

HABEAS HYGGE

Normalisation and Reintegration: Rethinking Canada's Justice Path through a Danish Perspective

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The views and opinions in this paper are the author's own and not those of the British Columbia Prosecution Service.

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A Comparative Curiosity

Sixteen years ago, I had the good fortune of moving to Copenhagen, Denmark for a year-long study abroad program. Attending the University of Copenhagen and living at the renowned *Tietgenkollegiet* proved to be a defining chapter in my life.¹ The enduring friendships I formed during that year have afforded me the privilege of returning to Denmark annually for more than a decade. Across these visits, my initially speculative sense that there was something distinct in how the Danes move through and organize their society, has become increasingly curious—solidifying a welcomed reverence for a country, its culture, and the inseparable social and legal values that animate public life.

On one of my first days in Copenhagen, I recall an experience walking along a canal with my exchange student mentor. As we explored the city, she taught me about a recognized part of Danish cultural cohesion which would come to frame much of my experience in Denmark—the significance of a social discomfort with *Hubris*. Over time, I began to understand this underlying cultural baseline as one that prioritizes humility, social balance, and collective responsibility.

This idea—closely tied to what is often referred to as *Janteloven*, or the *Law of Jante*—reflects a national social instinct to resist boasting or self-importance.² Perhaps best captured by former Maersk CEO, Mærsk Mc-Kinney Møller. Mc-Kinney emphasized that even success should be met with restraint, that one should never assume they are the best, only skilled in certain areas, and always at risk of complacency.³

Janteloven, Hygge, and Social Foundations

Similarly, *Janteloven* represents a broader Scandinavian “cultural code”, that emphasizes modesty, equality, collective success over individual achievement, and cautions against seeing oneself as *superior*. Originating from a 1933 satirical novel by Danish-Norwegian author Aksel Sandemose, *Janteloven* discourages acting superior, boasting, or standing out, while encouraging equality, humility, and collective success.⁴ Though these principles are not “rules” *per se* and have their own limitations, they continue to exist as an ethos a century later.

My recent visit to Denmark in May of this year deepened my comparative inquiry, as I was fortunate to meet with and interview a member of the Danish Prosecution Service. Our discussion provided practical insight into Danish approaches to charge approval, remand, detention, community sanctions, and the handling of child sexual offence allegations. These qualitative observations help ground this paper in lived institutional reality, rather than personal anecdotes or academic comparative philosophy alone.

¹ *Tietgenkollegiet*. Danish Architecture Center - DAC. <<https://dac.dk/en/magazine/places/tietgenkollegiet-289>>.

² A.P. Møller. *The origin of the Core Values* - A.P. Møller Holding. <<https://apmoller.com/the-origin-of-the-core-values/>>.

³ Ahlness, E. *Janteloven and Social Conformity in Thorbørn Egner's Literature*. Proceedings of the National Conference On Undergraduate Research (NCUR) 2014 University of Kentucky, Lexington, KY. April 3-5, 2014. <<https://libjournals.unca.edu/ncur/wp-content/uploads/2021/07/738-Ahlness-Ellen.pdf>>.

⁴ Cappelen, C, Dahlberg, S. *Law of Jante and generalized trust*. August 2017. Acta Sociological, Sage Pub.

What began as cultural curiosity eventually became a legal exploration. I grew less interested in whether Denmark's criminal justice system was simply more humane, and more interested in why the country's institutions appeared to operate with such undeniable cohesion and *connection*. This question ultimately led me to a consideration of whether Canada's own commitments to restraint, proportionality, dignity, and rehabilitation might be strengthened through an understanding of how these principles are operationalized in Denmark.

For years, I have been drawn to the concept and practice of *Hygge*—not merely as an aesthetic expression of comfort, but as a broader cultural reflection of dignity, balance, inclusion, and social ease. From my perspective, *hygge* represents something deeper than a physical environment or moments of comfort; it reflects a way of organizing social life around belonging, connection, physical, emotional, and psychological safety; and the appreciation of the ordinary human experience. It is found in the recognition that people are shaped by their relationships, communities, and shared environments; and that maintaining those connections is central to individual and collective health and well-being.

It was through this lens that I began to understand Denmark's *Principle of Normalisation*. Normalisation seeks to preserve ordinary life and a sense of collectiveness by ensuring that individuals who enter the criminal justice system are not wholly excommunicated from their community, remaining a contributing and benefiting member of the society to which they will eventually return. While imprisonment necessarily involves a deprivation of liberty, Normalisation reflects the belief that this deprivation should not extend beyond what is necessary. Importantly, the Danish application of *necessity* is scaled against the weighty social prioritization of community, connection, and belonging—where individuals in custody remain members of society, with continued rights and responsibilities.⁵

Within this framework, maintaining relationships, preserving social identity, and remaining connected to ordinary life are not viewed as secondary considerations, but fundamental aspects of human rights and dignity. Normalisation therefore reflects a conception of punishment in which reintegration seems prospective, both in its inception and application.

In writing this paper, I came to realize that my observations were initially not legal conclusions, but human ones. That seemingly inconsequential canal-side conversation, seven years prior to starting law school has stayed with me. Little did I know that a decade later, it would underpin much of how I approach my role as a prosecutor and shape the questions that guide this paper: what happens when a society's broader commitments to dignity, equality, health, welfare, and inclusion are reflected not only in its social institutions, but the way it responds to crime?

From these observations, I suspect that criminal justice institutions cannot develop independently from the people that establish them. Rather, they are the expressions of

⁵ Open-ended intergovernmental group of experts on the standard minimum rules for the treatment of prisoners Buenos Aires, Argentina, 11–13 December 2012. *Response Of The Government of Denmark To Note CU 2011/26*. November 7, 2012. <<https://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/DENMARK-GOV-13-En.pdf>>. [Response Of The Government of Denmark].

the values, assumptions, and relationships embedded within those societies. I see Normalisation as “institutionalized hygge” in practice—reflecting an understanding that dignity, inclusion, and social connection are not separate from criminal justice, but foundational to how justice is administered.

The Living Tree and Institutional Adaptation

What I have observed of Copenhagen over the last fifteen years, is that it is a city that continually evolves as a living, breathing, reflection of change. I sense it is defined by its citizens and responsive their needs. For me, Copenhagen has come to represent something akin to a fundamental Canadian legal principle—“The Living Tree.” Of course, The Living Tree Doctrine as a principle of constitutional interpretation recognizes that law ought not be frozen in the past, but remain capable of growth, flexibility, and adaptation in response to contemporary realities and changing values.⁶ Though rooted in Canadian constitutional jurisprudence, the concept offers a useful lens through which to think about legal and institutional design.

My curiosity and adoration for Denmark stems in part, from the sense that its penal and social systems reflect this same organic quality: not a rejection of order or accountability, but an ongoing willingness to adapt institutions to human need, and the practical realities of a society that grows on a path parallel to its’ people. From this, it seemed that if constitutional principles ought to be interpreted and applied with the evolution of a society, then perhaps institutions and penal progression should as well.

Institutional Coherence

Institutional coherence refers to the extent to which the objectives of criminal law are reinforced and cultivated consistently across the broader institutions of society.⁷ A coherent criminal justice system is not one in which every institution performs the same function, but where legal principles such as dignity, restraint, proportionality, and reintegration are reflected not only in legislation and jurisprudence, but also in prosecutions, corrections, health care, education, housing, and social welfare. Denmark functions as an intriguing comparator, not because of its different laws, but because its institutions and the people who orchestrate them are aligned in both principle and practice.

Danish institutions appear to operate with a shared understanding of the values they are intended to promote. Principles such as proportionality, dignity, restraint, and reintegration are not confined to isolated legal provisions, but appear to be reinforced across the broader landscape. This perceived alignment between legal principles, social values, and institutional practice makes the Danish model analytically interesting, and

⁶ Centre for Constitutional Studies. *Living Tree Doctrine*. July 4, 2019. < <https://www.constitutionalstudies.ca/2019/07/living-tree-doctrine>>.

⁷ Kenworthy, Lane. *Institutional coherence and macroeconomic performance*. Socio-Economic Review, Volume 4, Issue 1, January 2006, Pages 69-91. 18 October 2005.

raises the broader question of what Canada can learn from a system in which criminal justice operates as one component of a synonymous social structure.

