodal Qualitative Approach," 5; Lerner, "Recognizing Menstrual Equity," 231.

⁹ Crays, "Menstrual Equity and Justice in the US," 137; Lerner, "Recognizing Menstrual Equity," 239.

¹⁰ Lerner, "Recognizing Menstrual Equity," 260.

¹¹ Davies et al., "A Multimodal Qualitative Approach," 5.; Lerner, "Recognizing Menstrual Equity," 234, 243.

reproductive health education because it promotes greater gender equality.¹² As well, including those who do not menstruate in educational strategies supports menstrual equity and works to combat inequalities and stigma.¹³

The most effective way to implement these strategies in education is through policy and legislation formulation that work to target the gendered gap in the current curriculums. Inadequate sexual health education programs have been found in several provinces, such as in Alberta, where the current curriculum for sexual health education touches little on menstruation, only referring to it as something that happens relative to puberty and is mentioned only in the grade five curriculum.¹⁴ It does not discuss menstrual health practices that should be applied or ways to reduce stigmatization of periods. These findings are similar across Canada, seen in British Columbia,¹⁵ Saskatchewan, Ontario, Quebec, Nova Scotia, Newfoundland and Labrador and Prince Edward Island curriculums. As education is provincial jurisdiction, this poses a challenge to policy initiatives that improve menstrual education country wide.

Product Accessibility

Since menstruation is a natural bodily process, there should not be barriers in society, such as one's socio-economic status, race, or disability, that prevent menstruating individuals from accessing education, employment, or having overall well-being. Achieving menstrual equity includes access to both period products and safe clean spaces for use of period products. This means that all bathrooms should be equipped with

¹² Crays, "Menstrual Equity and Justice in the US," 140.; Holst et al., "Experiences of Menstrual Inequity," 3.

¹³ Holst et al., "Experiences of Menstrual Inequity," 8.

¹⁴ Government of Alberta, "Teaching Sexual Health: Curriculum Overview," <https://teachingsexualhealth.ca/teachers/sexual-health-education/understanding-your-role/get-prepared/curriculum-overview/>.

¹⁵ Government of British Columbia, "Supporting Student Health Guide: Elementary (2022)," https://curriculum.gov.bc.ca/sites/curriculum.gov.bc.ca/files/pdf/subject/phe/Supporting_Student_Health_Elementary.pdf; Government of Saskatchewan, "Health Education Curriculum," <https://curriculum.gov.sk.ca/CurriculumOutcomeContent?id=49&oc=76315>; Government of Ontario, "Human Development and Sexual Health Education by Grade," <https://www.ontario.ca/document/health-and-physical-education-grades-1-8/human-development-and-sexual-health-education-grade>; Government of Quebec, "Sexuality Education," https://cdn-contenu.quebec.ca/cdn-contenu/education/education-sexualite/education-sexualite-information-parent-5e-annee-primaire_AN.pdf; Government of Nova Scotia, "Sexual Health Education in Nova Scotia Schools – A Resource for Teachers," [https://curriculum.novascotia.ca/sites/default/files/documents/resource-files/Sexual%20Health%20Education%20in%20Nova%20Scotia%20Schools%20\(2021\).pdf](https://curriculum.novascotia.ca/sites/default/files/documents/resource-files/Sexual%20Health%20Education%20in%20Nova%20Scotia%20Schools%20(2021).pdf); Government of Newfoundland and Labrador, "Comprehensive School Health Active Living/Active Learning," https://www.gov.nl.ca/education/files/k12_curriculum_guides_health_adolescence_adolescence-healthy-lifestyles.pdf; Government of Prince Edward Island, "Physical and Health Education Grade 7,8,9," <https://www.peiparents.com/resources/health-curriculum-grade-7-8-9-2023.pdf>.

menstrual product stations that are offered for free or at a low cost. Some recommended initiatives have included legislation to increase access to products in public schools¹⁶ and in federally regulated buildings.¹⁷ Menstruators are disproportionately affected when there are inadequate resources available for period needs in public spaces. They can miss school and work because there is limited access to period products or washrooms where they can remove, change, and dispose of products in a safe and clean way.¹⁸ For some under-privileged groups, it can be even more difficult to access these products, furthering the need for public access.¹⁹ The most affected groups of menstruators in period poverty are low-income, unhoused, and incarcerated individuals. In Canada, research has found that incarcerated menstruators face numerous challenges when it comes to accessing period products.²⁰ Through the use of workshops in facilities like the Nova Institution for Women, the Edmonton Institution for Women, and the Okimaw Ohci Healing Lodge, it was reported that individuals struggle with adequate access to period products, such as tampons or sanitary pads.²¹ Further, the stigma surrounding asking staff for these products often results in menstruators feeling embarrassed and creates feelings of lack of bodily autonomy and dignity.²² In early 2023, the Government of Canada proposed Regulations Amending Certain Regulations Made Under the Canada Labour Code (Menstrual Products), as part of the Menstrual Equity Fund.²³ This required federally regulated workplaces to implement menstruation products in all washrooms, or subsequent spaces, as long as those spaces are always accessible and privacy measures can be taken.²⁴ The cost of implementing these regulations was estimated at the regulated private sector level to be the highest during the first year of service – 2024 – at roughly \$35 million CAD but would decrease substantially over the following years costing

¹⁶ Allyson Crays, "Limitations of Current Menstrual Equity Advocacy and Path Towards Justice," *UCLA Journal of Gender and Law* 30, no. 1 (2023): 113, <https://escholarship.org/uc/item/22w5s00b>; Davies et al., "A Multimodal Qualitative Approach," 4; Together Alberta, "The Period Promise: Free Menstrual Products in Alberta Schools and Beyond," <https://together.acgc.ca/the-stories/post/the-period-promise-free-menstrual-products-in-alberta-schools-and-beyond>.

¹⁷ Crays, "Limitations of Current Menstrual Equity," 123; Davies et al., "A Multimodal Qualitative Approach," 5; Lerner, "Recognizing Menstrual Equity," 252.

¹⁸ Crays, "Limitations of Current Menstrual Equity," 120.

¹⁹ Davies et al., "A Multimodal Qualitative Approach," 1 and 5.

²⁰ Martha J. Paynter, "Reproductive (In)Justice in Canadian Federal Prisoners for Women," *Canadian Association for the Elizabeth Fry Societies*, February 2021, https://ac935091-bf76-4969-8249-ae3a107fca23.filesusr.com/ugd/d2d30e_13d22f66c3eb41449c2e52c519913b35.pdf.

²¹ Paynter, "Reproductive (In)Justice in Canadian Federal Prisons," 38.

²² Paynter, "Reproductive (In)Justice in Canadian Federal Prisons," 21 and 40.

²³ Government of Canada, "Regulations Amending Certain Regulations Made Under the Canada Labour Code (Menstrual Products): SOR/2023-78," *Canada Gazette*, October 15, 2022, <https://canadagazette.gc.ca/rp-pr/p2/2023/2023-05-10/html/sor-dors78-eng.html>.

