# CANADIAN LEGAL RESEARCH JOURNAL (CLRJ)

REVUE CANADIENNE DE RECHERCHE JURIDIQUE


**Munir Ahmed Dar**
Publisher & Chief Editor CLRJ

Volume 01, Issue 01 September 01, 2025 (Mo)

**CANADIAN LEGAL RESEARCH JOURNAL**

**Volume 01, Number 01, September 01, 2025**

## Preface

Welcome to the first issue of the Volume 01 of the Canadian Legal Research Journal (CLRJ). This issue arrives at a serious juncture, reflecting the complex legal challenges and innovative jurisprudential solutions currently shaping Canadian law, particularly in a landscape marked by rapid societal and technological change.

The papers presented herein showcase the breadth and depth of research necessary for a resilient and sustainable legal framework in Canada. We highlight timely work in public law and constitutional adaptation, including new analyses for predicting shifts in federal-provincial regulatory authority over emerging sectors, and studies exploring the efficacy of Alternative Dispute Resolution (ADR) techniques in reducing litigation burden.

Furthermore, as Canada continues to manage its legal resources amidst increasing pressure from evolving social demands, the CLRJ remains committed to publishing rigorous, peer-reviewed legal scholarship that informs Canadian policy, guides practice, and advances our fundamental understanding of law and justice.

We thank our dedicated authors, reviewers, and the entire editorial board for their commitment to legal excellence.

Munir Ahmed Dar
Publisher & Chief Editor
Canadian Legal Research Journal (CLRJ)
418 Coxwell Ave.
Toronto Ontario, Canada
M4L 3B7
Email: munirdar@clrj.ca
Cell: +1-437-237-1014

## ACKNOWLEDGEMENTS

The editorial team of the Canadian Legal Research Journal (CLRJ) gratefully acknowledges the profound contributions of all individuals and institutions that have made this inaugural and first issue of the Volume 01, possible.

Our deepest gratitude goes to the authors, whose innovative scholarship and commitment to legal rigour form the foundation of this journal.

We extend special thanks to our dedicated, often uncredited, peer reviewers. Their timely, insightful, and constructive feedback is the cornerstone of our editorial process, ensuring the high standard and credibility of the work published in the CLRJ. Their voluntary service to the Canadian and global legal and academic community is invaluable.

We acknowledge the exceptional efforts of the Editorial Board and Associate Editors, whose expertise in diverse areas of law and jurisprudence are essential in shaping the journal's scope and maintaining its quality.

Finally, we recognize the continuous financial and institutional support provided by the Mian Karam Ellahi Trust (MKET) Canada, a Not-For-Profit, Non-Governmental Organization (NPO/NGO), and various Canadian law faculties and legal organizations. Their support and investment in Canadian legal research are vital for advancing the study and practice of justice across the country and internationally.



Munir Ahmed Dar
Publisher & Chief Editor
Canadian Legal Research Journal (CLRJ)
418 Coxwell Ave.
Toronto Ontario, Canada
M4L 3B7

## CLRJ'S AIMS & OBJECTIVES

The Canadian Legal Research Journal (CLRJ) is an academic research publication operating under the auspices of the Mian Karam Ellahi Trust (MKET) Canada, a federally incorporated Not-for-Profit and Non-Governmental Organization (NPO/NGO) under Registration No. 1504027-2. The journal serves as a national, peer-reviewed forum designed to facilitate scholarly contributions from students and early-career researchers, thereby enriching legal discourse. Its mandate is to advance the democratization of legal research and foster a more inclusive and representative dialogue within Canada and internationally.

### Objectives of the CLRJ

The primary objective of the CLRJ is to empower young individuals to actively engage with and influence Canadian law and public policy through advocacy, legal education, and community engagement. The journal's platform is specifically tailored for students, early-career researchers, and emerging legal professionals.

### Specific Objectives

The specific objectives of the CLRJ are to**:**

1. provide a national venue for emerging legal scholars to contribute to contemporary legal research and debates.

2. aid in the professional development of aspiring legal academics by helping them refine their scholarly voice.

3. further the mission of democratizing legal scholarship in Canada.

4. promote a more inclusive and representative legal discourse within Canada.

5. publish research articles across a broad spectrum of legal topics, including but not limited to, constitutional matters, issues of access to justice, legal reform, and comparative legal analysis.

# CLRJ'S PRIVACY POLICY FOR RESEARCHERS AND CONTRIBUTORS

The Canadian Legal Research Journal (CLRJ) is committed to protecting the privacy and confidentiality of all researchers, authors, and contributors. This policy outlines how we collect, use, and protect your personal information in accordance with applicable Canadian privacy legislation, including the Personal Information Protection and Electronic Documents Act (PIPEDA), 2000.

## 1. Collection of Information

We collect personal information from you only when you voluntarily provide it during the submission process. This may include:

**Contact Information:** Name, email address, institutional affiliation, and contact number.

**Academic Information:** Your year of study or professional status, as relevant to the CLRJ's mandate.

**Submission Metadata:** The title of your paper, abstract, and keywords.

## 2. Use of Information

The information we collect is used solely for the purpose of managing and publishing the CLRJ. Specifically, we use your data to:

- **Process Submissions:** To facilitate the submission, peer-review, and editorial process for your paper or article.
- **Communicate with You:** To send you updates on the status of your submission, requests for revision, and notifications regarding acceptance or rejection.
- **Publication:** To attribute your work correctly if it is selected for publication, including your name and institutional affiliation.
- **Maintain Records:** To keep an accurate record of submissions for our internal database and for future correspondence.

## 3. Confidentiality and Data Security

I. **Double-Blind Review:** The CLRJ employs a double-blind peer-review process. Your identity is kept confidential from reviewers, and their identities are kept confidential from you. All identifying information is removed from your manuscript before it is sent for review.

II. **Limited Access:** Access to your personal information is restricted to the CLRJ's editorial team and staff who are directly involved in the management of the journal. All staff are trained on the importance of confidentiality and are bound by confidentiality agreements.

III. **Secure Storage:** All personal information is stored securely on protected servers. We implement robust physical, technical, and administrative safeguards to prevent unauthorized access, disclosure, or misuse of your data.

**4. Disclosure to Third Parties**

The CLRJ will not sell, rent, or lease your personal information to third parties. Your information will only be disclosed in the following limited circumstances:

- **With Your Consent:** We may share your information with your explicit consent.
- **As Required by Law:** We may be required to disclose your information by law, court order, or governmental regulation.

**5. Your Rights**

You have the right to access, correct, or request the deletion of your personal information held by the CLRJ. To do so, please contact the CLRJ's editorial team. We will take all reasonable steps to verify your identity before processing such requests.

**6. Policy Updates**

This Privacy Policy may be updated periodically to reflect changes in our practices or legal requirements. We encourage you to review this policy whenever you submit a paper. Your continued use of the submission portal constitutes your acceptance of these changes.

## TABLE OF CONTENTS

# A COMPARATIVE LEGAL ANALYSIS OF THE COURT SYSTEMS AND CIVIL PROCEDURE IN PAKISTAN AND CANADA

**Author:** Munir Ahmed Dar (Advocate), Darwin's Law Office, Toronto ON. Canada M4L 3B7


- DOI: https://doi.org/10.5281/zenodo.17444657
- ORCID ID: https://orcid.org/0009-0007-1445-4176
- Google Scholar: https://scholar.google.ca/citations?user=7qq7WEkAAAAJ&hl=en
- ResearchGate ID: https://www.researchgate.net/profile/Munir-Dar-3?ev=hdr_xprf
- Clarivate Web of Science Researcher ID: OHV-2983-2025
- Academia.edu Scholar: https://yorku.academia.edu/munirdar

**Keywords*:*** Legal Systems, Comparative Law, Court Systems, Civil Procedure, Pakistan, Canada, Common Law, Federalism, Civil Procedure Code (CPC), ADR.