A Contemporary Conundrum

I consider this global comparative perspective while, owning my undeniable oversimplification of my persistent sense that people in British Columbia—and plausibly throughout Canada—are wondering why our criminal justice system feels, or perhaps truly is, so frayed. As a prosecutor, with a deep love of the law and the privilege that is this profession, I have shied away from eliciting strong opinions on the subject. At the same time, I have lived and worked in Vancouver's Downtown Eastside⁸—the "poorest urban postal code" in Canada.⁹ The area is marked not only by financial precarity, but by some of the highest concentrations of crime in Canada; including significantly elevated rates of substances use, homelessness, violence, and property offences.¹⁰

From this lived experience, I am confident that frustration exists on all sides—both among those enmeshed in criminality and by those occupying the perceived opulence of their armchair observatory—never truly getting close enough to the criminal justice system to experience its complexity or its humanity. Be it inside or out of the system, it seems common ground is found in the feeling that the rehabilitative and penal aspirations of Canadian criminal law as they currently operate, may be engulfed in their own enervation. Observably, the court of public opinion is questioning loudly: is our system truly responding to its objectives, and what must happen to engage a positive pivot?¹¹

Of the current climate, I see deep contrast: a cornucopia of great triumphs alongside a palpable exhaustion. In the Downtown Eastside of Vancouver for example, both the system itself and its participants seem weathered.¹² It is here that I cannot help but wonder whether our criminal justice system is, in part, being tasked with solving problems for which it was never created to contemplate. I question whether the conditions that give rise to much of the criminality I observe—those identifiable social *pathogens*—might be better addressed earlier in time and structure, in ways notably more nuanced than jail or no jail, retribution, or rehabilitation.

Undeniable are the many issues that originate at a deeper societal level, where conditions that give rise to criminality, often lie well beyond the silo of the law itself and the tools it has available. At the same time, moral blameworthiness, mitigation, proportionality, and

⁸ City of Vancouver. *Downtown Eastside*. <<https://vancouver.ca/news-calendar/downtown-eastside.aspx>>.

⁹ Boyd, J and Kerr, T. *Policing 'Vancouver's Mental Health Crisis': A Critical Discourse Analysis*. Critical Public Health., Volume 26, Issue 4. 2015 Feb 9;26(4):418–433. 2017 May 9, <Policing 'Vancouver's Mental Health Crisis': A Critical Discourse Analysis - PMC>; *Vancouver Police Department*. Crime RATE By Incident. <<https://vpd.ca/wp-content/uploads/2024/03/crime-rate-by-incident-2019-2023>>.

¹⁰ City of Vancouver. *Downtown Eastside (DTES) local area profile 2012*. 2012 Aug 2. <www.vancouver.ca/dtesplan>; Karp L, Livingston A. *Client perspectives on improving health care in the Downtown Eastside*. Vancouver Coastal Health; 2014. <<http://dtes.vch.ca>>.

¹¹ Christian Paas-Lang, "Premiers urge Trudeau to tighten Canada's bail system" CBC News (14 January 2023), <<https://www.cbc.ca/news/politics/premiers-letter-trudeau-bail-reform-firearms-1.6714245>>.

¹² Andresen, M.A., & Brantingham, P.J. (2007). *Hot spots of crime in Vancouver and their relationship with population characteristics*. Ottawa, ON: Department of Justice Canada.

parity assessments become frustrated when the criminal law is compensating for other social and institutional deficiencies that are inextricable from said blameworthiness.

To analogize, I surmise that when a society invests in maintaining a strong institutional and social welfare fabric, the hull of each citizen's *boat* is less likely to form cracks. When fewer cracks exist at the outset, individuals are better positioned to respond to the inevitable *edges* of experiencing life for the first time—repairing what damage occurs, managing the leaks, and continuing to paddle forward. Conversely, when one's foundation is porous, cracks develop more quickly and in greater quantity. Here, the focus shifts from growth and progress, to simply trying to stay afloat.

The expectation that the criminal justice system should serve as the primary mechanism for repairing said "cracks" is understandable, but neither realistic nor sustainable. When considering the persistence of recidivism in communities such as Vancouver, I do not view our criminal justice system alone as broken, but recognize the broader human system in which it is laudably operating.

Institutional Incoherence

In the face of institutional incoherence and shortcomings of surrounding social systems, Canadian criminal law has increasingly been called upon to address challenges that are not truly criminal law issues, but broader social conditions. In my experience, evidence of this is palpable. While participating in "ride-along" shifts with Vancouver's municipal police department, I observed that a striking number of emergency calls to police involved no objective aspect of criminality.¹³ Instead, policing resources were consistently drawn to respond to individuals experiencing mental health and drug crises, because no other institutions were available to provide care. Despite historically being one of Canada's most highly served, "police to population" cities, these *expectations* of modern policing are not unique to Vancouver.¹⁴

While criminal law is structured around responding to blameworthy conduct, it is increasingly required to function as a mechanism for managing complex social need. In this sense, criminal law does not operate in isolation but increasingly absorbs the consequences of inadequacies within housing systems, health care, welfare supports, addiction services, and broader social networks. As noted by the Canadian Civil Liberties Association, citing, the 2017 report by the Independent Review of Ontario Corrections: "When early intervention and prevention strategies fail; when health, social service and education programs, interventions and opportunities are inadequate, denied or rejected; when poverty, mental illness, addiction and trauma overwhelm individuals, there can be conflict with the law".¹⁵

¹³ The term "ride-along", is used to define an opportunity where a lay person accompanies a police officer during a patrol shift, to observe the officer's day-to-day work in the community responding to calls and carrying out policing duties.

¹⁴ Chappell, D. *From sorcery to stun guns and suicide: The eclectic and global challenges of policing and the mentally ill*. Police Practice and Research: An International Journal. 2010;11(4):289–300.

¹⁵ Canadian Civil Liberties Association and the Canadian Civil Liberties Education Trust. *Still Failing, The Deepening Crisis of Bail and Pre-Trial Detention in Canada*. 2024, <https://ccla.org/wp-content/uploads/2024/04/CCLA_Bail-Report-V2.pdf>; *Independent Review of Ontario Corrections, Segregation in Ontario* (Queen's Printer for Ontario, March 2017) at 1, <<https://hsjcc.on.ca/wp->

The criminal justice system is therefore performing multiple, and sometimes simultaneous competing functions: punishment, rehabilitation, risk management, and social stabilization. The criminal system is expected to promote accountability, fairness, proportionality, restraint, denunciation, deterrence, rehabilitation, and public safety: yet these objectives become increasingly difficult to realize where the broader institutions responsible for providing health, education, housing, and social support, fail to operate with empowered agency over their own obligations.¹⁶ The capacity of the criminal law is therefore being diluted.

These realities place increasing strain on the application of bail and sentencing principles, in communities such as Vancouver's Downtown Eastside, where individuals frequently arrive before the courts having experienced prolonged homelessness, addiction, untreated mental illness, trauma, family violence, poverty, and social isolation.¹⁷ Restraint becomes clouded where risk appears relentless; rehabilitation becomes challenging where underlying contributors to offending endure as unaddressed ultimatums; and proportionality becomes increasingly complex where offending behaviour is inseparable from systemic disadvantage.

While these realities do not excuse responsibility, they form the backdrop against which much offending arises. The issue is not whether Canada should simply adopt other sentencing laws or correctional practices, but whether our broader environment surrounding criminal justice, adequately supports the legal principles that our justice system already champions.¹⁸

A Comparative Question

Acknowledging institutional incoherence reframes the comparative question. Normalisation serves as the mechanism through which, by a different avenue, Denmark operationalizes many of the values Canada also professes. Normalisation functions effectively not simply because of prison design or sentencing philosophy, but because it is embedded within a broader barometer of social and systematic coherence.

The Danish experience suggests that legal principles cannot be examined independently from the institutional environments that support or constrain them. This is particularly important when considering recidivism. If criminal behaviour is influenced not only by individual choice but also by the institutional conditions that shape opportunity, stability, and resilience; then the effectiveness of criminal law cannot be assessed solely by

content/uploads/IROC Segregation-Report-2017-03.pdf>. [*Still Failing, The Deepening Crisis of Bail and Pre-Trial Detention in Canada*].