²⁴ Government of Canada, "Regulations Amending Certain Regulations: SOR/2023-78."

less than \$5 million CAD a year by 2031.²⁵ Additionally, the *Let's Talk About It, Period: Achieving Menstrual Equity in Canada* report, done by the Standing Committee on the Status of Women, addresses barriers such as lack of clean water access, and makes recommendations such as the inclusion of Indigenous persons to achieve menstrual equity and reduce period poverty.²⁶

Cost of Periods

Besides inaccessibility of products, the cost of menstruation products can be unaffordable for many people, particularly those from underprivileged and marginalized groups. When menstruating individuals cannot access proper period products, they may resort to the use of tissue paper, rags, or other materials that can be uncomfortable and unsanitary.²⁷ One of the reasons period products can be so unaffordable is the 'pink tax', which is an increase in price typically seen on items targeted at women, such as tampons, but is also seen on women's razors, deodorant, and other products.²⁸ In 2015, a bill was passed to remove GST from feminine hygiene products to ease the impacts of the pink tax.²⁹ Despite this bill, the pink-tax is still seen on other female marketed products, such as pain killers. For example, the pain killer naproxen is an over the-counter-drug that is used for inflammation, muscle aches, and menstrual cramps.³⁰ A non-academic social experiment conducted by CBC News found that Shoppers Drug Mart was selling Life Brand naproxen as both a regular pain reliever and a pain reliever for menstrual cramps, but at different costs.³¹ For the same active ingredients, same brand, same size, and same product, the regular (non-gendered) naproxen was priced at \$6.99 CAD while the one aimed at menstrual cramps was being sold for \$7.49 CAD.³² A fifty-cent difference may not seem like a lot of money, but menstruators spend approximately \$6,000 CAD in their life on

²⁵ Government of Canada, "Canada Gazette, Part I, Volume 156, Number 42: Regulations Amending Certain Regulations Made Under the Canada Labour Code (Menstrual Products)," <https://canadagazette.gc.ca/rp-pr/p1/2022/2022-10-15/html/reg1-eng.html>.

²⁶ House of Common Canada, "Let's Talk About It, Period: Achieving Menstrual Equity in Canada," <https://www.ourcommons.ca/Content/Committee/441/FEWO/Reports/RP12690894/feworp08/feworp08-e.pdf>.

²⁷ Crays, "Limitations of Current Menstrual Equity," 123; Davies et al., "A Multimodal Qualitative Approach," 5.

²⁸ Maryalene LaPonsie, "Pink Tax: What Does Price Discrimination Cost Women?," *US NEWS*, October 11, 2024, <https://money.usnews.com/money/personal-finance/taxes/articles/the-pink-tax-costs-women-thousands-of-dollars-over-their-lifetimes>

²⁹ Haydn Watters, "Tampon Tax Will End July," *CBC News*, May 28, 2015, <https://www.cbc.ca/news/politics/tampon-tax-will-end-july-1-1.3091533>.

³⁰ WebMD, "Naproxen Tablet - Uses, Side Effects, and More," <https://www.webmd.com/drugs/2/drug-5173-1289/naproxen-oral/naproxen-oral/details>.

³¹ CBC News, "Why the 'Pink Tax' is Still Alive and Well in 2023," <https://www.cbc.ca/player/play/2185995843729>.

³² CBC News, "Why the 'Pink Tax' is Still Alive."

period products and in some rural areas the cost can be even more.³³ Coupled with an increasing cost of living, the pink tax can make affording basic menstrual products increasingly difficult. Women are paying more for products throughout their life leading to call for action to prevent gendered pricing on basic health necessities.

In 2021, the Scottish Government passed the *Period Products (Free Provision) (Scotland) Act* unanimously, making all period products free to anyone who may need them.³⁴ They are currently the first and only country in the world to do this, although, countries like New Zealand and Kenya do offer free products in public schools.³⁵

Recommendations regarding period product access include healthcare clinics and schools offering free products, and overall policy and legislation changes.³⁶ Even though Canada has taken measures to reduce the effects of the pink tax, it is clear more work needs to be done to combat it and provide services and products at the same cost, regardless of the targeted customer.

Trans and Non-Binary Perspective

Low-income, incarcerated, and unhoused menstruators are not the only demographics being underrepresented on these issues. There should be access to menstrual products in gender neutral bathrooms.³⁷ In part this is because menstruators use those bathrooms, so access to those products is still necessary, but the other consideration is that not all who menstruate identify as female. The trans-male and non-binary persons perspectives are relevant on the topic, as they too experience periods.

The experiences these individuals have surrounding menstrual equity are different but just as valid as those of cisgender women. For example, a transgender or non-binary

³³ Vanora D'Sa, "Period Poverty in Canada and around the Globe," <https://www.cpha.ca/period-poverty-canada-and-around-globe>; Maggie Germano, "The Economics of Menstruation," <https://www.maggiegermano.com/blog/the-economics-of-menstruation/>; Rachel Wilson, "The Cost of a Period: The SDGs and Period Poverty," *International Institute for Sustainable Development*, January 13, 2022, <https://sdg.iisd.org/commentary/generation-2030/the-cost-of-a-period-the-sdgs-and-period-poverty/>.

³⁴ Government of Scotland, "Period Products (Free Provision) (Scotland) Act: 2021: Equality Impact Assessment," <https://www.gov.scot/publications/period-products-free-provision-scotland-act-2021-equality-impact-assessment/>.

³⁵ NPR, "Scotland Becomes the First Country to Offer Tampons and Pads for Free, Official Say," August 16, 2022, <https://www.npr.org/2022/08/16/1117748486/scotland-tampons-pads-menstrual-free-period-products#:~:text=Scotland%20is%20the%20first%20country,last%20a%20month%20or%20two>.

³⁶ Crays, "Limitations of Current Menstrual Equity," 113 and 127; Davies et al., "A Multimodal Qualitative Approach," 5; Lerner, "Recognizing Menstrual Equity," 113 and 115; Lane et al., "Improving Menstrual Equity in the USA," 1414; House of Commons. "Let's Talk About It, Period," 19.

³⁷ Lane et al., "Improving Menstrual Equity in the USA," 1416; Lerner, "Recognizing Menstrual Equity," 118.

persons may not feeling comfortable asking cis-women for menstrual products and may feel unwelcomed or segregated in gendered bathrooms.³⁸ Acknowledging their experiences goes a long way for the mental health and well-being of these individuals as it promotes a nuanced understanding of gender.³⁹ To achieve these goals, education about trans and non-binary persons needs to be implemented in healthcare settings so that those seeking information or menstrual resources can access it.⁴⁰ This increases the awareness of trans and non-binary members in women's health areas by promoting inclusivity and reducing the stigma around the issue.⁴¹

WHAT IS BEING DONE?

Around the world, there is a growing movement to combat menstrual equity issues, driven by various organizations, activists, and policymakers. The Standing Committee on the Status of Women's *Achieving Menstrual Equity* report brought attention to the importance of addressing period poverty and ensuring accessible products for all.⁴² It made eleven recommendations that involve public awareness, funded research, and menstrual products that use biodegradable organic materials.⁴³ The following are policies countries have introduced that aim to improve menstrual equity. The ideas and policy provided may be a valuable resource Canada can use to develop their own legislation.

Menstrual Leave

A way in which countries have improved menstrual equity is with menstrual leave. Menstrual leave allows any individual who gets a period to take a specified amount of time off during menstruation, either with or without pay.⁴⁴ In 1947, Japan was the first to adopt menstrual leave as a national law as they were concerned with the reproductive health of women after World War II.⁴⁵ Shortly after, with newly gained independence from Japan, both Taiwan, in 1951, and South Korea, in 1953, adopted their own national

³⁸ Lane et al., "Improving Menstrual Equity in the USA," 1416.

³⁹ Crays, "Menstrual Equity and Justice in the US," 139; Holst et al., "Experiences of Menstrual Inequity," 4; Lane et al., "Improving Menstrual Equity in the USA," 1409; National Women's Law Center, "The Equality Act of 2021: Expansive Antidiscrimination Protections for LGBTQ People and Women," 2021, <https://nwlc.org/wp-content/uploads/2019/08/Equality-Act-2021.pdf>.

⁴⁰ Holst et al., "Experiences of Menstrual Inequity," 3 8; Lane et al., "Improving Menstrual Equity in the USA," 1409.