**Abstract:** This paper presents a comparative analysis of the court structures and civil procedural rules in Pakistan and Canada. Despite a shared common law heritage as former British colonies, the two nations have developed distinct judicial architectures reflective of their unique constitutional and socio-political contexts. The analysis reveals that while both systems feature a multi-tiered judicial hierarchy culminating in a Supreme Court, they diverge fundamentally in their constitutional organization of judicial power and their approaches to civil litigation. By examining the historical foundations, court structures, and key procedural mechanisms such as the initiation of suits, pleadings, and evidence this study elucidates the core similarities and critical divergences between the two systems. The conclusion underscores how these differences are shaped by and reflective of each country's legal and political evolution.

## 1. Introduction

The comparative study of legal systems provides critical insight into how different societies structure their institutions to administer justice. This is particularly salient for Pakistan and Canada, two nations that inherited a common law foundation from the British Empire but have since pursued divergent constitutional and socio-political trajectories. Canada, a federal commonwealth, and Pakistan, a federal Islamic republic, offer a compelling case study in legal evolution from a shared origin.

This paper contends that while the judicial systems of Pakistan and Canada are structurally analogous in their hierarchical design and common law procedural ethos, they have diverged significantly in their constitutional architecture and the codification of civil procedure. These divergences are direct manifestations of their distinct federal structures, legal traditions, and historical paths. By examining the structure of their court systems and the mechanics of their civil procedural rules, this paper will illuminate the practical realities of litigation in these two Commonwealth nations.

## 2. The Court Systems: A Structural Overview

### 2.1. The Pakistani Judicial System

The judicial system of Pakistan is a unified hierarchy established under the Constitution of the Islamic Republic of Pakistan**.** Its apex is the Supreme Court of Pakistan, located in Islamabad, which functions as the final court of appeal and exercises original, appellate, and advisory jurisdictions. Beneath it are the provincial High Courts (in Lahore, Karachi, Peshawar, and Quetta) and the High Court for the Islamabad Capital Territory, each serving as the highest appellate court within its territory and exercising supervisory control over all subordinate courts and tribunals.

The subordinate judiciary forms the backbone of the trial court system, comprising District Courts (for civil matters) and Sessions Courts (for criminal matters). Pakistan has also established specialized tribunals (e.g., for banking, service, and anti-terrorism matters) to adjudicate specific disputes. A unique feature of the Pakistani system is the Federal Shariat Court, which is empowered to examine and determine whether any law is repugnant to the Injunctions of Islam.

### 2.2. The Canadian Judicial System

Canada's judiciary operates within a federal constitutional framework, resulting in a bifurcated system comprising both federal and provincial courts. The Supreme Court of Canada, in Ottawa, is the ultimate general court of appeal for all matters, both federal and provincial. The federal court system includes the Federal Court and the Federal Court of Appeal, which possess jurisdiction over matters assigned by federal statute, such as intellectual property, immigration, and interprovincial disputes.

Each province and territory maintain its own court system, typically structured in three tiers: the Provincial Court (a lower court handling the majority of criminal, family, and small claims matters), the Superior Court (a court of inherent jurisdiction hearing serious civil and criminal cases and acting as an appellate court for the Provincial Court), and the provincial Court of Appeal. A key constitutional distinction lies in the appointment process: judges of the Supreme Court of Canada, the federal courts, and the superior courts of the provinces are appointed by the federal government, while judges of the provincial courts are appointed by their respective provincial governments.

## 3. Comparison of Civil Procedure

### 3.1. The Civil Procedure Code of Pakistan

Civil litigation in Pakistan is governed by a single, comprehensive statute: the Code of Civil Procedure (CPC), 1908. A legacy of the British Raj, this code provides a detailed framework for conducting civil suits. The CPC is bifurcated: the main body contains 158 sections outlining general principles of jurisdiction, *res judicata*, and appeals, while the First Schedule contains 51 Orders with accompanying Rules that dictate the specific, sequential procedure for litigation. A suit is formally initiated by the plaintiff filing a plaint. The defendant is subsequently summoned

to file a written statement in response. The CPC meticulously outlines subsequent stages, including the framing of issues, discovery and production of documents, and the examination of witnesses at trial. The overarching objective of the CPC is to provide a uniform, structured, and fair process for adjudicating civil disputes across Pakistan.

### 3.2. The Rules of Civil Procedure in Canada

In stark contrast to Pakistan's unified code, Canada's common law provinces operate under distinct provincial and territorial rules, typically titled "Rules of Civil Procedure" (e.g., Ontario's **Rules of Civil Procedure.** It is critical to note that Quebec, as a civil law jurisdiction, operates under its own wholly distinct **Code of Civil Procedure.**

In the common law provinces, these rules govern all aspects of litigation, from the commencement of proceedings (often via a statement of claim or notice of application) and service of documents to the expansive discovery process (including examinations for discovery and documentary disclosure), motions, and the trial itself.

A defining feature of modern Canadian civil procedure is its explicit philosophical commitment, often enshrined in the rules' foundational principles, to secure the "just, most expeditious and least expensive determination of every civil proceeding on its merits. This objective has fostered a strong emphasis on alternative dispute resolution (ADR), including mandatory mediation programs in provinces like Ontario.

## 4. Comparative Analysis and Differences

A direct comparison reveals fundamental differences emanating from constitutional and historical contexts. The most apparent difference is the source of procedural law. Pakistan relies on a single, historic, and comprehensive code (the CPC, 1908) applied uniformly nationwide. Canada's system is decentralized; its common law provinces utilize separate, jurisdiction-specific rules, while Quebec has a wholly different civil law system. This reflects Canada's federalist commitment to provincial autonomy over the administration of justice.

Pakistan's judiciary is a unified, centralized hierarchy. Canada's is a classic federal model, featuring a clear division between federal and provincial courts with distinct judicial appointment processes. This division dictates not only judicial appointments but also the subject-matter jurisdiction of each court level.

While both systems aim to deliver justice, Canadian rules explicitly and aggressively prioritize expedition, cost-effectiveness, and early resolution through ADR. Pakistan's CPC, while containing analogous procedural tools, is a century-old code whose application is frequently criticized for delays and procedural complexity. Canada's provincial systems allow for more agile and frequent updates to their rules to address modern litigation challenges.

Both systems are rooted in British colonial law. However, Pakistan retained and adapted the 1908 CPC post-independence, embedding it within an Islamic republican framework. Canada's provinces, having achieved Confederation much earlier, developed their own distinct legal identities and procedural rules over a longer period, tailoring them to their specific societal needs.

## 5. Conclusion

This comparative analysis demonstrates that while a shared common law heritage underpins the judicial systems of Pakistan and Canada evidenced by their multi-tiered court structures and adversarial procedures this common foundation has given way to significant divergence. Pakistan's system is characterized by a unified judiciary operating under a single, historic code of civil procedure. Canada, in contrast, exhibits a decentralized, federalized judiciary where procedural law is primarily a provincial concern, resulting in a variety of modern rules that explicitly prioritize efficiency and alternative dispute resolution.

These differences are not merely technical but are profound reflections of each nation's constitutional identity, historical trajectory, and socio-political priorities. For the legal practitioner, this necessitates navigating a centralized, codified system in Pakistan versus a decentralized, evolving set of systems in Canada. For the citizen, it fundamentally shapes the experience of justice, influencing the speed, cost, and very nature of civil litigation. Understanding these parallels and divergences is vital for fostering cross-jurisdictional legal dialogue and appreciating the nuanced adaptation of common law traditions to unique national contexts.

## References

**Legislation**

*Code of Civil Procedure 1908* (Pak).

*Constitution of the Islamic Republic of Pakistan 1973* (Pak).

*Courts of Justice Act*, Ontario, RSO 1990, c C.43.

*Rules of Civil Procedure*, Ontario, RRO 1990, Reg 194.