¹⁶ Reitano, J. (2006). *Police Resources in Canada, 2006*. Ottawa, ON: Statistics Canada, Canadian Centre for Justice Statistics; Carten, R. *No support for peer support: Vancouver Coastal health terminates funding for grassroots mental health networks*. Vancouver Media Co-op. 2013 Nov 29. <<http://vancouver.mediacoop.ca/fr/story/no-support-peer-support/20091>>.

¹⁷ Hasson, Shlomo and David Ley. 1994. *The Downtown Eastside: 'One Hundred Years of Struggle'*. In Shlomo Hasson and David Ley, *Neighbourhood Organizations and the Welfare State*. Toronto, ON: University of Toronto Press, pp. 172-204.

¹⁸ Grabb E, Guppy N. *Social inequality in Canada: Patterns, problems, and policies*. 5. Toronto, ON: Pearson Prentice Hall; 2009. pp. 19–28.

reference to legislation, sentencing outcomes, or correctional policy. It must be considered within the broader social environment in which those legal principles live.¹⁹

Denmark demonstrates the potential strength of a criminal justice system operating within a broader network of institutions that consistently reinforce those shared values. Canada, by contrast, increasingly asks its criminal justice system to compensate because the surrounding institutional environment is often insufficiently equipped to sustain itself.²⁰ Meaningful criminal justice reform may require a broader collaboration. If institutional coherence better supports individual stability, resilience, and social connection before criminal justice intervention becomes necessary, then the most effective justice reforms may ultimately lie beyond the criminal law. The distinction is one of institutional alignment.

This paper does not seek to capture every aspect in which the Danish criminal justice system diverges, but rather those I found remarkable, and relevant.

CANADA

Bail and Sentencing

Canadian bail law is built around the interrelated principles of the presumption of release, the ladder principle, and restraint—all of which are intended to ensure that pre-trial detention remains the exception. The framework assumes that release is the default position and that detention must be justified through a proportionately responsive, and incremental analysis.²¹

Canadian sentencing law is governed by s. 718 of the Canadian *Criminal Code*, which sets out the Purposes and Principles of Sentencing.²² These include denunciation, deterrence, separation of offenders where necessary, rehabilitation, reparation, and promoting responsibility and accountability in offenders. At the centre of sentencing is proportionality, requiring that a sentence must reflect both the gravity of the offence and the degree of responsibility of the offender. Alongside this, parity promotes consistency in sentencing outcomes, while rehabilitation remains a core objective of the sentencing process.

Brief History of Sentencing

Since the mid-1990s, Canada's criminal justice system has undergone notable statutory and judicial expansion. Enacted in 1996, Bill C-41 restructured Canadian sentencing, intending to reduce the overreliance on incarceration, particularly for offending considered "less serious". The amendments saw the addition of ss. 718 - 718.2 to Canada's *Criminal*

¹⁹ Vancouver Police Department. *Vancouver's Mental Health Crisis: An Update Report*, September 13, 2013.

²⁰ *Still Failing: The Deepening Crisis of Bail and Pre-Trial Detention in Canada*

²¹ *Criminal Code*, RSC 1985, c C-46, s. 11e, PART XVI, ss. 515; *R. v. Antic*, 2017 SCC 27.

²² *Criminal Code*, RSC 1985, c C-46, s. 718.

Code, codifying a clear statutory framework to guide courts and improve consistency amongst decision makers.²³

The amendments responded to questions of whether reliance on custodial sentences, particularly in response to criminal conduct arising from the distinct systemic and socio-historical circumstances of marginalized groups (most notably Indigenous peoples), tangibly constituted an effective means of reducing crime or mitigating recidivism. In response, s. 718.2(d) incorporated the Principle of Restraint, while s. 718.2(e) created a duty to consider all reasonable alternatives to incarceration, especially for Indigenous offenders in light of their systemic and historical realities.²⁴

Though already a recognized principle, “Proportionality”—that a sentence must be proportionate to the gravity of the offence and the blameworthiness of the offender, was shifted to the fundamental principle of sentencing per s. 718.1.²⁵ An emphasis on “Parity” under the then, s. 718.2(b), highlighted the need to maintain fairness by ensuring that similar offenders and offences were treated the same.²⁶ Prior to these reforms, sentencing principles had been developed incrementally by appellate courts, but were not comprehensively codified.²⁷

The amendments also explicitly introduced restorative objectives, recognizing the concern that punishment alone was an insufficient response in the context of a measured sentencing framework. These changes required courts to weigh the benefit of rehabilitation, offender accountability, and where appropriate, emphasize repairing harm to victims and communities.

Conditional Sentence Orders were introduced to permit certain offenders to serve custodial terms in the community under strict conditions. The amendments also required courts to treat offences motivated by bias, prejudice, or hate, as aggravating factors and formalized the use of Alternative Measures to divert appropriate cases from the traditional prosecutorial process. Collectively, Bill C-41 modernized Canadian sentencing by codifying foundational principles developed from the case law, while embedding proportionality, restorative justice, and recognition of systemic marginalization into the sentencing framework.

²³ Government of Canada. *A Review of the Principles and Purposes of Sentencing in Sections 718-718.21 of the Criminal Code*. <<https://www.justice.gc.ca/eng/rp-pr/jr/rppss-eodpa/p4.htm>>.

²⁴ Government of Canada. *Reform of the Purposes and Principles of Sentencing: A Think Piece*. <<https://www.justice.gc.ca/eng/rp-pr/jr/rpps-ropp/p3.html>>.

¹⁸ Manikis, M. *The Principle of Proportionality in Sentencing: A Dynamic Evolution and Multiplication of Conceptions*. Osgoode Hall Law Journal, Volume 59, Issue 3 (Summer 2022). <<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3812&context=ohlj>>.

²⁶ *Supra* note 16.

²⁷ Research and Statistics Division. *Spotlight on Gladue: Challenges, Experiences, and Possibilities in Canada's Criminal Justice System*. Department of Justice, Canada. September 2017. <https://publications.gc.ca/collections/collection_2018/jus/J4-46-2017-eng.pdf>.

Are we limbing the tree or growing new branches?

Despite doctrinal commitments, Canada's remand population has steadily increased.²⁸ As noted by Professor Nicole Myers: amongst comparable common law countries, Canada, has the highest proportion of its total prison population on remand—46.6%.²⁹ Per Statistics Canada, in 2023 and 2024, Indigenous adults were incarcerated at a rate 10 times higher than non-Indigenous adults in British Columbia and five other Canadian provinces. This trend has unfolded alongside institutional overcrowding, delay, and growing concerns regarding mental health care, release planning, and the overrepresentation of Indigenous persons in custody.³⁰

Since Bill C-41, legislative developments have reflected an ongoing tension between these foundational sentencing principles, and periodic shifts toward more abrasive, punitive policies, particularly during the term of then, Prime Minister Stephen Harper. Despite the wake of legislative restrictions prioritizing denunciation, deterrence, and mandatory minimum sentences, many laws were challenged by zealous advocates or struck down by appellate courts.³¹ While recent jurisprudence reaffirmed the centrality of proportionality, recognizing the undeniable systemic overrepresentation of marginalized communities, and the harms of arbitrary bail conditions that disproportionately burden over-criminalized and over-incarcerated communities,³² recent political discourse has continued to propel narratives of public safety through tougher sentencing and bail regimes.

During the 2025 Canadian federal election, major political parties pushed for stricter bail measures and sentencing reforms, in response to public safety concerns.³³ The continuing tensions between evidence-based sentencing principles and politically driven calls for more punitive focused criminal justice reactions persist.³⁴

What remains clear, is that the sentencing in bail law in Canada continues to toggle. With the timely introduction of Bill C-14, *The Bail and Sentencing Reform Act*, Canada is currently moving into a period of legislative change, where the Principle of Restraint—a cornerstone of Canadian justice, will face renewed scrutiny. Targeting repeat violent offending, intimate partner violence, organized crime, and firearms-related offences, the

²⁸ Fair, H, Walmsley, R; *World Pre-trial/Remand Imprisonment List (fifth Edition)*. World Prison Brief. <https://www.prisonstudies.org/sites/default/files/publications/world_pre-trial-remand_imprisonment_list_5th_edition.pdf>.

²⁹ Myers, N. *The bail process is both the trial and the punishment: Surveillance and control without the burden of conviction*, Journal of Criminology, 2025, Vol. 58(3) 466-484., at page, 467, <<https://crpoi.ca/wp-content/uploads/2025/10/myers-2024-the-bail-process-is-both-the-trial-and-the-punishment-surveillance-and-control-without-the-burden-of.pdf>>; World Prison Brief. (2024). Institute for Crime & Justice Policy Research. <https://www.prisonstudies.org/prison-brief-data>.