⁴¹ Crays, "Menstrual Equity and Justice in the US," 145; Holst et al., "Experiences of Menstrual Inequity," 14; Lane et al., "Improving Menstrual Equity in the USA," 1418-1419.

⁴² House of Common Canada. "Let's Talk About It, Period," 14.

⁴³ House of Common Canada. "Let's Talk About It, Period," 24.

⁴⁴ Sally King, "Menstrual Leave: Good Intention, Poor Solution," in *Aligning Perspectives in Gender Mainstreaming: Gender, Health, Safety, and Wellbeing*, ed. Juliet Hassard and Luis Torres (Switzerland: Springer, 2020), 151.

⁴⁵ King, "Menstrual Leave: Good Intention, Poor Solution," 152.

menstrual leave policies.⁴⁶ In 2023, Spain became the first European country to implement menstrual leave legislation.⁴⁷ However, not all menstrual leave policies are the same. For example, in Japan, employers are required to offer menstrual leave as an option, but they are not required to pay menstruators when on leave, yet it is estimated about 30% of employers do.⁴⁸ It is reported from those who have the option to use this benefit, that male-dominated business settings discourage the use of this policy as it goes against workplace norms.⁴⁹ Spain has a progressive menstrual leave policy allowing for 3-5 days of paid leave every month, but those who wish to use it must provide a doctor's note every month.⁵⁰ Although countries like Japan and Spain are spearheading the movement for better work flexibility for those who menstruate, it is unclear what benefits their policies are having on menstruators in the workplace.⁵¹

Originally, period leave was a policy that was used to protect women's reproductive health in a time where populations were recovering from war, but has evolved to provide relief for those who experience intense menstrual pain.⁵² For those who experience severe cramping or deal with menstrual illnesses such as endometriosis and dysmenorrhea, extreme pain can be experienced during menstruation and having designated time off can be very helpful.⁵³ The goal of these menstruation leave policies is for menstruators to feel comfortable speaking up about menstrual health, to reduce stigma surrounding menstruation, and to increase safety for trans and non-binary persons who may not feel comfortable taking time off for their period.⁵⁴ In these instances, it is important to have some level of support for menstruating individuals, promoting an inclusive, productive, and equal workplace environment. On the other hand, menstrual leave has its drawbacks. Scholars note that menstrual leave can increase gender discrimination, because of "benevolent and hostile"⁵⁵ work environments that perpetuate the idea that women cannot handle the workplace to the same capacity as

⁴⁶ Khalil, "These Are the Countries that Offer Menstrual Leave."

⁴⁷ NDTV News, "The Global Push for Paid Menstrual Leave as Spain Brings in Law," February 16, 2023, <https://www.ndtv.com/world-news/the-global-push-for-paid-menstrual-leave-as-spain-brings-in-law-3789125>.

⁴⁸ Khalil, "These Are the Countries that Offer Menstrual Leave."

⁴⁹ King, "Menstrual Leave: Good Intention, Poor Solution," 155.

⁵⁰ Alexandra Jones, "Spain's Paid Menstrual Leave Hits Unsympathetic Employers Where it Hurts – In the Bottom Line," *The Standard*, June 13, 2023, <https://www.standard.co.uk/lifestyle/spain-period-menstrual-leave-british-economy-b1087490.html>.

⁵¹ Rachel B. Levitt and Jessica L. Barnack-Tavlaris, "Addressing Menstruation in the Workplace: The Menstrual Leave Debate," in *The Palgrave Handbook of Critical Menstruation Studies*, ed. Chris Bobel et al. (Singapore: Palgrave MacMillan, 2020), 562-563.

⁵² King, "Menstrual Leave: Good Intention, Poor Solution," 155.

⁵³ Levitt and Barnack-Tavlaris, "Addressing Menstruation in the Workplace," 566.

⁵⁴ Levitt and Barnack-Tavlaris, "Addressing Menstruation in the Workplace," 566-567.

⁵⁵ Levitt and Barnack-Tavlaris, "Addressing Menstruation in the Workplace," 568.

men.⁵⁶ It can also contribute to further stigmatization of periods, perpetuating the idea that menstruation is an illness, weakness, or something to be ashamed of.⁵⁷ The aspect of productivity is both a benefit and drawback of menstrual leave. It is assumed that those who use menstrual leave will miss work resulting in a loss of productivity.⁵⁸ However, the benefits of menstrual leave, like increased morale and working conditions, have been shown to improve productivity and even encourage menstruators to join the workforce.⁵⁹

Some employers have chosen to implement menstrual leave on their own accord, such as the women's right organization Victorian Women's Trust in Australia, small enterprise Coexist in the United Kingdom, and Indian marketing companies, Culture Machine and Gozoop.⁶⁰ Research is needed to evaluate the effectiveness of these private efforts, but they are nonetheless a step in right direction, and if nothing else, allow for more flexible sick leave. Some advocacy has been done in regards to giving Canadian's menstrual leave so that menstruating individuals do not need to take sick days or vacation days when they are on their periods but as of now there are no policies or legislation in place to tackle this issue.⁶¹ The debate over if menstrual leave is helping or hurting women and gender equity movements will continue to be a discussed among scholars and politicians, as growing support for menstrual equity persists.

Government Partnerships, NGOs, and Grassroots Movements

In addition to government action, a variety of non-profits, non-governmental organizations (NGOs) and grassroots movements are working toward menstrual equity through initiatives that distribute menstrual products to vulnerable populations. In Canada, the organization is The Period Purse promotes menstrual equity by advocating for affordable period product access and education efforts.⁶² They accept donations of period products and distribute them to their community partners, to deliver to those in need. Although The Period Purse is mostly based out of Ontario, they hope to expand across Canada. They are currently the only charity registered in Canada that focuses on menstrual equity. Additionally, the Menstrual Equity Fund proposed by the Canadian

⁵⁶ King, "Menstrual Leave: Good Intention, Poor Solution," 166-167; Levitt and Barnack-Tavlaris, "Addressing Menstruation in the Workplace," 587-568.

⁵⁷ King, "Menstrual Leave: Good Intention, Poor Solution," 162; Levitt and Barnack-Tavlaris, "Addressing Menstruation in the Workplace," 568.

⁵⁸ Levitt and Barnack-Tavlaris, "Addressing Menstruation in the Workplace," 569.

⁵⁹ King, "Menstrual Leave: Good Intention, Poor Solution," 155.

⁶⁰ King, "Menstrual Leave: Good Intention, Poor Solution," 156.

⁶¹ Andrew Cowie and Monika Gul, "Any Person's Pain Needs to be Recognized: Canadian Advocates Look at Menstrual Sick Leave," *City News*, May 13, 2022, <https://vancouver.citynews.ca/2022/05/13/canada-menstrual-sick-leave/>; Paid Period Leave, <https://www.paidperiodleave.ca/>.

⁶² The Period Purse, "Our Mission, Vision and Values," <https://www.theperiodpurse.com/about-us.html>.

federal government has committed \$25 million CAD to menstrual equity practices between 2022 and 2024.⁶³ This initiative will be helpful in providing Canadian menstruators with free or accessible products.⁶⁴ As part of Canada's Menstrual Equity Fund, the federal government has chosen to partner with Food Banks Canada to deliver menstrual products and education to local communities.⁶⁵ The goal of this national pilot is to test different methods of delivering menstrual products by to partnering with grassroots organizations that have existing menstrual health programs. Food Banks Canada operates in all ten provinces and interacts with low-income and unhoused individuals, making it easier for them to reach the most at-risk communities.