**Secondary Materials**

Harding, Andrew et al, eds, *Comparative Law and the Courts: The Supreme Court of Pakistan in its Context* (London: Routledge, 2022).

Irani, Phiroze K, "The Civil Procedure Code and the Advent of Justice Equity and Good Conscience in India" (1963) 5:2/3 J Indian L Inst 265.

Jacob, Jack I H, *The Fabric of English Civil Justice* (London: Stevens & Sons, 1987).

Kennedy, W P M, *The Constitution of Canada: An Introduction to its Development and Law*, 2nd ed (London: Oxford University Press, 1938).

Siddique, Osama, *Pakistan's Experience with Formal Law: An Alien Justice* (Cambridge: Cambridge University Press, 2013). https://doi.org/10.1017/CBO9781139506745

**Cases**

*Reference re Supreme Court Act, ss. 5 and 6*, 2014 SCC 21, (2014) 1 SCR 433.

# ENHANCING FAIRNESS, EFFICIENCY, AND ACCESSIBILITY IN CANADA'S ADMINISTRATIVE LEGAL SYSTEM

**Author:** Munir Ahmed Dar (Advocate), Darwin's Law Office, Toronto ON. Canada M4L 3B7

- DOI: https://doi.org/10.5281/zenodo.17162668
- ORCID ID: https://orcid.org/0009-0007-1445-4176
- Google Scholar: https://scholar.google.ca/citations?user=7qq7WEkAAAAJ&hl=en
- ResearchGate ID: https://www.researchgate.net/profile/Munir-Dar-3?ev=hdr_xprf
- Clarivate Web of Science Researcher ID: OHV-2983-2025
- Academia.edu Scholar: https://yorku.academia.edu/munirdar

**Keywords:** Administrative law, Canada, judicial review, administrative tribunals, access to justice, technology in law, Automated Decision-Making (ADM), Online Dispute Resolution (ODR), Vavilov, Dunsmuir, legal reform, procedural fairness, algorithmic bias.

**Abstract:** This research paper provides a comprehensive analysis of the Canadian administrative legal system, examining its foundational principles, the evolution of judicial oversight, and the key challenges it faces today. The report traces the development of judicial review standards through landmark cases like *Dunsmuir* and *Vavilov*, highlighting the ongoing debate regarding the consistent application of a "robust reasonableness" standard. It identifies a persistent access to justice crisis, which disproportionately affects self-represented and vulnerable individuals, and explores how emerging technologies present both opportunities for greater efficiency and significant risks to fundamental fairness. While the success of British Columbia's Civil Resolution Tribunal demonstrates the potential of online dispute resolution, the opaque use of automated decision-making systems in other areas, such as immigration, raises profound questions about transparency, accountability, and the right to a human decision. The paper concludes with a blueprint for reform that calls for a multi-faceted approach, including a new regulatory framework for artificial intelligence, an expansion of user-centered digital services, and a renewed emphasis on strengthening the independence and perceived importance of administrative tribunals as a cornerstone of a fair and accessible legal system.

## Introduction

This report provides a comprehensive analysis of the contemporary Canadian administrative legal system, identifying vital challenges and offering a values-driven blueprint for reform. The administrative state, a crucial third pillar of government, is tasked with implementing a vast array of policies and programs through a network of agencies, ministers, and quasi-judicial tribunals. While this system has brought expertise and efficiency to public administration, it is currently grappling with significant strains, including a complex and at times confusing judicial review framework, a persistent access to justice crisis, and the profound legal and ethical challenges posed by emerging technologies like Automated Decision-Making (ADM).

Through an examination of landmark judicial decisions such as *Dunsmuir* and *Vavilov*, the report traces the evolution of judicial oversight and argues that while *Vavilov* has brought a welcome measure of clarity, its application remains a subject of judicial debate. The report highlights the British Columbia Civil Resolution Tribunal (CRT) as a case study in the successful use of technology to improve accessibility, but contrasts this with the profound risks of ADM systems in areas like immigration, which threaten to create opaque, unaccountable, and potentially biased decision-making.

Ultimately, this paper argues that meaningful improvement requires a coordinated, multi-faceted approach. The analysis suggests that a fundamental, systemic issue is the structural and conceptual de-emphasis of administrative justice, which undermines its importance despite its critical role in the lives of ordinary Canadians. We must move beyond piecemeal reforms and embrace a vision that prioritizes fairness, transparency, and the human element. The recommendations advanced in this report call for a new regulatory framework for Artificial Intelligence (AI), a renewed commitment to plain-language and user-centered design, and a sustained effort to reinforce the independence and legitimacy of administrative tribunals as a cornerstone of Canadian democracy.

## General Objective

The general objective of this research paper is to provide a comprehensive analysis of the Canadian administrative legal system, identify its key challenges, and propose a multi-faceted, values-driven blueprint for reform. The ultimate goal is to enhance the system's fairness, efficiency, and accessibility for all Canadians by addressing its structural deficiencies and adapting to new technologies.

## Specific Objectives

The specific objectives of the paper are to:

- Analyze the core institutional and conceptual foundations of Canadian administrative law, including the principles of the rule of law and procedural fairness.
- Trace the evolution of the judicial review framework from *Dunsmuir* to *Vavilov* and evaluate the ongoing challenges in applying a consistent standard of review.
- Examine the pervasive "access to justice" crisis and the significant barriers faced by self represented and vulnerable litigants.
- Evaluate the dual impact of technology by exploring the opportunities of online dispute resolution (ODR) and the significant risks posed by opaque automated decision-making (ADM) systems.
- Propose concrete recommendations for reform, including a new regulatory framework for artificial intelligence, measures to strengthen the independence and procedural fairness of administrative tribunals, and strategies to expand access to justice through user-centered design.

- Advocate for a conceptual shift that elevates the perceived status of administrative justice to ensure that these critical institutions receive the resources and recognition necessary to fulfill their democratic purpose.

## PART I: THE INSTITUTIONAL AND CONCEPTUAL FOUNDATIONS OF CANADIAN ADMINISTRATIVE LAW

### 1: The Administrative State in Context: Origins and Rationale

The foundational premise of Canadian administrative law is that it is the body of law that governs the exercise of power delegated by statute to various components of the executive branch of government. This delegation is a practical necessity in a modern, highly regulated society where Parliament and the courts cannot directly address the vast and intricate array of regulatory functions required. These delegated powers are exercised by a wide range of administrative decision-makers (ADMs), including ministers, government departments, and a complex network of administrative tribunals and agencies.

This system is concerned with three primary functions: the procedural expectations that ADMs must meet, the substantive constraints they must observe to avoid errors, and the remedial structures available through judicial review to challenge their decisions. This tripartite framework highlights the dual purpose of the system: it must enable the government to carry out its functions efficiently while simultaneously ensuring that all actions adhere to the principle of the rule of law.

A central tension is inherent in this design, namely, the aspiration to create a capable and expert public administration that is also accountable and respectful of liberal-democratic norms. This fundamental conflict, between the objectives of neutrality and expertise on one hand and democracy and individual rights on the other, is a recurring theme that underpins the entire administrative law framework in Canada.

### 2: Defining Principles: The Rule of Law and Procedural Fairness

The rule of law serves as the foundational principle that mandates that all government actors, including administrative decision-makers, must operate within the bounds of their legal authority. This concept is a core purpose of administrative law, as it ensures that delegated power is exercised in a "proper" manner. It is this principle that provides the basis for judicial oversight, as superior courts have an inherent common law power to review any administrative decision to ensure it is lawful, reasonable, and fair.