³⁰ Statistics Canada. *Overrepresentation of Indigenous and Black adults in provincial and federal custody*. January 14, 2026. <<https://www150.statcan.gc.ca/n1/en/daily-quotidien/260114/dq260114b-eng.pdf?st=Kp8NxfS>>

³¹ CBC Radio. *Courts, government bills are unravelling Harper-era crime laws*. Radio-Canada.ca. November 2, 2022. <<https://ici.radio-canada.ca/rci/en/news/1929685/courts-government-bills-are-unravelling-harper-era-crime-laws>>; *R v Ndhlovu*, 2022 SCC 28.

³² *R v Zora*, 2020 SCC 14; *R v Tunney*, 2018 ONSC 961 at para 57.

³³ Tasker, P. *Liberals claim to be the party of law and order now. Inside the party's about-face on crime*

CBC News, Posted: Jun 27, 2026 4:00 AM EDT | Last Updated: June 27, <<https://www.cbc.ca/news/politics/liberals-crime-bail-reform-9.724903>>. See: "[Canada's Justice Minister Sean Fraser], speaking to reporters this week on a cross-country tour promoting the government's agenda, Fraser relayed that the first thing Prime Minister Mark Carney asked him to do when he took the top job at Justice was get a handle on crime and pursue "a massive sea change."

³⁴ Angus Reid Institute. *Crime & Punishment: Canadians overwhelmingly supportive of proposed federal measures to toughen sentencing & bail*. <<https://angusreid.org/crime-canada-bail-carney-liberals-bill-c14-gladue>>.

reforms expand the scope of reverse onus provisions and strengthen detention pathways for several *Criminal Code* offences.³⁵

In practice, reverse onus provisions will now apply to a broader range of serious offences, including: assault with a weapon, aggravated assault, choking-related offences, sexual offences, trafficking in persons, organized crime-related conduct involving violence, extortion involving violence, and break and enter into a dwelling house.³⁶ When an accused is subject to a reverse onus provision—for which the legislative oversight has been expanded, the primary consideration of release at the earliest opportunity shifts. Here, the burden falls to the accused to justify release through a clear and specific release plan, addressing the risks identified under s. 515.³⁷ In these contexts, the ladder principle—where conditions of release are considered progressively before detention—is increasingly constrained.³⁸

The influence of prior convictions relative to new allegations, is also being expanded for several offences, extending the relevant period for prior violent offending from five to ten years.³⁹ These changes significantly increase the burden on accused persons at the bail stage, and expand the scope of the detention risk analysis. Courts are also now required to consider a broader range of factors, including patterns of violent conduct, the nature of the alleged offence, and cumulative risk across multiple incidents. This includes expanded consideration of tertiary grounds, as well as more robust analysis of public safety concerns for cases involving violence or repeat conduct.⁴⁰

With respect to restraint, s. 493.11 clarifies that the Principle of Restraint does not create a presumption of release where detention is otherwise justified. It requires peace officers and courts to impose only the least onerous conditions necessary to address the statutory grounds for detention, while confirming that an accused should not be released where detention is necessary in the public interest, justified under the grounds set out in s. 515(10), or where Parliament has imposed a reverse onus.⁴¹

In sentencing, Bill C-14 reflects a legislative shift toward greater emphasis on denunciation and deterrence. It also expands aggravating sentencing factors, restricts the availability of Conditional Sentence Orders for additional serious offences, and increases the maximum penalty for contempt—collectively signalling Parliament's intention to strengthen sentencing responses for specified categories of offending.

³⁵ Government of Canada. *Bail and Sentencing Reform Act: Legislation makes bail laws stricter and toughens sentencing laws*. <<https://www.justice.gc.ca/eng/csj-sjc/pl/c14/index.html>>.

³⁶ Government of Canada. Canada's sweeping bail and sentencing reforms become law. June 16, 2026. Department of Justice. <<https://www.canada.ca/en/departement-justice/news/2026/06/canadas-sweeping-bail-and-sentencing-reforms-become-law.html>>.

³⁷ *Criminal Code*, RSC 1985, c C-46, ss. 515, 522, and 524.

³⁸ Government of Canada. *Bail and Sentencing Reform Act: Legislation makes bail laws stricter and toughens sentencing laws*. <<https://www.justice.gc.ca/eng/csj-sjc/pl/c14/index.html>>.

³⁹ Government of Canada. *Bill C-14: An Act to amend the Criminal Code, the Youth Criminal Justice Act and the National Defence Act (bail and sentencing)*. *Charter Statement*. Tabled in the House of Commons, December 3, 2025. <https://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c14_3.html>.

⁴⁰ *Ibid.*

⁴¹ Langsted, L, Garde, P, Vagn Greve, T, *Criminal Law in Denmark*, Kluwer Law International B.V., August 5, 2019. [*Criminal Law in Denmark*]; "The Danish Model." Denmark. <<http://www.denmark.dk/en/menu/About-Denmark/Denmark-In-Brief/Denmark-An-Overview/TheDanishModel/>>.

Taken together, these and other legislative developments not discussed here, reflect a gradual but clear recalibration of the Canadian bail and sentencing frameworks. While the presumption of release and restraint remain formally present, the operational reality reflects a substantial vocalization and politization of concerns for public safety, preventive detention, and in some serious cases, risk-motivated decision-making.⁴²

DENMARK

Social, Political and Legal Context

Globally, Denmark is often viewed as a utopian social welfare paradise, consistently ranked one of the “happiest” countries in the world.⁴³ A relatively small country, Denmark has a population approximately 6.1 million people, with the capital city of Copenhagen and the greater metropolitan areas containing about 1.5 million residents.⁴⁴ Located in northern Europe, the Kingdom of Denmark consists of Denmark, the Faroe Islands, and Greenland. The three regions are geographically distinct and operate under one constitution, with independent legislation and *Penal Codes*. The information contained in this paper does not reflect the Faroe Islands or Greenland.

The average employee pre-tax wage in Denmark is approximately 51,657 Danish Kroner, per month.⁴⁵ This translates to a monthly salary of approximately \$11,206.93 Canadian Dollars. For context, appreciating that averages are less representative than mean measures due to the pull from top earners, the median individual employment income in Canada is approximately \$42,600 annually—roughly, \$3550.00 monthly.⁴⁶

Denmark enjoys a supportive welfare state with high rates of employment, public education, health care, social equality, and public spending on social welfare.⁴⁷ These benefits are made possible through progressive policy and high income and sales taxes rates.⁴⁸ Notably, over my repeated visits to Denmark, I have yet to observe that Copenhagen—a city of comparable size to Vancouver—struggles with the same homelessness and substance use disparities that plague many urban centres.

Although this paper does not extensively examine incarceration rates or trends, the World Prison Brief indicates that Canada’s incarceration rate per 100, 000 people is 90, while

⁴² Government of Canada. *Public Perception of Crime and Justice in Canada: A Review of Opinion Polls*. <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/rr01_1/p2_1.h>; Statistics Canada: reveals that “when asked about laws, the enforcement of laws, and sentencing, a majority of Canadians polled (79%) are of the opinion that sentences imposed are too lenient. . . . Only 14% think they are about right, and 2% think they are too strict. The results are similar for laws and their enforcement, whereby 69% of respondents think that enforcement of laws is too lenient. Twenty-five percent think they are about right and 3% think they are too strict”.

⁴³ World Population Review. *Happiest Countries in the World 2026*. <<https://worldpopulationreview.com/country-rankings/happiest-countries-in-the-world>>.

⁴⁴ United States Census Bureau. *Denmark*. July 1, 2026. <<https://www.census.gov/popclock/world/da>>.

⁴⁵ Statistics Denmark. *The Average Dane*. <<https://www.dst.dk/en/Statistik/laer-om-statistik/gennemsnitsdanskeren>>.

⁴⁶ Government of Canada. Statistics Canada. *Income of individuals by age group, gender and income source, Canada, provinces and selected census metropolitan areas*. April 29, 2026. <<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1110023901&pickMembers%5B0%5D=1.1&pickMembers%5B1%5D=2.1&pickMembers%5B2%5D=3.1&pickMembers%5B3%5D=4.1&cubeTimeFrame.startYear=2019&cubeTimeFrame.endYear=2023&referencePeriods=20190101%2C20230101>>.