Although the Menstrual Equity Fund came to an end in March 2024, the official results of the pilot project have not been released. However, the project has expanded to include Moon Time Connections, a flagship project that will distribute menstrual products to northern Indigenous communities across Canada.⁶⁶ Food Banks Canada continues to distribute menstrual products to low-income communities, with an estimated 72,000,000 units delivered as of early 2025.⁶⁷ Additionally, as of January 2025, Newfoundland and Labrador have partnered with Shoppers Drug Mart to distribute approximately 4.7 million donated menstrual products over three years.⁶⁸ This partnership, facilitated by the pilot, is similar to the one between Saskatchewan and Shoppers Drug Mart that has been providing menstrual products to schools since August 2024.⁶⁹ The collaboration between government and non-governmental organizations may be an efficient mode of service delivery at the community level so more money and energy can go toward developing

⁶³ Erika Ibrahim, "Federal Government Commits to Menstrual Equity Fund," *CBC News*, April 8, 2022, <https://www.cbc.ca/news/canada/kitchener-waterloo/menstrual-equity-fund-changing-the-flow-federal-budget-1.6413212>; Government of Canada, "Menstrual Equity Fund Pilot."

⁶⁴ Government of Canada, "Menstrual Equity Fund Pilot."

⁶⁵ Government of Canada, "Food Banks Canada Selected to Run a National Pilot Addressing Barriers to Menstrual Equity," <https://www.canada.ca/en/women-gender-equality/news/2023/09/food-banks-canada-selected-to-run-a-national-pilot-addressing-barriers-to-menstrual-equity.html>.

⁶⁶ True North Aid, "Moon Time Connections Overseeing Distribution of \$2.4 Million of menstrual Products to Indigenous Menstruators in the North," *Cision*, May 15, 2024, <https://www.newswire.ca/news-releases/moon-time-connections-overseeing-distribution-of-2-4-million-of-menstrual-products-to-indigenous-menstruators-in-the-north-822588730.html>.

⁶⁷ Food Banks Canada, "Menstrual Equity Fund," <https://foodbankscanada.ca/menstrual-equity-fund/>.

⁶⁸ Government of Newfoundland and Labrador, "Shoppers Drug Mart Donates 4.7 Million Menstrual Products to Advance Menstrual Equity in Newfoundland and Labrador," <https://www.gov.nl.ca/releases/2025/wge/0127n01/>.

⁶⁹ Government of Saskatchewan, "Saskatchewan and the Shoppers Foundation for Women's Health Continue Distribution of Period Products with Third Shipment to Schools and Post Secondary Institutions," August 30, 2024, <https://www.saskatchewan.ca/government/news-and-media/2024/august/30/saskatchewan-and-the-shoppers-foundation-for-womens-health-continue-distribution-of-period-products>.

policy rather than the infrastructure and networks needed to deliver and provide accessible period products.

International Organizations

International organizations are raising awareness and supporting policies that are addressing menstrual equity globally. In 2022, the World Health Organization (WHO) decided that menstrual health should be reframed as a human rights and health issue.⁷⁰ The WHO recognizes the efforts of grassroots movements and activists in drawing attention to and championing menstrual equity. The WHO calls for three things; for menstruation to be seen as a health issue that has “physical, psychological, and social dimensions”, for those who menstruate to have access to education, clean facilities, care, and overall well-being when menstruating, and a call for these factors to be worked into relevant policy and programs with performance measures.⁷¹

These collective efforts demonstrate that government and non-governmental organizations care about menstrual health and that progress is being made to improve current conditions and achieve menstrual equity. This represents optimistic strides towards an equitable society where menstruating individuals can manage their periods with dignity and ease without consequences.

Conclusion

Menstrual equity contributes to the greater inclusion of menstruators in health and gender equity. This essay has explored the gaps in achieving menstrual equity and explained the need for education to normalize and de-stigmatize periods and areas surrounding menstrual health. It has also looked at the accessibility of period products, especially for those in low-income and incarcerated positions. It observed how the cost of menstrual products can impede access and how the pink-tax, even with measures to combat it, is still pertinent in Canadian society. It has also explored the perspective of transgender and non-binary persons who have a valid and underrepresented perspective on the topic. The second part of this essay focused on what measures are being taken to advance menstrual equity in other areas of the world. This includes the use of paid and unpaid period leave in countries such as Spain and Japan. It also looked at what NGOs are doing to advocate for menstrual equity specifically for low-income and incarcerated menstruators, such as the collaboration of the Government of Canada with Food Banks

⁷⁰ World Health Organization, “WHO Statement on Menstrual Health and Rights,” June 22, 2022, <https://www.who.int/news/item/22-06-2022-who-statement-n-menstrual-health-and-rights>.

⁷¹ World Health Organization, “WHO Statement.”

Canada to provide period products.⁷² Finally, this article looked at how menstrual equity is being handled in the international sphere, including promoting menstrual equity as a human right. With little research to consult, one can assume that these countries are choosing to adopt menstrual equity policies to be more inclusive and progressive with their populations. This is important because it can offer insight into why those policies have yet to be adopted in Canada and how they can be adapted to fit the Canadian context.

Policy-makers at the municipal, provincial, and federal levels of government should be paying attention to menstrual equity and champion legislation that promotes it to remove the barriers of access to products and work to reduce the stigma that encompasses it.

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This includes working with Indigenous populations, ensuring everyone has access to clean water, safe washrooms, and the financial ability to afford period products.⁷³ While Canada may not be leading the charge toward menstrual equity, the federal government is taking great steps toward producing policies and programs aimed at helping menstruating

individuals, such as the Menstrual Equity Fund Pilot and efforts to eliminate the pink tax. However, until the Menstrual Equity Fund Pilot results can be published regarding the effectiveness of the program, the decision to expand its partnerships, with organizations like the Period Purse and Moon Time Connections, shows impressive strides in the right direction.

One main issue standing in the way of menstrual equity is education. As demonstrated above, sufficient education of all students on menstrual health and preparation can be a useful to for destigmatization and normalization of periods. The examined provinces demonstrated that education is currently focused on menstruation as a part of puberty but fails to discuss proper hygiene and care measures, and the provincial governments should be updating curriculum to include comprehensive of menstrual health information. Additionally, accessible and affordable period products should be implemented. While the 2023 proposal to introduce free products in federally regulated

⁷² World Health Organization, "WHO Statement."

⁷³ House of Commons. "Let's Talk About It, Period," 12-13.

workplaces is a good start, there is less being done for underprivileged and incarcerated groups who also require supplies and safe spaces.⁷⁴ Finally, menstrual leave, both paid and unpaid, is one way the government and individual businesses can promote menstrual equity. This is still relatively unstudied in its effects and answers to the questions that arise about how it is helping or hurting individuals who use it are largely unknown, but the federal government has already committed to improving menstrual equity within a pilot program which can be extended and added upon to examine what can or should be done.

To conclude, menstrual equity is a growing concern in the world and the recognition of it as a health issue by organizations like the WHO validates the problems associated with menstruation like cost, education, and stigma, and challenges the world to address it as a human rights issue. The point of this essay has been to bring awareness to the issue of menstrual equity and examine what Canada has done and could do in the future to solve a problem that is pertinent to half the population.

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⁷⁴ Government of Canada, "Requirements for Employers to Provide Menstrual Products in Federally Regulated Workplaces," <https://www.canada.ca/en/employment-social-development/services/health-safety/reports/employer-requirements-workplace-menstrual-products.html>.