Beyond the rule of law, the system is guided by the principles of procedural fairness, which concern the rights of individuals to participate in decisions that affect their rights, privileges, or interests. These rights are derived from a combination of legal sources, including the common law, enabling legislation, general statutes that impose procedural rules, and constitutional principles such as the

*Canadian Charter of Rights and Freedoms*. The two core principles of natural justice are the right to be heard (*audi alteram partem*) and the right to be judged impartially (*nemo judex in sua causa*). A common law duty of fairness can also be invoked when a decision is sufficiently administrative, affects the claimant's interests, and is based on a statutory power. Furthermore, a "legitimate expectation" of a particular procedure can create a duty of fairness where a public authority has promised to follow a certain process and an individual has relied upon that promise. The content of this duty is not fixed but is determined by a contextual analysis of factors such as the nature of the decision, the statutory scheme, and the importance of the interest at stake.

## 3: The Role of Tribunals: Independence, Expertise, and the Hybrid Nature of Quasi-Judicial Bodies

Administrative tribunals are a central component of the Canadian administrative state, acting as a parallel, specialized system of justice that is distinct from, yet supervised by, the traditional court system. As quasi-judicial bodies, they make decisions on behalf of federal, provincial, and territorial governments in areas where it would be impractical or inappropriate for a government department to do so directly. The mandates of these tribunals are incredibly diverse and specialized, handling a vast range of disputes from social security appeals and veterans' affairs to human rights, labour relations, and Indigenous land claims. The creation of these bodies is rooted in the need for specialized expertise and greater efficiency in public administration.

However, a fundamental contradiction exists within this system. The very design of administrative tribunals, while intended to deliver specialized justice, has led to ongoing debates regarding their independence and impartiality. The process for appointing tribunal members is typically by order in-council, which can lead to concerns about political influence. While the rationale for tribunals is efficiency and expertise, they are often evaluated against a judicial model of independence that may not be appropriate for bodies designed to be "multifunctional" and that "stray from the traditional adversarial model".

This situation reflects a deeper, systemic issue: despite the scale and social importance of administrative tribunals, they are often seen as being at the "bottom of the judicial hierarchy or outside of it". Their adjudicators, who handle a massive caseload of complex and socially sensitive issues that have major consequences for litigants, often have less training, formal protections, and resources than judges of the general court system. The very terminology of "quasi-judicial" can be seen as diminishing their importance.

This structural and conceptual de-emphasis of administrative justice has profound consequences, as it can lead to under-resourcing and a lack of public awareness and trust. Part of improving Canada's administrative legal system may therefore require a conceptual shift that elevates the perceived status and importance of administrative justice, ensuring that these critical institutions receive the resources and recognition commensurate with their role.

## PART II: JUDICIAL OVERSIGHT AND THE EVOLVING STANDARD OF REVIEW

### 4: The Framework of Judicial Review: Purpose and Process

Superior courts in Canada maintain a critical supervisory role over the administrative state through the process of judicial review. This inherent power, derived from the common law and originating from the four original writs of *certiorari*, *prohibition*, *mandamus*, and *habeas corpus*, ensures that administrative decision-makers remain within the boundaries of their authority. The purpose of judicial review is not to serve as an appeal where the court re-argues the case or substitutes its own findings of fact for those of the administrative body. Instead, it is a process by which a court examines the decision-making process to ensure that the administrative body's final decision was fair, reasonable, and lawful.

Bringing an application for judicial review is subject to several procedural barriers. A court will generally not hear an application until all alternative remedies within the administrative process have been exhausted, as courts are reluctant to interfere with ongoing administrative proceedings. Furthermore, judicial review applications can be dismissed if they are filed prematurely or if they are brought with undue delay, as most jurisdictions have statutory time limits, such as the 30-day limit in Ontario and the Federal Court for many matters.

### 5: A Decade of Doctrinal Change: From *Dunsmuir* to *Vavilov*

The landscape of judicial review in Canada has been shaped by a series of landmark Supreme Court decisions, all of which sought to bring greater clarity and coherence to the standards of review. Prior to the 2019 decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, the governing framework was established by the 2008 decision in *Dunsmuir v. New Brunswick*.

In that case, the Supreme Court of Canada sought to simplify the judicial review framework by merging the previously distinct standards of "reasonableness *simpliciter*" and "patent unreasonableness" into a single reasonableness standard. The *Dunsmuir* framework also established a two-standard system of review: correctness and reasonableness.

The standard to be applied was determined through a contextual analysis, which considered factors such as precedents, the decision-maker's expertise, and the nature of the legal question itself. While this framework was intended to be more workable, it still led to significant debate and a continued search for doctrinal clarity.

The *Vavilov* judgment was a decisive step in this evolution, establishing the current framework and revising the approach to judicial review. The central shift was the establishment of a strong presumption that reasonableness is the applicable standard for all judicial reviews of administrative decisions. This presumptive standard removes the need for courts to engage in the kind of detailed contextual analysis that characterized the pre-*Vavilov* landscape.

The court in *Vavilov* also clarified the narrow categories where the correctness standard still applies, including constitutional questions and questions of law of central importance to the legal

system as a whole. A notable change was the clarification that "true questions of jurisdiction," a long-standing source of legal debate, are no longer a separate category for correctness review and are now subject to the presumptive reasonableness standard.

The *Vavilov* decision, while intended to bring stability and a greater measure of deference to administrative expertise, has not completely resolved the underlying tension between judicial oversight and deference. The new framework's emphasis on a "robust" reasonableness review has led to a mixed application by lower courts.

For instance, while some courts have properly interpreted the guidance by looking at the "entire record" of the administrative decision without substituting their own analysis, other courts have been seen as treating the new standard as an invitation to conduct a *de novo* analysis and to substitute their preferred outcome for that of the administrative decision-maker.

This disparity in application suggests that the doctrinal pendulum, while intended to swing towards greater deference, may not have fully settled. The ongoing debate and close monitoring by legal bodies, such as the Canadian Bar Association, underscore that the fundamental challenge of ensuring consistent judicial application of the standard of review persists despite the Supreme Court's clear guidance.

## PART III: A SYSTEM UNDER STRAIN: KEY CHALLENGES AND DEFICIENCIES

### 6: The Access to Justice Crisis: Barriers for the Self-Represented and Vulnerable

A critical challenge facing the Canadian administrative legal system is the persistent "access to justice problem". While the administrative state is intended to be a more accessible form of justice than the traditional court system, there are "significant and long-standing obstacles" that make it difficult for ordinary people to access administrative justice.

A major manifestation of this crisis is the high volume of self-represented litigants, who have become the norm rather than the exception in many tribunal settings. These individuals face significant procedural and substantive hurdles, including complex, time-consuming processes, dense legal language, and an overwhelming amount of documentation. Many people, particularly those with low literacy levels, are ill-equipped to navigate these challenges on their own.

The issue extends beyond simple procedural complexity. The challenges for vulnerable and equity denied communities, such as persons with disabilities, are systemic and substantive. These communities often face a disproportionate number of barriers, including economic marginalization and systemic ableism, which hinder their ability to act as litigants or even to shape the structure and content of legal rules. Addressing these barriers requires a comprehensive approach that moves beyond procedural fixes and confronts the deeply ingrained power dynamics and paternalistic attitudes that impact how legal professionals perceive and treat litigants with disabilities.

## 7: The Double-Edged Sword of Technology

The administrative legal system is at a critical juncture, with technology offering both a profound opportunity for improvement and a significant threat to fairness and accountability.

### Opportunities: The Promise of Digital Transformation

Digital transformation initiatives, driven by rising public expectations for convenient and transparent government services, hold the promise of improving the efficiency and accessibility of the justice system. The British Columbia Civil Resolution Tribunal (CRT) stands as a leading example of how technology can be harnessed for the public good. As Canada's first online tribunal, the CRT provides an accessible and affordable way to resolve a variety of civil law disputes without the need for a lawyer or a physical court appearance.

The CRT's success is rooted in its user-centered design, which offers self-help tools and encourages a collaborative, problem-solving approach to dispute resolution. Its "Solution Explorer" tool provides free, customized legal information and has helped to resolve disputes without the need for a formal claim. The tribunal's annual reports demonstrate its positive impact, with high participant satisfaction rates and an expedited process for sensitive matters like intimate image claims, highlighting its ability to address complex social issues with a timely and accessible process.