⁴⁷ Greve, B. *What Characterizes the Nordic Welfare State Model*. *Journal of Social Sciences* 3(2): 43-51, February 2007.

⁴⁸ Tax Foundation. *Denmark Tax Rates & Rankings*. *Taxes in Denmark*. <<https://taxfoundation.org/location/denmark>>.

Denmark's is 69. Further, as of March 2023, the average population of individuals incarcerated in Canada was 35, 485 people across 216 adult institutions, while Denmark's prison population was approximately 4, 100 people across 54 institutions, as of January 2024.⁴⁹

Prosecution and Criminal Procedure

The Danish *Constitutional Act* (the "DCA") came into force in 1849. Revised in 1953 it represents the highest national legal authority.⁵⁰ With the exception of the *DCA*, statutory legislation has primacy over all other written legal sources in Denmark.⁵¹ Accordingly, substantive criminal law is founded upon a civil law system of parliamentary legislation comprising principally, of the Danish *Penal Code*, the *Administration of Justice Act* (*Retsplejeloven*) (the "AJA")—which governs the investigation, prosecution, trial, and disposition of criminal matters, and the *Corrections Act*.⁵²

Although Danish law contains common law influences, Nordic countries are generally considered to form a separate legal family. Though considerable legal power is vested with the judiciary, legal precedent does not enjoy the same Common Law authority. Decisions are not legally binding per *stare decisis*; however, in any event, decisions of the Danish Supreme Court are highly influential on lower courts.⁵³

Unlike Canada, Denmark does not designate offences according to categories such as summary, hybrid, or indictable conviction offences, but adopts a monistic approach, recognizing a single concept of criminal offending regardless of the seriousness or regulatory nature of the conduct.⁵⁴ As such, criminal acts and omissions are terms used broadly across offences ranging from serious criminal offences to breaches of vehicle legislation or administrative regulatory provisions.

Danish criminal law recognizes a limited number of criminal sanctions: imprisonment, fines, and community service. Imprisonment may be imposed either for life or a determinate period, while fines under the *Penal Code* are generally assessed through a day-fine system, where the associated quantum reflects the seriousness of the offence. The *AJA* prescribes measures for ordinary punishments and other legal consequences,

⁴⁹ World Prison Brief. *Canada: Total Prison Population*. <https://www.prisonstudies.org/country/canada?language_content_entity=en-gb>; Office of the Correctional Investigator - Independent Ombuds and Oversight of Federal Corrections in Canada, *Office of the Correctional Investigator Annual Report 2022-2023*.

⁵⁰ *The Danish Constitution Act*. <<https://www.thedanishparliament.dk/democracy/the-constitutional-act>>.

⁵¹ *Criminal Law in Denmark*.

⁵² *The Constitutional Act of Denmark* (Act No. 169 of June 5, 1953); Ministry of Justice. *Danish Administration of Justice Act* (*Retsplejeloven*). Consolidated Act No. 1045, 5 September 2023, retsinformation.dk: [AJA]; Jensen, M. et al (eds.), *The Danish Criminal Code, The Danish Corrections Act, and The Administration of Justice Act (Excerpts)*. 3rd ed. Djøef Publishing. 2006; FOLKETINGET - The Danish Parliament. *The Danish Constitution Act*. <<https://www.thedanishparliament.dk/democracy/the-constitutional-act>>; The *Danish Criminal Code*, § 1 (*Lovbekendtgørelse* nr. 976 of September 17, 2019);

⁵³ Djøf Forlag. *Jurabibliotek*. <<https://djoefforlag.dk/products/jurabibliotek>>; *Criminal Law in Denmark*, at page 46; The Supreme Court of Denmark, *Højesteret*, <https://www.domstol.dk/hoejesteret/english/about/?utm_source>.

⁵⁴ Levn, R. *World Factbook of Criminal Justice Systems - Denmark*. University of New York. <<https://bjs.ojp.gov/content/pub/pdf/wfbjcsd.pdf>>.

including measures relating to treatment, security detention, confiscation, or loss of rights.

From 1796 to 1919, Denmark's prosecutorial system involved an inquisitorial system, whereby a judge was involved in both the investigative and adjudicatory stages of an allegation. Once an investigation concluded, an independent Crown agency decided whether to prosecute the file, and private counsel was then hired for the respective roles of Crown and defence. The same investigating judge would then return to adjudicate the case. Judges in Denmark are no longer involved in the investigative or prosecutorial stages of a criminal proceeding. With the passing of the *AJA* in 1916, 1919 saw the creation of a specialized Prosecution Service distinct from the Judiciary.⁵⁵

Unlike Canada, the Minister of Justice is politically responsible for the police and Prosecution Service in Denmark. Though procedurally independent, the police and the Prosecution Service are integrated.⁵⁶ At the district level, the Chief Constable maintains authority as the head of the Prosecution Service. At higher levels, the Prosecution Service maintains its own leadership through the Attorney General and Director of the Prosecution Service. Despite political affiliation, the Ministry of Justice possesses the legal power to intervene in cases or cease prosecutions. Today, public prosecutions are divided into two categories—the Office of the Chief Constable, prosecutes offences delegated by statute, and the Crown Prosecutors are responsible for the remaining prosecutions.⁵⁷

As in British Columbia, the police investigate crimes, and the Prosecution Service is responsible for completing an independent charge assessment. If the police find “reasonable cause” to suspect that a person has committed a crime, the police will lay a “provisional charge”, rendering an accused subject to rights and obligations at that stage. The police then forward the file to the Prosecution Service and, if the prosecutor finds that there is sufficient evidence for a conviction, formal charges will be brought by way of an Indictment. Matters will generally only advance where conviction is considered “sufficiently likely and a prosecution is regarded as being in the public interest”.⁵⁸

Like Canada, Danish prosecutors are subject to a duty of objectivity and independence.⁵⁹ They are not simply advocates seeking conviction but representatives of the state who must consider and present relevant information, including evidence that may support the innocence of the accused.⁶⁰ To facilitate a robust justice system, civil participation in the judicial system, including criminal trials, is mandated under s. 65 of the *DCA*.⁶¹

Normalisation of Procedural Fairness

A comparative examination of Danish and Canadian criminal procedure reveals two systems that share fundamental commitments to procedural fairness, the presumption of

⁵⁵ *Criminal Law in Denmark*, at page 218.

⁵⁶ *AJA*, at s. 98.

⁵⁷ *AJA*, at s. 720.

⁵⁸ *Criminal Law in Denmark; Meeting in Copenhagen with Danish Prosecutor*, May 6, 2026.

⁵⁹ *AJA*, at s. 96.

⁶⁰ *Criminal Law in Denmark*, at page 319.

⁶¹ *Criminal Law in Denmark*, at page 209.

innocence, the right to counsel, and the protection of individuals against any coercive power of the state; however, the way these commitments are institutionalized differs notably. The Danish model is characterized by a high degree of institutional coherence, where principles of equality, access, and fairness are embedded into ordinary criminal justice structures rather than activated primarily as corrective safeguards.

In Canada, some protections are frequently framed through individual entitlement and threshold assessments (such as eligibility for publicly funded representation), are incorporated into the ordinary operation criminal procedure. The Danish model therefore reflects a broader institutional preference for Normalisation: fairness is achieved not only through enforceable rights but through structures designed to make unequal access less likely. This is not to suggest that Denmark and Canada pursue fundamentally different values, rather the contrast seems to lie in institutional design.

Court Structure and Administration of Justice

Denmark has three levels of court: criminal cases are initially heard before one of twenty-four District Courts, known as *Byret*. Two High Courts—the Eastern High Court (*Østre Landsret*) and the Western High Court (*Vestre Landsret*), function primarily as Appellate Courts. The Supreme Court of Denmark (*Højesteret*) serves as the country's highest court and generally hears cases involving significant questions of law and legal interpretation rather than routine factual appeals.⁶²

Compared with Canada's provincial and territorial court structure, Denmark's Judiciary reflects a centralized and integrated institutional model. While Canada's appellate structure is divided among provincial Courts of Appeal and the Supreme Court of Canada, Denmark's court hierarchy operates within a smaller nationally unified legal administration.