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John Rawls and Robert Nozick's Conceptions of Justice

Jasper Heit

ABSTRACT

This paper compares arguments drawn from John Rawls' A Theory of Justice and Robert Nozick's Anarchy, State, and Utopia. Both authors take opposing positions on the same question, namely, who should decide the means of distribution if the greatest societal aim is justice? It is not the purpose of this paper to take sides or agree with either thinker. Rather, the purpose for this comparison is to pull apart the arguments and analyze what it is exactly that makes an argument, especially one grounded entirely in theory, so perceptive. Beginning with Rawls, I break down his argument and explain his stream of thought from his first premise the "veil of ignorance" to his natural conclusion "justice as fairness." With Nozick, I suggest that he writes in response to Rawls' Theory of Justice and evaluates the arguments made for social welfare while defending free market principles (or Classical Liberalism) appealing to the tradition of Frederick Hayek. In conclusion I suggest that Rawls' argument is the less consistent of the two, due to the shortcomings of rational choice (or game theory) and social contract theory, while Nozick offers coherent arguments in defense of Classical Liberalism and his own arguments against Rawls' "justice as fairness."

INTRODUCTION

In *A Theory of Justice*, John Rawls aims to establish a foundational set of principles to address the inequalities of a free-market system. Using a social contract theory structure and taking a rational choice approach, Rawls "present[s] a conception of justice," whose agreement creates "the basic structure of society," from which all subsequent societal progressions are derived. In *Anarchy, State, and Utopia*, Robert Nozick criticizes Rawls' theory, while defending free market values. Fundamentally, the question both Rawls and Nozick seek to address is: Who should decide the means of distribution if the greatest aim of a society is justice? In this paper, I examine both Rawls' and Nozick's theories and offer an analysis of which is more logical, sequential, and coherent. It is not the purpose of this paper to determine which theory stands to scrutiny in practice – there will always be a degree a misalignment between theory and practice no matter how logical a theory may be. Moreover, I do not intend to make any moral or ethical claims on the free market versus social welfare debate. Rather, I intend to examine Rawl's inductive reasoning (or bottom-up) and Nozick's deductive reasoning (or top-

down) and determine whose arguments are more perceptive according to the principles of theory.¹ With these objectives in mind, it is important to note the following: (1) While theories are useful in fostering understanding, they have their shortcomings. One such shortcoming is oversimplification. Theorists tend to give examples that are oversimplified to make them more digestible to their readers, but in doing so, they may leave out crucial elements. (2) Theorists tend to make assumptions that can be useful in illustrating their points but have little bearing on reality. (3) Nozick's *Anarchy, State, and Utopia* is written after and in response to Rawls' *Theory of Justice*, thus allowing him to criticize precise aspects of the theory without allowing Rawls the opportunity to counterargue. (4) Nozick's addresses Rawls' theory as if it is a more radical version of socialism (which makes his criticisms seem more valid since issues are exacerbated when brought to the extreme), while Rawls' arguments are not necessarily in favor of any degree of socialism, but of socialism more generally. (5) Nozick argues from an economic perspective, giving a greater sense of realism than Rawls' theory, which by contrast argues almost exclusively from abstractions. This 5th point can be understood in conjunction with the 3rd, where Nozick argues directly in response to Rawls' theory, and thus might be purposeful to make Rawls' abstractions seem more like wishful thinking. With all this in mind, I will provide a summary of both theories, examine the influences on both thinkers, and offer an analysis of both theories of justice. Therein, I will argue that although both Rawls and Nozick provide detailed and valuable theories, it is ultimately Nozick's argument that finds itself to be more logical and coherent according to the principles of theory.

INFLUENCES ON THE IDEAS OF RAWLS AND NOZICK

Rawls' *Theory of Justice* is based on social contract theory. Contract theorists assume a common principle that everyone can agree on and then proceed from that principle. Rawls states, "My aim is to present a conception of justice which generalizes and carries to a high level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant."² To contextualize, Locke thought everyone should agree that a majority vote would be the basis of governmental elections, Rousseau thought everyone should agree that the government would enact legislation that is aimed at the

¹ As learned throughout my undergraduate degree, by principles of theory, I mean a sort of philosophical foundation for governmental prerogatives and public policy. On a basic level, theoretical reasoning takes the following form: If premise x is true, and premise y is true, then we can conclude that z must be true. When analyzing a theory, the objective becomes breaking it down into its base components to see, for example, if the original premises are indeed true or if the conclusion drawn is the only natural end of those premises. See W. Russ Payne, *An Introduction to Philosophy*, BCCampus, 2023, <https://open.umn.edu/opentextbooks/textbooks/598>.

² Rawls, *A Theory of Justice*, (Cambridge, MA: Harvard University Press, 1971), 11.

general good of all, and Kant thought everyone should agree on basic moral principles that would guide institutions.³ When reflecting on his theory, Rawls says that “the undertakings referred to are purely hypothetical: a contract view holds that certain principles would be accepted in a well-defined initial situation.”⁴ As a hypothetical, social contract theory is used as a tool to evoke ideas that otherwise couldn’t be empirically observed. Although an agreement of disinterested actors prior to the establishment of society has never happened and cannot happen, Rawls would say, imagine that it could, and X might be the outcome. Rawls’ theory, then, is a social contract theory in its structure.

Additionally, his theory is rational choice in its approach. He says, “Each person must decide by rational reflection what constitutes his good, that is, the system of ends which it is rational for him to pursue.”⁵ Rational choice is a form of hypothesis with roots in game theory. Game theory suggests that when engaging in a game, one must play by a set of predetermined rules, and if a player is (a) self-interested and (b) must play by the rules, then it follows that their behavior will be predictable. Rational choice theory follows the same logic. Rational choice makes three assumptions about individuals: (a) that they are self-interested, (b) that they have preferences, and (c) that they are rational actors. Rawls assumes the latter three, but he creates the “veil of ignorance” to deal with the problem of self-interest. This way, in agreeing with principles of justice, the actors wouldn’t be swayed by their predispositions or biases, but instead by the idea that they could end up anywhere on the ladder of the socio-economic hierarchy.

While Rawls based his ideas on contract theory and, therefore, works such as those of Rousseau and Locke, Nozick’s ideas were based more on classical liberalism. Classical liberalism can be traced back to Adam Smith and his *Wealth of Nations*. Smith argues that free trade makes all parties better off and free markets are most efficient when left alone by the government. Rather than interference through rules and regulations, the market operates best through its own intrinsic mechanisms – what Smith called the ‘invisible hand.’ Friedrich Hayek, too, was a free-market apologist and had a large influence on Nozick. In a biography on the life and work of Hayek, Nicholas Wapshott sums up Hayek’s beliefs on government intervention in the free market: “He maintained that it was impossible to understand or measure the full weight of the countless individual economic

³ See John Locke, *Second Treatise of Government*, ed. C. B. Macpherson (Cambridge, MA: Hackett Publishing Company, 1980); Jean-Jacques Rousseau, *The Social Contract and Other Later Political Writings*, 2nd Ed. Edited and Translated by Victor Gourevitch, (United Kingdom: Cambridge University Press, 2019); and Immanuel Kant, *Grounding for the Metaphysics of Morals: With, on a Supposed Right to Die Because of Philanthropic Concerns*, trans. James W. Ellington (Indiana: Hackett Publishing, 1981) respectively.

⁴ Rawls, *A Theory of Justice*, 16.

⁵ Rawls, *A Theory of Justice*, 11–12.

decisions made by the vast number of individuals that made-up an economy... Because prices are essentially organic... any attempt to alter or interfere with prices was ultimately futile, for human behavior will always circumvent the presumptions on which a price is fixed.”⁶ While Hayek thought that any sort of government intervention would be “futile,” Nozick argues that there’s no need for this kind of intervention even if it wasn’t. In Nozick’s response to Rawls, he explains how agreements between free market participants are already just in and of themselves.