### Risks: Automated Decision-Making and Algorithmic Bias

In contrast to the CRT's success, the rapid and often opaque deployment of Automated Decision-making (ADM) systems presents significant legal and ethical challenges. In areas like immigration, ADM systems are being used to triage visa applications and analyze fraud patterns, quietly augmenting or even replacing the judgment of human decision-makers. The core concern with these systems is the "black box" problem, where the proprietary nature of the algorithms and a lack of transparency make it impossible for end-users, or even their lawyers, to understand how a decision was reached.

This lack of transparency and accountability has profound human rights and Charter implications. The use of ADMs can lead to racial and data-based discrimination, and raises fundamental questions about whether there is a right to a human decision. The systems are particularly impactful on vulnerable individuals who are least able to contest their use. The pursuit of efficiency, a key driver behind the adoption of these technologies, can therefore actively undermine the principle of fairness. This creates a paradox where a system that becomes more "efficient" for government may become less "accessible" for the citizen, thereby exacerbating the very access to justice crisis it was intended to solve.

## PART IV: TOWARDS A MORE EFFECTIVE ADMINISTRATIVE STATE: RECOMMENDATIONS FOR REFORM

### 8: Enhancing Procedural Fairness and Tribunal Independence

To restore public confidence and strengthen the administrative legal system, several key reforms are necessary to enhance procedural fairness and tribunal independence. First, the appointment process for tribunal members should be re-examined to ensure greater transparency and to insulate it from political pressure. Second, mandatory, standardized training should be implemented for all administrative decision-makers to ensure a consistent application of the law and a commitment to best practices in public administration. Finally, structural safeguards should be established to reinforce the neutrality and impartiality of tribunals, particularly in a context where they are often viewed as being less independent than the courts.

### 9: Regulating the Algorithm: Recommendations for AI and ADM

The proliferation of automated decision-making systems necessitates a new, comprehensive legal and regulatory framework to ensure fairness and accountability. Drawing on the work of the Law Commission of Ontario (LCO), this report recommends a framework guided by principles of "Trustworthy AI" and "human rights by design". This framework should include the following core components:

1. **Mandatory Human Rights Impact Assessments (HRIAs):** Public and private organizations regulated by the federal government should be required to conduct HRIAs before deploying new ADM systems to identify and mitigate potential human rights risks, such as data discrimination and bias.
2. **Transparency and Disclosure:** A legal duty must be placed on government departments to provide a clear, public explanation of how ADM systems function, what data they use, and how they impact final decisions. This is essential for ensuring procedural fairness and enabling effective judicial review.
3. **Human-in-the-Loop Safeguards:** Decision-making systems should be required to have a human review for all adverse or high-risk outcomes. Furthermore, the legal community should formally debate and, where appropriate, codify the "right to a human decision" to protect individual autonomy and integrity.

4. **Accessibility and Accountability:** The regulatory framework must address the need for plain-language explanations of complex systems and accessible methods for challenging decisions made with ADM technologies to prevent technology from becoming a new barrier to justice.

### 10: Broadening Access: Innovations for a More Accessible System

The success of the Civil Resolution Tribunal demonstrates the potential for innovation to address the access to justice crisis. The ODR model should be strategically expanded to other jurisdictions and tribunals across Canada, but this expansion must be accompanied by a sustained focus on

accessibility accommodations for those without internet access or with disabilities. All tribunals should be mandated to develop and provide plain-language guides and self-help tools, as these resources are critical for the majority of users who are self-represented. Finally, the findings from the Canadian Bar Association's submissions on legal aid reform should be carefully considered, as a robust legal aid system for administrative law matters is a vital component of a truly accessible justice system.

### 11: Refining the Judicial Review Framework

While the *Vavilov* decision has brought a welcome measure of clarity, its effectiveness depends on consistent judicial application. Legal bodies and academic institutions should continue to monitor how the "robust reasonableness" standard is applied to prevent a subtle retreat into the contextual analysis it was designed to replace. To further reduce ambiguity, legislatures should be encouraged to be explicit about the intended standard of review when creating new administrative bodies or amending enabling statutes. This would provide clear guidance to both tribunals and reviewing courts, thereby enhancing predictability and coherence within the system.

## Conclusion

The administrative legal system is not a static institution but a dynamic one, constantly evolving to meet the needs of a changing society. The analysis suggests that the system is at a critical juncture, faced with unprecedented challenges and opportunities. To improve it, we must move beyond piecemeal reforms and embrace a coordinated, multi-faceted approach that addresses not only the procedural and doctrinal issues but also the fundamental questions of fairness, transparency, and public trust. The ultimate measure of a successful administrative state is not merely its efficiency, but its ability to serve as a fair and accessible avenue for justice for all Canadians. The reforms proposed herein, from a new regulatory framework for AI to an expanded vision for accessible ODR, are a starting point for a national conversation aimed at achieving that goal.

## References

### Jurisprudence

*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, 4 SCR 653.
*Cooper v Canada (Human Rights Commission)*, (1996) 3 SCR 854.
*Dunsmuir v New Brunswick*, 2008 SCC 9, (2008) 1 SCR 190.

### Legislation and Government Documents

*Civil Resolution Tribunal Act*, SBC 2012, c 25. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
Civil Resolution Tribunal, “CRT Annual Report 2023-2024” (2024).
Civil Resolution Tribunal, “Participant Survey – December 2024,” *Civil Resolution Tribunal Blog* (December 2024).
Department of Justice Canada, *Justice Digital Transformation Strategy Report* (2022).

Law Commission of Ontario, *Accountable AI* (2022).
Law Commission of Ontario, *AI Human Rights Impact Assessment* (2024).
Law Commission of Ontario, *Regulating AI: Critical Issues and Choices* (2021).
Ontario Courts, *Guide to the Divisional Court for a Judicial Review*.
The Government of Canada, "Government Views on Legislative Reform," *Justice Canada* (16 August 2022).

**Secondary Materials**

A Blueprint for a Better Balance: Enhancing Fairness, Efficiency, and Accessibility in Canada's Administrative Legal System", *NCA.legal*.
Canadian Bar Association, "Administrative Law," *CBA Saskatchewan* (5 May 2025).
Canadian Council of Administrative Tribunals, "Access to Justice Tools for Tribunal Leaders," *CCAT-CTAC*.
Civil Resolution Tribunal, "About the CRT," *Civil Resolution Tribunal*.
Courts of British Columbia, "What is it," *Courts of British Columbia*.
Polonskaya, Ksenia. "Counting a Massively Important Docket: The Case of Common Law Administrative Tribunals" (2021) 18 Int J L Context 331.
Lavery, "Judicial Review: Impact of the Vavilov Judgment," *Lavery* (6 February 2020).
Ross, Sara J. "From Rights to Justice: Perspectives on Access to Disability Justice in British Columbia" (2023) 38:3 WYAJ 18.
Hage, Tarek. "Automating Administrative Law's Future: The Immigration Story," *Bartalk* (23 May 2025).
Wikipedia, "Canadian administrative law". https://en.wikipedia.org/wiki/Category:Canadian_administrative_law

# THE EFFICACY OF FOREST LAWS AND GOVERNANCE IN FOSTERING SUSTAINABLE FORESTRY IN PAKISTAN

**Author:** Munir Ahmed Dar (Advocate), Darwin's Law Office, Toronto ON. Canada M4L 3B7

- DOI: https://doi.org/10.5281/zenodo.17444969
- ORCID ID: https://orcid.org/0009-0007-1445-4176
- Google Scholar: https://scholar.google.ca/citations?user=7qq7WEkAAAAJ&hl=en
- ResearchGate ID: https://www.researchgate.net/profile/Munir-Dar-3?ev=hdr_xprf
- Clarivate Web of Science Researcher ID: OHV-2983-2025
- Academia.edu Scholar: https://yorku.academia.edu/munirdar