Investigations, Detention, and Procedural Safeguards

The *AJA* establishes the legal framework governing criminal investigations in Denmark, including police powers, arrest, detention, searches, surveillance, evidence gathering, and procedures applicable to suspects before trial.⁶³ Investigative measures such as searches, surveillance, and other forms of evidence gathering are regulated by statutory requirements and may require judicial authorization. The Danish system also provides procedural safeguards for suspects during the investigative stage, including access to legal representation and ongoing fairness protections.

As in Canada, an accused must either be released or brought before a court within 24 hours of being arrested.⁶⁴ The Court may authorize continued detention for investigative purposes or order pre-trial detention where statutory requirements are met. Pre-trial detention is subject to legal limitations and judicial oversight, including renewable four-

⁶² *Criminal Law in Denmark*, at page 25.; *Højesteret - About the Supreme Court*. <<https://www.domstol.dk/hoejesteret/english/about>>.

⁶³ *AJA*, at ss.742–830.

⁶⁴ *DCA*, at s. 71.

week periods of detention.⁶⁵ Continued detention requires ongoing justification and review by the Court.

Defence Counsel and Equality of Arms

Defending against a criminal allegation provides a clear example of Institutional Normalisation and cohesion. All accused have a right to counsel and to the participation of counsel throughout significant stages of investigation and prosecution.⁶⁶ Defence counsel may attend police questioning and may request additional questions are asked of an accused.⁶⁷ Although counsel must generally wait until the completion of police questioning before providing advice regarding a specific response, at any stage counsel may advise the accused to refrain from answering questions.⁶⁸

At all stages of the criminal process, an accused may be represented by privately retained counsel, however, private criminal practice is uncommon due to the strength of Denmark's publicly funded program for defence counsel.⁶⁹ Unlike Canada, where publicly funded legal representation is generally administered through provincial *Legal Aid* systems, and eligibility is contingent on financial circumstance, Denmark does not structure access to defence counsel around an accused's income.

Instead, access is legislatively integrated under the *AJA*.⁷⁰ A Court must appoint counsel based on the nature of the case, the procedural circumstances, and the interests of justice, rather than solely the financial position of the accused or the potential jeopardy of the allegation.⁷¹ A court-appointed lawyer cannot refuse an appointment, barring certain circumstances such as a conflict.

The Danish compensation structure further supports the independence and quality of court-appointed counsel. Like Canadian *Legal-Aid*, payment is based on a fee schedule calculated according to the time spent, including client meetings while in custody, preparation, attendance during police questioning, and court appearances. Unlike Canada, compensation is established through cooperation between the Ministry of Justice and the National Bar Association, with the objective of ensuring that court-appointed counsel is compensated at a level comparable to the Judiciary.⁷²

A point of contrast is that a convicted person is generally required to reimburse the public treasury for costs associated with proceedings, including defence counsel fees, though repayment is often unrealistic in practice and can be excused.⁷³

⁶⁵ *AJA*, at s. 760.

⁶⁶ *AJA*, at s. 730; *Criminal Law in Denmark*, at page 225.

⁶⁷ *AJA*, at s. 745.

⁶⁸ *Criminal Law in Denmark*, at page 294.

⁶⁹ *Criminal Law in Denmark*, at page 225.

⁷⁰ *AJA*, at s. 731.

⁷¹ *AJA*, at s. 730.

⁷² *Criminal Law in Denmark*, at page 227.

⁷³ *Criminal Law in Denmark*, at page 227; *AJA*, at s. 1008.

Rather than viewing defence representation as a limited resource distributed according to individual need, Denmark treats meaningful and unfettered access to representation as an inherent component of a legitimate criminal process. This reflects the Principle of Equality of Arms, a concept embedded within Danish criminal procedure and understood as an essential component of a fair trial. Equality between prosecution and defence is not merely procedural—it is supported through institutional arrangements that seek to place both parties on relatively equal footing from the beginning of a proceeding.

Active Judges and the Search for Truth

The Danish system incorporates both professional judges and members of the public as adjudicators. The composition of the Court depends on the seriousness of the offence and the circumstances of the case. Some criminal cases are heard by a single professional judge, including less serious matters such as traffic offences or cases where the prosecution does not request a penalty beyond a fine. More serious criminal cases may involve lay judges (*domsmænd*) or jurors (*nævningeting*). Cases where there is a risk of a custodial sentence of four years or more can be heard by a jury.

Lay judges, also referred to as lay assessors, are members of the public who assist professional judges with adjudicating criminal trials. Approximately 15,000 lay judges serve in Danish courts, excluding the Supreme Court. They are selected from the population for four-year terms and their jurisdiction and influence with respect to decision making, is equal to professional judges when determining guilt and sentencing. In regional courts, two lay judges sit alongside one professional judge, and decisions are reached by a simple majority.⁷⁴

Denmark utilizes a modified adversarial model of criminal trial procedure. The prosecution and defence remain responsible for presenting evidence and questioning witnesses, but the role of a judge differs from the traditional Anglo-American concept of a passive adjudicator. Danish judges are empowered and expected to actively ask questions, clarify uncertainty, and ensure that relevant evidence is properly examined. This active judicial role reflects a conception of adjudication in which the court shares responsibility for establishing an accurate factual record.⁷⁵

Examination of the Accused

The examination of an accused illustrates an important procedural distinction between Denmark and Canada. In both systems, an accused person cannot be compelled to testify, however, where an accused chooses to give evidence in Denmark, testimony generally occurs at the beginning of the hearing.⁷⁶ The prosecutor will examine the accused first through a blended examination in chief and cross-examination, followed by questions from defence counsel and then the Court.⁷⁷

⁷⁴ *Criminal Law in Denmark*, at page 212; AJA, at ss. 800(s).

⁷⁵ *Criminal Law in Denmark*, at pages 209-212.

⁷⁶ AJA, at ss. 863, 917.

⁷⁷ *Criminal Law in Denmark*, at page 233.

This sequence produces a form of blended examination, reflecting the broader role of the Court in actively developing the evidentiary record rather than relying exclusively upon the parties to present competing narratives, and the presentation of evidence contingent on trial strategy.

Evidence, Hearsay, and Direct Testimony

Despite that s. 174 of the *AJA* provides that witnesses should testify directly before the adjudicating court,⁷⁸ Denmark does not maintain an absolute prohibition against the general admissibility of hearsay evidence.⁷⁹ This difference illustrates a broader comparative distinction. Canadian evidence law often relies upon detailed admissibility rules designed to address reliability concerns before evidence reaches the trier of fact, while Denmark places a more concentrated emphasis on judicial evaluation of evidentiary weight, rather than first being tested in a *voir dire*.

Victim Participation

The *AJA* contains specific provisions concerning victims of violence, threats, sexual offences, and other crimes affecting personal safety and security.⁸⁰ Victims are entitled to information throughout the criminal process, including information regarding investigative developments and in certain circumstances, the appointment of a police contact person. Victims may also receive appointed legal counsel. In cases involving serious sexual offences, counsel is appointed automatically, while victims of violent offences may request representation.⁸¹

Compared with Canada, where victim participation has expanded through legislation such as the *Canadian Victims Bill of Rights*, Denmark's approach reflects institutional integration as victim recognition is incorporated into ordinary criminal procedure rather than existing primarily as an external responsive mechanism.⁸²

Sexual Assault Investigations Involving Youth

As learned during my meeting with the Danish Prosecutor, criminal investigations involving child complainants/victims differ significantly from the Canadian approach. When a child complainant provides a statement to the police, the statement is audio and video recorded; while a prosecutor, a lawyer to represent the child's interests, and defence counsel will all be present in a separate room to observe the interview with the investigating officer. Once the interview is substantially complete, both defence counsel and the prosecutor can provide further questions to the police officer, who will then ask

⁷⁸ *AJA*, at s. 174.

⁷⁹ *AJA*, at s. 863-865

⁸⁰ *AJA*, at *Chapter*, 66a.

⁸¹ *AJA*, at ss. 741a - 741e.

⁸² Canada. *Canadian Victims Bill of Rights*, Statutes of Canada (S.C.) 2015, c. 13, s. 2. Justice Laws. <<https://laws-lois.justice.gc.ca/eng/acts/c-23.7/page-1.html>>.

the child these questions.⁸³ Should there be any concerns or need for advice, the lawyer for the child's interests can assist contemporaneously.