To give a better understanding of Hayek’s philosophy, Wapshott explains that “he was determined to prove that there were no simple solutions to intractable economic problems, and came to believe that those who advocated large-scale public spending programs to cure unemployment were inviting not just uncontrollable inflation but political tyranny.”⁷ In other words, artificial economic stimulation not only failed to solve problems but caused more problems. To illustrate this point, Wapshott evokes Hayek in one of his lectures in the early 1930s: “‘Artificial demand,’ [or government intervention] ... would merely postpone the day of reckoning. ‘The only way permanently to ‘mobilize’ all available resources is, therefore, not to use artificial stimulants— whether during the crisis or thereafter – but to leave it to time to effect a permanent cure.’ In brief, there was no easy way out of a slump. In the long run the free market would restore an economy to an equilibrium where everyone was employed.”⁸ In this light, it is easier to understand Nozick’s approach to economics. Nozick and Hayek didn’t agree on everything, but they shared many core beliefs when it came to the free market. Like Hayek, Nozick sought above all to defend free market principles.

BRIEF SUMMARY OF RAWLS’ *THEORY OF JUSTICE*

In his theory of justice, Rawls offers his readers a hypothetical. He asks them to imagine rational actors who agree on the founding principles of justice for society. He says, “these principles are to regulate all further agreements; they specify the kinds of social cooperation that can be entered into and the forms of government that can be established.”⁹ Based on these principles, the participants must decide “the division of social benefits” and the “foundation charter of their society.”¹⁰ Critically, since he asks us to imagine rational actors and thus takes the rational choice approach, he notes that they would be self-interested: “The concept of rationality must be interpreted as far as possible in the narrow sense, standard in economic theory, of taking the most effective

⁶ Nicholas Wapshott, *Keynes Hayek: The Clash That Defined Modern Economics*, (New York: Norton, 2011), 181.

⁷ Wapshott, *Keynes Hayek*, xiii.

⁸ Wapshott, *Keynes Hayek*, 77.

⁹ John Rawls, *A Theory of Justice*, 11.

¹⁰ Rawls, *A Theory of Justice*, 11.

means to given cards.”¹¹ If they were self-interested, then they would naturally hope to gain as much as they could in the agreement. And if they were successful in gaining more, then it would come at the expense of the others (assuming it’s a zero-sum game). To circumvent this problem, Rawls suggests what he calls the “veil of ignorance.” Everyone partaking in the agreement must make their decisions without self-interest. In other words, no one knows their position in society either before or during the agreement: “Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good of their special psychological propensities. The principles of justice are chosen behind a veil of ignorance.”¹² Rawls argues that if the participants in the agreement do not know the outcome of the distribution, then no one would choose

Rawls argues that if the participants in the agreement do not know the outcome of the distribution, then no one would choose to distribute unequal portions on the chance that they might receive the lower share.

to distribute unequal portions on the chance that they might receive the lower share. Instead, everyone would choose to distribute everything equally. In this sense, Rawls calls the distributive agreement “justice as fairness” since everything is divided into fair proportions. Now, Rawls says that despite fairness as the most likely

outcome (that everything will be distributed equally) there is another potential outcome. It may be decided that the distributions result in inequalities so long as everyone is better off than they otherwise would be: “I shall maintain ... that the persons in the initial situation would choose two rather different principles... the second holds that social and economic equalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society... the hardships of some are offset by a greater good in the aggregate.”¹³ Thus, the fundamental purpose of the original agreement is threefold: (a) to ensure fairness, (b) to remove the potential for some to become better off, and (c) to remove the incentives for competition in the pursuit of becoming better off. Rawls says the conception of justice “nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in quest for political and economic advantage.”¹⁴ Though in both cases, that of equality and that of the lower classes being

¹¹ Rawls, *A Theory of Justice*, 14.

¹² Rawls, *A Theory of Justice*, 12.

¹³ Rawls, *A Theory of Justice*, 14-15.

¹⁴ Rawls, *A Theory of Justice*, 15.

better off, the hypothetical maintains the same aim. The purpose of the original agreement is to address the inequalities of the worst off in society.

In brief, Rawls believes that the closest a society can come to justice as such is by having general agreement to principles of justice (for the sake of distribution and otherwise) behind a veil of ignorance. Ignorance would ensure that the participants don't act in their own self-interest since they would not know their disposition in society during the agreement process. The principles of justice would ensure equality for all or at least make the lowest classes better off. These principles would act as the foundation for every societal institution, legislation, and so on. By creating the original agreement, Rawls addresses what he considers is most unjust – inequality.

BRIEF SUMMARY OF NOZICK'S *ANARCHY, STATE, AND UTOPIA*

To understand distribution as justice, Nozick looks at different forms of distribution and whether they are “patterned.” To be patterned, he says, a distribution must follow the principle: “distribution according to...”. For example, Nozick says distribution according to moral merit, need, and usefulness to society all follow the principle.¹⁵ Now, distribution is “patterned” if the distribution varies with “some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions.”¹⁶ So, if distribution went according to need, then distribution would vary as needs varied. In other words, distributions are not static by some predetermined calculation but rather change over time according to their natural dimension. If distributions were static, then they would be “historical” and not “patterned.” Nozick states, “Almost every suggested principle of distributive justice is patterned: to each according to his moral merit, or needs, or marginal product, or how hard he tries, or the weighted sum of the foregoing, and so on.”¹⁷ By this framework, Rawls' conception of distributive justice is patterned. Whereas in a free-market system, or with what Nozick calls the “principle of entitlement,” there is no distribution pattern per se. Nozick explains: “The set of holdings that results when some persons receive their marginal products, others win at gambling, others receive a share of their mate's income, others receive gifts from foundations, others receive interest on loans, others receive gifts from admirers, others receive returns on investment, others make for themselves much of what they have, others find things, and so on, will not be patterned.”¹⁸ Now, just because these distributions are not patterned

¹⁵ Robert Nozick, *Anarchy, State, and Utopia*, (Basic Books, 2013), 156.

¹⁶ Nozick, *Anarchy, State, and Utopia*, 156.

¹⁷ Nozick, *Anarchy, State, and Utopia*, 156-157.

¹⁸ Nozick, *Anarchy, State, and Utopia*, 157.

does not make them random. He says distributions of entitlement, while not patterned, are still intelligible and may follow certain principles of transfer.¹⁹ Why does this distinction matter? Nozick explains that there may be a societal link between what is perceived as just and what is perceived as patterned. If some distribution is random, then perhaps there is no justification and therefore no justice. Though, simply because there is no distributive pattern as such, does not mean there are no guiding principles: “Will people tolerate for long a system yielding distributions that they believe are unpatterned? No doubt people will not long accept a distribution they believe is unjust. People want their society to be and to look just... It must be granted that were some people's reasons for transferring some of their holdings to others always irrational or arbitrary, we would find this disturbing.”²⁰ Nozick admits that random transfers indeed seem unjust. However, the free market is not random. For Nozick, the guiding principle of the free market is the perceived benefit in trade. Moreover, if this guiding principle was formulated according to the principle of pattern (i.e., distribution according to...), then the free market is patterned. Accordingly, Frederick Hayek does exactly this. Where Nozick says that entitlement is not random and is not patterned, Hayek says that there is a pattern to entitlement. Nozick notes that “despite his rejection of a patterned conception of distributive justice, Hayek himself suggests a pattern he thinks is justifiable: distribution in accordance with the perceived benefits given to others.”²¹ Though at the same time, Nozick disagrees that this holds true in practice. He says, “A free society does not realize exactly this pattern.”²²

Given this understanding of patterns, entitlement, and distributive justice, Nozick

So, Nozick argues, what need is there for some hypothetical foundational agreement if, in the free-market system, agreements are being made every day?

addresses the implications and shortcomings of Rawls' theory of justice. Nozick explains that while Rawls' theory requires that everyone agree on justice in the context of distribution, the free market already does this, namely, people agree to terms of trade and consumption – they agree that the trades are just, and this is precisely why they trade. He says, “owners

of resources reaching separate agreements with entrepreneurs..., entrepreneurs reaching agreements with individual workers, or groups of workers first reaching some

¹⁹Nozick, *Anarchy, State, and Utopia*, 158.