**Keywords:** Forestry, Pakistan, Forest Law, Deforestation, Afforestation, Governance, Corruption, Community Management

**Abstract:** Pakistan, a country with critically low forest cover, is experiencing one of Asia's highest deforestation rates. Despite the introduction of ambitious afforestation programs and progressive policy statements in recent years, this report reveals a significant disconnect between the legal framework and its effectiveness. The core argument is that the ineffectiveness of Pakistan's forest governance stems not from a lack of laws but from the systemic failure to implement a colonial-era legal structure that is fundamentally ill-suited for modern challenges. This is exacerbated by a pervasive nexus of corruption and political interference, deep-seated institutional weaknesses, and conflicting national development priorities, which consistently undermine enforcement. While initiatives like the Billion Tree Tsunami Project demonstrate that positive, large-scale change is possible through a project-based approach, the degradation of high-value natural forests continues unabated. The report concludes that a fundamental paradigm shift is necessary, moving from a punitive, top-down approach to a genuinely participatory, institutionally strengthened, and cross-sectoral integrated model. Recommendations include a comprehensive legal and institutional overhaul, the promotion of community-based management, and the strategic alignment of economic incentives with conservation goals to foster a more sustainable future for Pakistan's forests.

## 1. INTRODUCTION

### 1.1. Context and Problem Statement

Forests in Pakistan serve a multifaceted and vital role, providing immense ecological, economic, and social value. They are a primary source of lumber, paper, fuelwood, and non-timber products essential for the livelihoods of millions of rural people living in and around them. Beyond their direct economic contributions, forests offer critical environmental services, including water and soil conservation, regulation of water yield,

protection from landslides, and carbon sequestration. This is particularly crucial in a country where environmental degradation is a key driver of natural disasters.

Despite their significance, Pakistan faces a grim reality. It is classified as a "forest-poor" country, with a per capita forest cover of only 0.021 hectares, significantly below the global average of 1 hectare per person. Compounding this scarcity is an alarming deforestation rate, which, according to various estimates, ranges from 0.2 to 0.5 percent annually, equating to a loss of approximately 27,000 hectares per year. This ecological decline has severe and tangible consequences, including desertification, soil erosion, and an increased frequency and magnitude of floods. The central problem, therefore, is the persistent and widening gap between the stated goals of national forest laws and policies and their limited tangible impact on the ground. This report provides a critical analysis of the root causes of this ineffectiveness, offering a comprehensive and expert-level critique of the existing governance framework.

### 1.2. Scope and Objectives

This report delivers an in-depth analysis of Pakistan's forest laws and policies, examining their historical evolution, the challenges encountered during their implementation, and their broader socio-economic context.

The analysis is guided by four specific objectives to:

1. deconstruct the legislative history of Pakistan’s forestry sector, from the colonial-era Forest Act of 1927 to the country's latest national and provincial policies.
2. identify and analyze the key challenges undermining the effectiveness of these laws, with a particular focus on institutional weaknesses, corruption, and conflicting socio-economic drivers.
3. evaluate the impacts of major forestry initiatives and controversies through detailed case studies, such as the Billion Tree Tsunami Project and the Green Pakistan Initiative.
4. propose concrete and actionable recommendations for legal and institutional reform to foster more effective and sustainable forest governance in the future.

## 2. LEGISLATIVE AND HISTORICAL FRAMEWORK

### 2.1. The Colonial Blueprint: The Indian Forest Act of 1927

The legislative foundation for forestry in Pakistan is the Indian Forest Act of 1927, a direct legacy of the British colonial era. The Punjab Forest Department, for instance, explicitly inherited its laws and manuals from the British administration. The Act was designed to consolidate the law relating to forests, the transit of forest produce, and the duty leviable on timber and other forest-related commodities. It established a clear hierarchy of forest categories: "Reserved Forests," "Protected Forests," and "Village Forests," each with distinct guidelines for protection and utilization. Reserved Forests represent the most

restricted category, where most uses by local people are prohibited unless specifically permitted by a Forest Settlement Officer. The Act provides broad powers to forest officers to enforce these rules, including the authority to seize property, confiscate vehicles and tools, and make arrests without a warrant.

The provisions of this Act are a direct reflection of British colonial forest policy, which was driven not by conservation but by commercial exploitation and revenue maximization. The primary objective was to secure valuable timber for industrial and infrastructure projects, particularly the construction of railways, and to increase state revenue by asserting control over "crown lands". This focus on state monopoly over forest areas and the concurrent curtailment of traditional community rights established a fundamental conflict.

The government's perspective saw forests as a resource for commercial gain, while local communities depended on these resources for their survival, creating a foundation of mistrust and conflict that persists to this day. The punitive and exclusionary nature of the 1927 Act rendered it a poor instrument for fostering the kind of participatory, community-based management required for modern conservation efforts.

### 2.2. Post-Independence Policy Evolution: The Policy-Implementation Gap

Following independence, Pakistan's approach to forestry evolved, moving through a series of national policies announced in 1955, 1962, 1975, 1980, 1988, 1991, and most recently, 2015. While earlier policies centered on sustained yield and commercial management, those from 1991 onwards began to incorporate progressive concepts like "participation" and "sustainable livelihoods". The National Forest Policy of 2015 explicitly aims to promote forest conservation, afforestation, and sustainable forest management while ensuring the participation of local communities.

Despite the more modern and inclusive policy rhetoric, the actual legal and institutional framework for forestry has remained largely static. The provided information notes that, in practice, many of the more recent policies are "a replica of the previously top-down, autocratic and non-participatory forest policies". This is because the core legal instrument the Forest Act of 1927 has only been superficially amended over the years and remains the principal piece of forestry legislation. This creates a profound disconnect: a legal framework designed for state control and punitive enforcement cannot effectively support a policy based on community participation and sustainable livelihoods. As a result, modern policies formulated at the federal level are consistently undermined by outdated provincial laws and an unreformed institutional culture at the implementation level, where the 1927 Act retains its full authority.

### 2.3. The 18th Amendment and the Decentralization Dilemma

The 18th Constitutional Amendment of 2010 was a watershed moment, transferring the subject of forestry from the federal Concurrent Legislative List to the provincial domain.

This devolution limited the federal government's role to national planning, inter-provincial coordination, and meeting international obligations. Consequently, specific provincial legislation and amendments have emerged, such as the Punjab Forest Act of 1999, the Khyber Pakhtunkhwa Forest Ordinance of 2002, and the Sindh Forest (Amendment) Act of 1994.

While the intent behind devolution was to empower provinces to create context-specific and effective policies, it has resulted in a fragmented legal and governance landscape. The provided material points to conflicts of interest between federal and provincial authorities, particularly concerning issues like the levying of taxes on inter-provincial timber movement and compensation for watershed values.

This administrative and legal fragmentation makes it challenging to implement a cohesive national strategy, as provinces with varying capacities and political will pursue different agendas. A successful afforestation effort in one province, such as the Billion Tree Tsunami Project in Khyber Pakhtunkhwa, may exist alongside rapid and unchecked deforestation in another, highlighting the lack of a unified front on conservation.