As a result, the child is not required to testify at trial or be subject to cross-examination. All the evidence can be captured at the time of the interview and then provided to the court by way of the recorded statement. When the interview occurs more closely in time to the date of the allegation, the child's answers to questions may be more accurate and responsive. If further interviews or follow up is requested by the prosecutor or defence counsel, this will also be facilitated. Interestingly, this same process is also being explored as a pilot project in some adult sexual assault investigations.⁸⁴

Bail and Pre-Trial Detention

Much like Canada, Denmark's Judicial Interim Release system is formally structured around three primary grounds: risk of flight, risk of interference with the investigation or administration of justice, and the seriousness of the offence, informed by the strength of the evidence before the Court.⁸⁵ Though conceptually similar to Canadian principles, these grounds appear to be applied within a narrower framework.

In practical terms, accused persons charged with lower-level offences are generally not detained pre-trial, as the anticipated sentence would not ordinarily justify custodial detention. Danish law makes this proportionality assessment explicit as remand custody cannot be used where the offence is expected to result in a fine, imprisonment of less than 30 days, or where detention would be disproportionate having regard to the disruption to the accused's life circumstance, the significance of the case, and the likely legal consequence if convicted. Accordingly, restraint is applied not only in the statutory grounds for remand, but also by express legislative direction.⁸⁶

Even where the threshold conditions for remand are met, the Court may order less intrusive measures where the objectives of remand can be achieved without custody, reinforcing the principle that pre-trial incarceration is not the default response.⁸⁷

Bail Through the Lens of Normalisation

These provisions may reflect the broader Danish commitment to proportionality. Unlike jurisdictions that rely on financial conditions for release, Denmark does not employ a system of cash bail. Instead, release or detention is determined according to statutory criteria and judicial assessment of necessity. As in Canada, remand detention is treated as an exceptional measure rather than a routine response, courts are expected to

⁸³ *Criminal Law in Denmark*, at page 389.

⁸⁴ *Meeting in Copenhagen with Danish Prosecutor*, May 6, 2026.

⁸⁵ *Criminal Law in Denmark*, at page 283.

⁸⁶ *Ibid.*

⁸⁷ *AJA*, at ss. 762(3), 765; *Rigsadvokatmeddelelsen*, at s. 3.3.1.

consider whether the objectives of detention can be achieved through less intrusive alternatives.

Sentencing and Corrections

The Danish Prison and Probation Service is guided by six principles—Normalisation, openness, responsibility, security, the least possible intervention, and the optimum use of resources—which are not intended to operate in isolation, but as mutually reinforcing principles informing the day-to-day administration of prison and probation work. Imprisonment should consist only of the deprivation of liberty and that, to the greatest extent possible, prisoners should retain the same legal rights, responsibilities, and conditions of everyday life as the *unincarcerated*.⁸⁸

Normalisation exists as the defining philosophy of the Danish correctional system as prison authorities have a duty to de-institutionalize prisons, so that prisoners can live as closely to ordinary citizens as possible.⁸⁹ As such, it is not merely a correctional practice, but an organizing principle of Danish prison and probation policy. Reintegration is therefore understood as a process embedded throughout the administration of a sentence and supported by institutions both inside and outside the correctional system.⁹⁰

This philosophy of Normalisation became increasingly embedded in Danish legislation in 1985, when a left-wing socialist government prompted the development of a comprehensive *Corrections Act* intended to establish statutory principles governing the enforcement of criminal sanctions, conditions of imprisonment, and prioritizing the rights of convicted persons. Historically, prison administration was governed through local administrative agencies rather than parliamentary legislation.⁹¹

Similar to the Canadian *Corrections and Conditional Release Act*,⁹² Section 3 of the *Corrections Act* expressly provides that the Prison and Probation Service must balance the implementation of a deprivation of liberty with assisting convicted persons to lead law-abiding lives:

The Prisons and Probation Service **shall offer the parolee guidance and assistance** for the individual's occupational, social and personal circumstances for the purpose of improving the individual's possibilities for leading a law-abiding life. The Prisons and Probation Service shall in this regard **be instrumental in bringing about contacts to persons, institutions and authorities, which can offer assistance according to other legislation.**⁹³

[Emphasis Added]

⁸⁸ Response of the Government of Denmark.

⁸⁹ Criminal Law in Denmark, at page 389.

⁹⁰ Response Of The Government of Denmark.

⁹¹ Criminal Law in Denmark, at page 385.

⁹² Canada. *Corrections and Conditional Release Act*. Statutes of Canada, c. 20, 1992.

⁹³ *Corrections Act*, at s. 3.

Accordingly, incarceration is not intended to impose additional hardship beyond the loss of objective physical liberties. Even where punitive priority applies, the Danish model seeks to minimize the deleterious effects of incarceration while promoting rehabilitation, reducing recidivism, maintaining family and community ties, and preparing offenders for a successful return to society. Importantly, Corrections cannot authorize further liberty restrictions unless the change is necessary to prevent escape from the prison or to upkeep order in the facility.⁹⁴

Rather than relying primarily on offence-specific correctional programs, the Danish Prison and Probation Service operationalizes Normalisation through including education, vocational training, employment, community contact, health care, and the exercise of personal responsibility within daily prison life.

Consistent with these principles, Danish correctional policy presumes that prisoners should serve their sentences in open institutions unless security or other exceptional considerations make such placement imprudent.⁹⁵ Denmark also embraces the principle of Vicinity, whereby prisoners should, serve their sentences as close to their families and communities as possible. These practices are practical manifestations Normalisation, reflecting the broader welfare-state objective of preserving family relationships, maintaining community supports, and facilitating gradual reintegration throughout the sentence. Taken together, the principles of Normalisation, the legislative commitment to rehabilitation, and integration with Denmark's broader social welfare institutions illustrate a system in which correctional policy is intended not simply to punish criminal conduct but prioritize the offender's eventual return to the community as a law-abiding citizen.

Importantly, leave from prisons under s. 46 of the *Corrections Act* are an integral part of Normalisation, considered when requests are reasonably grounded in educational, work-related, treatment related, family or other personal considerations.⁹⁶ The Prison Director will decide when an inmate is granted a leave. For inmates at open prisons leave is typically unaccompanied.⁹⁷ Reintegration is therefore not treated as a secondary concern following release, but as a core function of the correctional system itself.

Denmark's correctional philosophy has also been influenced by broader European human rights standards. The European Prison Rules, themselves derived from the United Nations Standard Minimum Rules for the Treatment of Prisoners, establish widely recognized principles respecting the humane treatment of detainees and the administration of correctional institutions. Although they are not legally binding upon member states of the Council of Europe, they provide authoritative guidance on good correctional practice and have significantly influenced correctional policy throughout Europe, including Denmark.⁹⁸

⁹⁴ *Criminal Law in Denmark*, at page 410.

⁹⁵ *Corrections Act*, at s. 22.

⁹⁶ *Criminal Law in Denmark*, at page 418-420.

⁹⁷ *Ibid.* at page 419.

⁹⁸ *Criminal Law in Denmark*, at page 384.

An open prison is managed not through physical security measures, such as circular walls or window fittings, but through rules for stay and activities. These rules carry the consequence of severe sanctions such as transfer to a closed prison, should a breach occur. In open prisons, the staff ratio is low and only the outer doors of the Ward will be locked at night.⁹⁹

A closed prison is characterized by the attempt to retain the presence of prisoners through, for example, the means of a circular wall, television monitoring and high physical and electronic security such as cameras, bars, tempered glass and locked doors. Closed prisons also have a much higher ratio of staff to inmate population.¹⁰⁰

Denmark also utilizes a “gaol”, which is a closed, strict oversight, high security, low socialization facility. Though uncommon, the Danish Prison and Probation Service has eight halfway houses throughout the country primarily used for prisoners serving the final part of their sentence.