²⁰ Nozick, *Anarchy, State, and Utopia*, 158-159.

²¹ Nozick, *Anarchy, State, and Utopia*, 158.

²² Nozick, *Anarchy, State, and Utopia*, 158.

joint agreement and then presenting a package to an entrepreneur and so forth.”²³ So, Nozick argues, what need is there for some hypothetical foundational agreement if, in the free-market system, agreements are being made every day?

In brief, Nozick explains that distributions are “patterned” if they follow some predetermined principle, and they are “historical” if they do not. Most conceptions of distributive justice, including Rawls’, are patterned while the free-market conception is not. Many would disagree with the free-market system because its distributions seem random, and if they are random, they seem unjust. However, Nozick explains the free market is neither random nor unjust. It is not random because it operates according to the guiding principles of perceived benefit. It is not unjust because all trades and purchases are made through mutual agreement. Hence, Nozick argues, why would Rawls need to come up with a hypothetical agreement of distributions if agreements are already being made every day?

ANALYSIS OF RAWLS’ ARGUMENTS

The first two criticisms of Rawls’ *Theory of Justice* deal with its structure and approach. Rawls’ theory is structured as a contract theory, which has a few implications. The first is that, as mentioned, a contract theory attempts to find some principle that everyone can agree on. However, a contract theory must be broad since the more particular the principle is, the less likely people are to agree. For example, when Locke says that everyone should agree that government elections should be based on a majority vote, he doesn’t specify if it should be a conditional majority – in fact, he states conditional majorities would have to be determined by further agreement.²⁴ He gives no further specifications on outlier cases, such as votes of plurality, again, unless specified by further agreement. Like Locke and other contract theorists, Rawls’ hypothetical contract is too broad, but what’s more, he doesn’t specify what the agreement is. Instead, he hypothesizes that the participants will come to their own conclusion on what justice should be. Rawls does examine possibilities of what an agreement of justice might be, but he leaves the actual agreement to the hypothetical participants.²⁵ Therefore, Rawls’ theory structure is too broad and lacks the actual object of justice which his entire theory is based upon.

The second criticism deals with Rawls’ approach. Rawls takes the rational choice approach, and therefore assumes that all actors are self-interested, rational, and have

²³ Nozick, *Anarchy, State, and Utopia*, 187.

²⁴ Locke, *Two Treatises of Government*, 143.

²⁵ Rawls, *A Theory of Justice*, 14.

preferences. While this approach is useful in theory, it often leaves out too much relevant information. For example, if, for an upcoming election, my voting options are parties A, B, and then C, we could say that (1) my preferences follow the order of A, B, and C, (2) I am self-interested, and (3) I am rational, then one could predict that I would vote for Party A. However, what if Party B has a much better chance of winning the election than Party A, and if I don't switch my vote from Party A to B, then my least preferred Party (Party C) would win? Then I might choose to vote strategically and vote for Party B rather than A so that my second preference would at least be elected over my third preference. Not to mention any other number of myriad examples such as political scandals, party discipline versus value preferences, etc. Moreover, what if one of the three original assumptions of rational choice theory were assumed incorrectly? What if I was not a rational actor? As anyone can see, there are many issues with the rational choice approach.

Now, while Rawls chooses the rational choice approach, he takes his theory a step further and attempts to strip the participants of the original agreement of their self-interests and preferences, leaving them with only their rationality. He does this to circumvent the potential of biases in their decision-making on distributions, but he does this to such a great extent that the participants begin to lose the nature that makes them human. In his hypothesis, he states: "Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities."²⁶ In his veil of ignorance, Rawls strips the participants of their abilities, strengths, and intelligence. He even strips them of their moral values and their "psychological propensities" – that is, their personalities. The participants thus begin to look more like aliens than humans. This, of course, is done to make the participants as objective as possible, but in so doing, it loses the validity of the contract theory structure. For, when Locke, Rousseau, and Kant make their assumptions about humans as rational actors who act in their own self-interest, they are at least all still valid through those assumptions. Namely, if someone were a rational actor, then it is not unreasonable to assume that they would make such agreements since the agreement is constructed to play into self-interest. However, if they no longer have any interests or preferences, as is the case with Rawl's theory, then how could we make any assumptions about what they would choose at all?

²⁶ Rawls, *A Theory of Justice*, 12.

The final criticism relates to Rawls' own analysis of his theory. Throughout his reasoning, Rawls continuously notes how impractical and limited his ideas are. For example, when he explains the "voluntary scheme," he says it is just to evoke ideas and has no real bearing on actual life circumstances: No society can of course be a scheme of cooperation which men enter voluntarily in a literal sense; Each person finds himself placed at birth in some particular position in some particular society, and the nature of this position materially affects his life prospects. Yet a society satisfying the principles of justice as fairness comes as close as a society can to being a voluntary scheme, for it meets the principles which free and equal persons would assent to under circumstances that are fair.²⁷ He explains that there are no actual implications in the voluntary scheme but is more of a thought exercise. The problem with this is that while a priori reasoning does not always coexist harmoniously with reality, the closer it gets, the more useful it becomes. Rawls' theory is so far removed from the realm of possibility that it is extremely difficult to find its usefulness. Moreover, when he addresses the concerns of the agreements, he says that some issues are more complicated than others. He says, "We are confident that religious intolerance and racial discrimination are unjust... but we have much less assurance as to what is the correct distribution of wealth and authority."²⁸ Thus, he notes the limitations of the agreements.

However, despite these holes in his logical reasoning, Rawls says that no one should find any issues with his theory so long as they play by his rules: "This concept should cause no difficulty if we keep in mind the constraints on arguments that it is meant to express."²⁹ While Rawls' theory is attractive in addressing issues of inequality, it has few implications for real-life circumstances and contains myriad problems in logical reasoning.

ANALYSIS OF NOZICK'S ARGUMENTS

My analysis of Nozick's *Anarchy, State, and Utopia* will consist of two parts. The first will be on his theory of distributive justice as entitlement, and the second will be on his own criticisms of Rawls' *Theory of Justice*. To begin, while Nozick's theory has much to do with agreements, it is neither a social contract theory nor rational choice. As we've seen, a social contract entails that everyone agrees on the same thing. For Nozick, in a free-market system, everyone will agree but all on different things. Purchases, trades, gifts, and donations are all examples of how people choose to give what is entitled to them. Thus, he circumvents the issues of social contract theory, namely, having to find one thing

²⁷ Rawls, *A Theory of Justice*, 13.

²⁸ Rawls, *A Theory of Justice*, 19-20.

²⁹ Rawls, *A Theory of Justice*, 19.

that everyone can agree on. Nozick avoids the issue we find with Rawls: creating a principle that is much too broad. Moreover, since Nozick does not take the rational choice approach, he does not constrain his theory to its rules – for example, that human beings are rational actors. He would say that people may or may not be rational actors, but their choices or agreements are still their own. This is important for Nozick because he thinks it would be unjust for someone else to decide what to do with someone else's entitlements.