**Table 1: Forestry Outcomes: The Contradiction Between Tree Cover Gain and Natural Forest Loss**

| Metric | Time Period | Data Source | Value | Interpretation/Significance |
|---|---|---|---|---|
| Forest Cover Percentage | 2020 | Global Forest Watch | 1.7% natural forest | Extremely low forest covers relative to global averages. |
| Total Tree Cover Loss | 2001-2024 | Global Forest Watch | 9.53 thousand hectares | Indicates significant and continuous loss of tree cover. |
| Total Tree Cover Gain | 2000-2020 | Global Forest Watch | 117 thousand hectares | Demonstrates positive impact of afforestation projects like the BTTP. |
| Overall Net Tree Cover Change | 2000-2020 | Global Forest Watch | +94.8 thousand hectares | A positive overall trend that masks the underlying degradation of natural ecosystems. |
| Primary Driver of Loss | 2001-2024 | Global Forest Watch | Logging (6.87 kha), Permanent Agriculture (492 ha) | Shows that law enforcement failures and land-use conflicts are the main causes. |
| Location of Loss | 2021-2024 | Global Forest Watch | 97% of loss within natural forests | The most critical finding: high-value, native forests are still being destroyed |

| Metric | Time Period | Data Source | Value | Interpretation/Significance |
|---|---|---|---|---|
| | | | | despite a net gain in overall tree cover from plantations. |

## 3. CHALLENGES TO LEGAL AND INSTITUTIONAL EFFECTIVENESS

### 3.1. The Institutional and Enforcement Gap

The primary implementer of Pakistan's forest laws, the provincial Forest Department, operates with a set of institutional attitudes that are a major impediment to effective governance. The department has an "entrenched" and "command-and-control" approach that makes it "wary of the development-agent/monitoring role" required by modern policies. This internal resistance is compounded by significant external constraints, including fiscal deficits, underfunded departmental budgets, and a lack of resources for investigation and prosecution. Furthermore, enforcement is hampered by insufficient training for forest officers and judges, which compromises their ability to handle complex forest-related legal matters.

The Forest Department's ineffectiveness is rooted in its historical role. Created in 1886 as the "Imperial Forest Service," it inherited a policing and revenue-generating function from the colonial administration. The provisions of the 1927 Act, which grant forest officers powers of summary trial and arrest, reinforce this identity as an enforcement agency. This institutional DNA makes it difficult for the department to transition to a modern role as a development and community facilitator, as advocated by progressive national policies. The focus remains on a punitive enforcement model, which is itself compromised by a lack of resources and technical capacity, thereby creating a self-perpetuating cycle of governance failure.

### 3.2. The Nexus of Corruption and Political Interference

A major obstacle to effective forest law enforcement is a pervasive culture of corruption and political interference that undermines environmental governance. A "well-entrenched nexus" of corrupt officials, political patrons, and timber traders actively exploits legal loopholes and weak governance to facilitate illegal logging. A recent scandal in Khyber Pakhtunkhwa offers a clear example of this dynamic, where a principled bureaucrat exposed the issuance of "unlawful transport permits" and the sanctioning of commercial and residential development on protected forest land under the guise of tourism promotion. The scale of this issue is staggering, with one study showing that illegal wood harvest is four times more than the legal harvest.

The issue goes far beyond simple bribery; it is a systematic subversion of the entire governance framework. The suspension of the Tree Marking & Harvest Monitoring System

for years, which allowed a staggering 30 percent of felling to be "outright illegal," is a testament to how the regulatory system can be deliberately disabled from within. The involvement of political patrons and the subsequent targeting of bureaucrats who expose these scams indicate that this is not a low-level problem but a high-level institutional failure driven by powerful vested interests. The existence of such a powerful "timber mafia" renders any conservation law ineffective, regardless of its content or intent, as the enforcement mechanism itself has been compromised.

### 3.3. Socio-economic Drivers and Conflicting Incentives

The drivers of deforestation in Pakistan are deeply intertwined with socio-economic factors that the current legal framework fails to adequately address. Population growth, rapid urbanization, and the conversion of forest land into agricultural fields and settlements place immense pressure on forest resources. The high dependence of rural communities on forests for their daily needs, such as fuelwood, fodder, and non-timber products, drives over-exploitation, particularly in the absence of viable economic alternatives. A weak community ownership structure, combined with this high dependence, contributes to a classic "tragedy of the commons" scenario, where individual short-term gains from illegal logging and land conversion outweigh the long-term collective benefit of conservation.

The legal framework's purely punitive nature is ill-equipped to handle these underlying socio-economic realities. While the law prohibits illegal activities, it offers no tangible alternative for the millions of people who rely on forest products for survival. This fundamental conflict between a top-down, non-participatory legal system and the bottom-up needs of local communities creates a perpetual state of conflict and non-compliance. The problem is not merely a matter of criminal behavior but a complex challenge rooted in poverty and the lack of sustainable livelihoods, which cannot be solved by law enforcement alone.

## 4. CASE STUDIES IN PRACTICE: FAILURES, SUCCESSES, AND CONTROVERSIES

### 4.1. Large-Scale Afforestation: The Billion Tree Tsunami Project (BTTP)

The Billion Tree Tsunami Project (BTTP), launched in Khyber Pakhtunkhwa in 2014, represents a significant departure from Pakistan's traditional forestry management model and provides a critical case study in effective conservation. The project successfully planted over one billion trees, adding 350,000 hectares of trees through a combination of mass afforestation and natural regeneration. This success garnered international praise, with the project being the first Bonn Challenge pledge to reach its restoration goal ahead of schedule.

The project's success was not merely a matter of numbers; it also had a profound socio-economic impact. By establishing a network of private tree nurseries, the initiative boosted

local incomes and created thousands of "green jobs," including for unemployed young people and women. This successful outcome, audited by an independent body, was a result of a combination of strong political will, a well-funded, project-based approach, and, most importantly, the genuine involvement of local communities from the outset. The BTTP demonstrates that positive outcomes are achievable by circumventing the deep-seated institutional inertia and legal challenges that plague the traditional forestry sector and by moving toward a model of collaboration and shared economic benefit.

### 4.2. Conflicting Priorities: The Green Pakistan Initiative (GPI)

The Green Pakistan Initiative (GPI) is a new, large-scale, military-led project focused on corporate farming and the transformation of "unused and barren government land" into fertile agricultural ground. Its stated goal is to enhance food security and agricultural productivity in a country heavily reliant on food imports. Despite its ambitious objectives, the initiative has faced significant criticism and opposition, particularly from the Sindh province, which has raised concerns over potential water scarcity, the displacement of small farmers, and long-term environmental degradation.

The GPI highlights a fundamental and unresolved tension at the heart of Pakistan's national development agenda. While one "Green" initiative (BTTP) focuses on afforestation and climate change mitigation, another (GPI) prioritizes large-scale agriculture, which is a key driver of deforestation and environmental degradation. This dichotomy demonstrates a profound lack of a coherent, cross-sectoral national strategy. The project has raised critical questions about governance and transparency, as the military’s leadership in a civilian economic venture is a contentious issue. The debate reveals that the country's limited land and water resources are at the center of a major policy conflict between competing visions of economic growth and environmental sustainability.

### 4.3. Community-Based Management and NGO-Led Initiatives

Successful community-based projects, often spearheaded by non-governmental organizations like WWF, offer a compelling alternative to the top-down state-centric model. A notable example is a mangrove restoration project in the Indus Delta, which was co-governed by WWF and local communities. This initiative successfully increased forest cover from 86,000 to 139,000 hectares over two decades and simultaneously boosted local incomes by 30 percent through sustainable practices like crab harvesting.

These projects prove that a shift away from state monopoly toward a model of shared governance is not only theoretically sound but practically effective. They demonstrate that local participation, when supported by external expertise and funding, can lead to positive outcomes that address both ecological and socio-economic needs. The fact that NGOs are filling a void left by the Forest Department’s institutional weaknesses underscores the urgent need for a comprehensive overhaul that integrates these successful, ground-up approaches into national and provincial policy.

The most critical finding: high-value, native forests are still being destroyed despite a net gain in overall tree cover from plantations.