A decision to not place an inmate in an open prison will be based on an assessment of whether such placement is found to be imprudent. *Imprudence* analysis mandates a risk assessment to determine the inmate’s dangerousness—at sentencing an assessments of the convicted persons’ personality, medical reports of any mental health or other recognized conditions, and the nature of the offence. This decision does not only consider the inmates risk factors while incarcerated, but also the risk to the community should the inmate escape.¹⁰¹

Per the *Corrections Act*, prisoners have a right to social contact (s. 33), a right to join influence upon the instructions affairs through spokesmen (s.34), A right to participate in religious service (s. 35), a right to possess and dispose of their own money and objects (s. 36), a right to communicate with others (s. 37), a right to work, education, and health care (ss. 38 and 45), and the right to spend one hour a day in the open air (s. 43).¹⁰² As self-management is an important and prospective consideration of Normalisation, s. 43 of the *Corrections Act*, states that to the extent possible a prisoner shall personally attend to practical tasks concerning personal matters, including cooking and cleaning.¹⁰³

There are, however, some provisions of the *Corrections Act* which appear contrary to Normalisation and the values of the *DCA*. Section 37, of the *Corrections Act* creates a legal basis for censorship of publications by prisoners. Another contrast is the low salaries that prisoners receive for work, and the absence of liberties to organize bargaining or collective job action.¹⁰⁴ The possession of cellular phones and smoking in custody is prohibited per the *Penal Code*, and breach of this law is normally punished by way of an additional seven days in custody.¹⁰⁵

⁹⁹ *Criminal Law in Denmark*, at page 395.

¹⁰⁰ *Ibid.*, at page 395.

¹⁰¹ *Ibid.*, at page 407.

¹⁰² *Ibid.*, at page 390.

¹⁰³ *Ibid.*, at page 391.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, at page 392.

In sentencing, Normalisation is reflected in the use of open prisons, access to education and employment, structured family contact, liberal rules for day leave, and gradual reintegration pathways. Correctional responses and institutions are oriented toward progressive correction rather than exclusion, where imprisonment is treated as a temporary condition rather than an unforgivable lapse from community membership.

Normalisation as Institutional Design through Coherence

The organization of Denmark's criminal justice system demonstrates a high degree of institutional coherence through the coordination of police, prosecutors, and courts and Corrections within a shared procedural framework. Normalisation procedures illustrate how legal practices become embedded as institutional expectations—procedural fairness is upheld through the institutional architecture. Defence counsel, judicial participation, Equality of Arms, victim representation, and evidentiary oversight operate together as interconnected, available, and of equal importance to the actualization of the law.

As seen in the investigation of sexual offence allegations involving youth complainants; predictable collaborative interaction between investigative authorities, prosecutors, defence counsel, and the Courts in the search for the truth, supports continuity in criminal justice decision-making and contributes to transparency and public confidence. In contrast to systems where fairness may depend upon judicial recognition of individual rights, the Danish model seeks to normalize fairness through institutional design. Procedural safeguards are integrated into the structure of criminal proceedings, creating a coordinated framework that supports both effective case processing and Constitutional guarantees.

As in sentencing, the *Corrections Act* specifically mandates that proportionality assessments must occur whenever considering a sanction with respect to a prisoner's rights while incarcerated, specifically for restrictions on matters such as use of force, exclusion for social interaction, use of handcuffs, or disciplinary matters.¹⁰⁶

Denmark seems to pursue fairness by embedding protections into all institutional structures, while Normalisation expresses broader institutional values of equality, dignity, and reintegration. The underlying institutional logic is that: reintegration is not a secondary objective of punishment, but its primary structure. Normalisation even extends to the way in which prison facilities are built. The building of a jail does not only consider whether a facility will meet operational capacity needs but considers design as an explicit and intentional parameter. I found the following statement by Danish Architecture Firm, Alex Poulsen Architects, a fascinating and poignant reflection of how Normalisation initiatives are also promoted by private, non-traditional justice system partner:

Modern Danish prisons are designed to resemble small, self-sustaining communities. This approach enables people in custody to engage in activities that reflect life outside the prison walls. Workspaces, educational facilities, and communal areas are seamlessly integrated into the prison's layout, reflecting

¹⁰⁶ *Ibid.*, at page 394.

the rhythm of a typical day. Such spaces not only provide structure but also prepare residents for reintegration by cultivating skills and routines necessary for societal participation.

Denmark's strict national building codes and construction standards ensure that prisons provide a healthy physical environment for their occupants. These codes prioritise high-quality indoor environments, emphasising natural daylight, direct outdoor views, appropriate air and thermal quality, as well as acoustic balance. These elements also align with the principles of healing architecture, which seeks to create spaces that support mental and physical well-being.

In Danish prisons, these principles are evident as differentiated regimes and security levels, enabling facilities to cater to diverse needs while maintaining the appropriate level of safety. The design ethos extends beyond functionality, striving to imbue spaces with qualities that promote ownership, privacy, and community – factors critical to fostering a sense of dignity and autonomy among incarcerated individuals. . . .

Furthermore, privacy and individual conduct are central to architectural design. Residents are provided with private spaces where they can reflect and recharge, alongside communal areas that encourage social interaction. This balance of solitude and community is a cornerstone of normalisation, promoting both personal development and social skills. Use of domestic-like, yet robust, materials, colours and tactile surfaces where possible is also key, in order to create a less institutional environment...

Through projects that reflect the Scandinavian commitment to humane incarceration, the firm addresses a critical question: How can society create the best physical environment for the well-being and reintegration of convicted persons? ¹⁰⁷

[Emphasis Added]

Conclusion—Can Canada Learn from Denmark?

Canada and Denmark, though vastly different in size, culture, and historical development, maintain respected legal systems rooted in the *Rule of Law*, sharing similar criminal justice objectives. Undoubtedly, the Danish model has developed within a particular historical, cultural, and institutional context characterized by a smaller population, notable social homogeneity, and a deeply supportive welfare state—conditions that contribute to institutional and public, trust and coordination.

¹⁰⁷ Justice Trends Magazine. *Case Spotlight: Denmark. The Danish approach: How architecture can promote normalisation*. February 28, 2025. <<https://justice-trends.press/the-danish-approach-how-architecture-can-promote-normalisation>>.

Denmark offers not a specific legal rule or practice, but an underlying philosophy in which criminal justice functions as one component of a coordinated social response. Normalisation is not merely a correctional philosophy, but an expression of human understanding and equality. Open prisons, community contact, education, and gradual release are important features, and their success seems contingent on a broader institutional environment directed toward the same objective: a collective humanity.

The Danish environment suggests that legal principles do not operate independently from the institutions and values that support them. The influence of concepts such as Janteloven, with its emphasis on equality, humility, and inclusion, cannot be separated entirely from the broader social context in which Danish criminal justice operates. Whether reflected directly or indirectly, these values contribute to a system that seeks to preserve human dignity, health, and social membership in tandem with penal punishment. The difference between the Danish and Canadian approaches seems to be the degree to which surrounding institutions reinforce coherent underlying values through institutional alignment.

Canada's size, diversity, federal structure, and diverging social conditions, mean that a direct replication of Denmark's approach is neither realistic nor desirable. Undoubtedly, this conference has highlighted that Canada's criminal justice system is internationally recognized as a model of a fair and democratic application of the Rule of Law. Our commitment to due process, judicial independence, the protection of constitutional rights, and procedural fairness, reflects the core values of a modern democratic society with a principled criminal justice system. What practitioners and academics have also highlighted is that Canadian courts are undoubtedly grappling with how to manage the impact of issues that begin beyond the criminal law (such as mental health or systemic racism) but are indissolubly embedded in its' application.

This paper was initially born of years of anecdotal observation, yet I came to understand that Denmark was a welcome jurisdiction through which I came to think more carefully about what restraint, proportionality, and institutional coherence might look like in practice. The challenge is to create a system in which our stated legal values are not merely principles expressed in legislation, judgments, or media click bait, but lived institutional realities. Denmark's example suggests that the strongest criminal justice systems may not be those that rely most heavily on punishment, but those in which restraint, fairness, and reintegration are embedded throughout the structures of society itself.

If *The Living Tree* reminds us that law must evolve alongside society, then perhaps the future of Canadian bail and sentencing reform lies not in becoming more punitive or lenient, but in ensuring that the institutions on which criminal justice and its' participants depend, recognize their interdependence and endeavour to work together more efficiently.

Perhaps the undeniable of *Scandinavian simplicity*, may help us appreciate that the most effective justice reform solutions may not be found in complex legal or legislative

overhaul, but in the simplicity of strengthening the environment in which the criminal law will inevitably exist. My observations of Denmark led me to a somewhat unexpected conclusion: if the Canadian application of *habeas*—in the protection of what “[we] shall have”—extended beyond *corpus* alone and incorporated a little more *hygge*—I suspect that our shared objective of a safer, more resilient, more progressive, and ultimately more prosperous society, could be more readily realized.