Nozick places distribution into two categories: patterned and unpatterned. "Almost every suggested principle of distributive justice," he says, "is patterned."³⁰ Nozick is referring to decisions made by the few for the many. This approach requires that decision-makers agree on how to distribute resources through some pattern, whether it be "according to his moral merit, or needs, or marginal product, or how hard he tries, or the weighted sum of the foregoing, and so on."³¹ To understand why Rawls argues for the distribution of the few for the many, we must first understand what he means by justice. As previously examined, Rawls understands justice as fairness – that is, a) distribution is equal in its proportion among the recipients, and b) fairness is agreed upon. For Nozick, fairness does require an agreement between interested parties but does not necessarily require equality. Especially if, again, those parties agree on what is fair. If there is already agreement on what is fair, Nozick explains, then what need is there for equality? What Nozick doesn't take into account is those who will be left out of the agreements. In a free market system, the only ones who are making agreements are those playing by the rules of the game. There are some who don't have anything to trade or purchase with, and it is this group that Rawls and other social theorists have in mind when they create their conceptions of distributive justice. Even if Nozick does not see justice as fairness, as Rawl's does, he would do better to account for the marginalized, as his theory stops short at this concept.

There are myriad criticisms that Nozick has of Rawls' *Theory of Justice*, but I want to emphasize three that I think most clearly emphasize the impracticality of Rawls' theory. The first criticism requires looking at distributive justice from a different perspective. This criticism is not directed at Rawls in particular, but at socialism in general. Nozick argues that social cooperation creates the problem that requires distributive justice. He explains that if people did not live in a cooperative society, then there would be no need for redistribution for society as a whole. Rather, everyone would only be concerned about their own interests, and no one would question that this isn't just. Nozick states, "Would

³⁰ Nozick, *Anarchy, State, and Utopia*, 156

³¹ Nozick, *Anarchy, State, and Utopia*, 157.

there be no problem of justice and no need for a theory of justice, if there was no social cooperation at all, if each person got his share solely by his own efforts? It cannot be said that there will be conflicting claims only where there is social cooperation; that individuals who produce independently and (initially) fend for themselves will not make claims of justice on each other.”³² Only when societies are created based on mutual cooperation does the issue of equality and redistribution seem justified. But even when the issue arises, it is still quite unclear who is entitled to what and thus requires some agreement of the few for the many: “On this view social cooperation introduces a muddying of the waters that makes it unclear or indeterminate who is entitled to what.”³³ Whereas in a non-cooperative society, it would be clear about who is entitled to what. Thus, he argues, cooperative societies create the problem of distributive justice. While it is impossible in practice to have no society, the conception is nonetheless useful in putting his ideas into perspective. Though it must be said that the implications are little since societies are inescapable in the modern age. In other words, human beings are social creatures. The mere fact that society exists denotes the necessity of finding a way that they can all live together peacefully.

The second criticism relates to a lack of sufficient information in Rawls’ hypothesis. In the hypothesis, the participants of the agreement must come to some decision about distribution with some lot of resources, whether it’s money, food, housing, etc. What Nozick points out is that Rawls makes no assumptions about where this lot came from. Rawls does not acknowledge that the resources must come from somewhere. Instead, he treats it as if it comes from nowhere. By doing this, Rawls has circumvented the issue of entitlement; if the resources have come from nowhere, then there is no objection about the unfairness of the stripping of those resources from whom they were originally entitled. In Nozick’s words: “People meeting behind a veil of ignorance to decide who gets what, knowing nothing about any special entitlement people may have, will treat anything to be distributed as [if it were] manna from heaven.”³⁴ In reality, resources, especially financial resources, do not come from nowhere. Nozick makes a strong point here. If Rawls had included where the lot had come from, it would likely have turned off a lot of readers since, in reality, that lot must come from everyone.

The third criticism deals with the problem of conformity. If, as in Rawls’ theory, society moves away from the agreements of the many in the free market to the agreement in the conception of distributive justice, then it is clear that all must abide by the decisions. In other words, in reality, not everyone can agree on one thing and so where does this leave

³² Nozick, *Anarchy, State, and Utopia*, 185.

³³ Nozick, *Anarchy, State, and Utopia*, 186

³⁴ Nozick, *Anarchy, State, and Utopia*, 199.

those who don't agree? This has a few implications, which Nozick explains this way: "This presupposes unrealistically that (1) all will most want to maintain the pattern (are those who don't, to be 'reeducated' or forced to undergo 'self-criticism'?), (2) that each can gather enough information about his own actions and the ongoing activities of others to discover which of his actions will upset the pattern, and (3) that diverse and far-flung persons can coordinate their actions to dovetail into the pattern."³⁵

The criticism of re-education draws a parallel between Rawls' contract theory and Rousseau's. In Rousseau's later political writings, he defends his idea of the general will by admitting that the only way for people to all desire the same things is to be educated to want those things. Rousseau says the public must be educated by the state for the good of the state: "It is education that must give souls the national form, and so direct their tastes and opinions that they will be patriotic by inclination, passion, necessity. Upon opening its eyes, a child should see the fatherland, and see only it until his dying day."³⁶ Through Nozick's perspective, Rawls' theory of justice begins to look like wishful thinking at best and dystopia at worst.

CONCLUSION

The question that both Rawls and Nozick want to answer is who should decide the means of distribution if the greatest aim of a society is justice? For Rawls, the answer is distribution according to agreement on justice by the few for the many behind a veil of ignorance. The veil of ignorance ensures the participants are more likely to agree on equality to avoid risking a lower socio-economic status. In this way, and in a most basic sense, those who would otherwise be overlooked in a free-market system are accounted for. Nozick, on the other hand, disagrees with Rawls and says that formulating patterns for distributions are unnecessary. Justice, Nozick says, does not require a foundational agreement but consists in daily agreements between all individuals in a free-market system. Further, the free market is not as random as it might seem. If the guiding principle of the free market is "according to perceived benefit," then it is not random even though it is not patterned. If distribution is already just, then the formulation of a new pattern of distribution is unnecessary.

Rawls' *Theory of Justice* is a social contract theory, with a rational choice approach. As such, he is influenced by former contract theorists such as Locke, Rousseau, and Kant. By

³⁵ Simply put, Nozick is asking what is done with those who don't agree with the new means of distribution. By "reeducation" he means the outliers will have to be taught why the new means of distribution is best, and by "self-criticism" he means they will have to be taught why they were wrong.

³⁶ Rousseau, *The Social Contract*, 193.

theorizing through the contract theory structure, Rawls falls prey to overgeneralizations, and by taking the rational choice approach, he disregards crucial information. Through the combination of his structure and approach and by his own admissions, Rawls' theory has very few implications for practical politics. Nozick takes the Classical Liberalism approach, and his work is thus influenced by Adam Smith and, more directly, Nozick builds on the theories of Frederick Hayek. Hayek maintained that any effort by the government to interfere with countless individual agreements would be futile and that people would be better served if they acted freely and made their own choices. Nozick backed this position, arguing that it is more just for everyone to make their own choices than act according to some "voluntary scheme."

Three noteworthy criticisms Nozick had of Rawls' theory were (1) cooperative societies create the problem of justice, and if each were left to their own devices, then no one would question the "justness" of entitlement, (2) Rawls assumes that the resources to be distributed essentially come from nowhere and thus doesn't address the issue of having to take the entitlements of others, and (3) Rawls' agreement requires mass conformity and does not address what should be done to outliers. On these points, Nozick points out that all the alternatives to this question are undesirable regardless of one's perspective. Therefore, while Rawls' theory falls prey to a lack of logical conciseness, Nozick avoids those pitfalls and makes strong criticisms of his own. As for Nozick's pitfalls, he fails to address the problem of the marginalized in a free-market system. However, ethical values and practical implications aside, Nozick's theory is more logical and coherent according to the principles of theory.

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