## 5. RECOMMENDATIONS FOR FUTURE FOREST GOVERNANCE

### 5.1. Foundational Legal and Policy Reforms

The colonial-era Forest Act of 1927 is outdated and fundamentally ill-equipped to address modern conservation challenges. A significant legal overhaul is required to replace it with a modern, harmonized legal framework that aligns with international agreements like the United Nations Framework Convention on Climate Change (UNFCCC) and the United Nations Forum on Forests (UNFF). The "Model Forest Act Initiative" proposed by the IUCN can serve as a valuable blueprint for this reform, focusing on a multi-stakeholder and interdisciplinary approach. Furthermore, the new legal framework must legally institutionalize community tenure and rights. The current laws fail to secure the rights of forest-dependent communities, and legal changes are necessary to enable communities to become genuine partners in joint forest management, thereby moving away from a model of governmental control alone.

### 5.2. Strengthening Institutional Capacity and Accountability

The provincial Forest Departments must be restructured to move beyond their outdated "command-and-control" approach. This transformation requires a shift in the role of staff from a purely policing function to one of a development and monitoring agent. This new role necessitates increased funding for training and resources, which are currently severely lacking. Concurrently, robust anti-corruption and accountability mechanisms must be implemented to address the systemic subversion of forest governance. This requires independent oversight, legal reforms to increase penalties for officials involved in illegal activities, and the establishment of transparent mechanisms to protect whistleblowers, thereby disrupting the deep-seated nexus of corruption and political interference.

### 5.3. Promoting Participatory and Sustainable Management

The success of projects like the Billion Tree Tsunami Project and the Indus Delta mangrove restoration project provides a clear blueprint for a new governance model. Policies must be designed to scale up these successful community-based models, which rely on strong, high-trust relationships between external bodies and internal community groups. By empowering local communities and providing them with a direct stake in the health of the forests, these initiatives prove that effective conservation is possible.

### 5.4. Aligning Economic Incentives with Conservation

The low priority and limited investment the forestry sector receives in provincial budgets must be reversed. This can be achieved by developing scientific methods for the economic valuation of forests, including their tangible and intangible benefits like ecosystem services

and carbon sequestration. The report by the CIF Forest Investment Program suggests fiscal reforms, such as environmental commodity taxation and ecological fiscal transfers, to create incentives for conservation and sustainable management. Additionally, policies must be put in place to support alternative, forest-friendly livelihoods. By promoting farm forestry and the sustainable use of non-timber forest products, the pressure on natural forests can be reduced, providing rural communities with viable income streams that are not dependent on over-exploitation.

## 6. CONCLUSION

Pakistan's forest laws, while comprehensive on paper, are largely ineffective in practice due to a complex interplay of historical legacy, institutional inertia, and underlying socio-economic pressures. The foundational legal framework, a relic of colonial-era exploitation, is fundamentally unequipped to address modern conservation challenges. The analysis demonstrates that the persistent policy-implementation gap is a result of this deep-seated structural and institutional failure, which allows for the systematic subversion of governance by a powerful network of vested interests.

The path forward does not lie in simply creating new laws, but in a holistic and transformative shift in governance. This requires a move from a punitive, top-down approach to one that is collaborative, decentralized, and rooted in the principle of equitable co-management with local communities. The success of projects like the Billion Tree Tsunami demonstrates that positive change is possible when strong political will and modern, inclusive governance models are applied. Without a fundamental institutional overhaul and a genuine commitment to reform, Pakistan's forests will continue to be a site of conflict and degradation, undermining the country's long-term environmental and economic stability.

## REFERENCES

Ali, A., Khan, B., Shah, S. A. A., & Ahmad, I. (2018). *National and international efforts for countering climate change: A case study of billion tree tsunami afforestation project Pakistan*. https://cdrlaw.org/wp-content/uploads/2020/08/10.11648.j.ijls_.20180104.13.pdf

American Bar Association. (n.d.). *Forest law and policy in Pakistan*. https://www.americanbar.org/groups/environment_energy_resources/resources/newsletters/forest-resources/forest-law-policy-pakistan/

ANI. (2025, September 2). *Pakistan: PKR 1.7 billion timber scam exposed in Khyber Pakhtunkhwa; 140 officials implicated*. The Tribune. https://www.tribuneindia.com/news/world/pakistan-pkr-1-7-billion-timber-scam-exposed-in-khyber-pakhtunkhwa-140-officials-implicated/

Chatham House. (n.d.). *The challenges of forest law enforcement*. https://forestgovernance.chathamhouse.org/publications/the-challenges-of-forest-law-enforcement

CIF Forest Investment Program & World Bank. (n.d.). *New report shows how fiscal reforms can positively influence forest conservation and ecosystem*. https://www.cif.org/news/new-report-shows-how-fiscal-reforms-can-positively-influence-forest-conservation-and-ecosystem

FAO. (n.d.). *Forestry sector review of Pakistan: Policy and legislation*. https://www.fao.org/4/ab576e/AB576E18.htm

Global Forest Watch. (n.d.). *Pakistan deforestation rates & statistics*. https://www.globalforestwatch.org/dashboards/country/PAK/

Hutt, R. (2018, July 2). *Pakistan has planted over a billion trees*. World Economic Forum. https://www.weforum.org/stories/2018/07/pakistan-s-billion-tree-tsunami-is-astonishing/

Imran, M. (2024, May 26). *Rapid disappearance of Pakistan's forests*. The Express Tribune. https://tribune.com.pk/story/2563999/rapid-disappearance-of-pakistans-forests

IUCN. (n.d.). *Legal and institutional framework for environmental management in Pakistan*.. https://portals.iucn.org/library/efiles/documents/ELC-016-1.pdf

IUCN. (n.d.). *The model forest act initiative: Modernising law to address the global forest crisis*. https://iucncongress2025.org/programme/model-forest-act-initiative-modernising-law-address-global-forest-crisis

Khalid, T., Ullah, A., Shah, M., & Ali, N. (2022). Community attitude about the effects of corruption on forest governance - A case of Malakand District of Khyber Pakhtunkhwa, Pakistan. *Journal of Business and Social Sciences Review, 3*(8), 1-13. https://www.researchgate.net/publication/363586995_Community_Attitude_About_the_Effects_of_Corruption_on_Forest_Governance--A_Case_of_Malakand_District_of_Khyber_Pakhtunkhwa_Pakistan

Khan, H. Z. (n.d.). *The Forest Act 1927*. https://khalidzafar.com/laws-of-pakistan/the-forest-act-1927/

Khaama Press. (n.d.). *Farmers and environmentalists raise concerns over green Pakistan initiative*. https://www.khaama.com/farmers-and-environmentalists-raise-concerns-over-green-pakistan-initiative/

Khyber Pakhtunkhwa Government. (n.d.). *The Forest Act, 1927*. https://kp.gov.pk/page/the_forest_act_1927/

Khyber Pakhtunkhwa Government. (2002). *North-West Frontier Province Forest Ordinance, 2002*. https://faolex.fao.org/docs/pdf/pak65061.pdf

Koirala, R., Ru, J., & Jabeen, R. (2018). *Forests for Green Pakistan: Forest Policy Note*. The World Bank. https://documents.worldbank.org/en/publication/documents-reports/documentdetail/823081541716238227

Mahmood, M. K. (2018). *Anatomy of state failures in the forest management in Pakistan*. https://www.researchgate.net/publication/24115020_An_Anatomy_of_State_Failures_in_The_Forest_Management_in_Pakistan

Modern Diplomacy. (n.d.). *Green Pakistan Initiative: Sowing seeds of prosperity beyond farming*. https://moderndiplomacy.eu/2025/02/26/green-pakistan-initiative-sowing-seeds-of-prosperity-beyond-farming/

Ministry of Climate Change. (2021). *Pakistan REDD+ Strategy*. https://redd.unfccc.int/media/pakistan_redd__strategy_final-oct_2_2021_edited_by_iucn-new_minister.pdf

Ministry of Information and Broadcasting. (2024, September 7). *4.8m acres identified for Green Pakistan Initiative*. https://moib.gov.pk/News/64781

Qureshi, M. A., Ullah, W., Khan, M. F., & Khan, I. A. (2024). Beyond the books: Real world challenges in implementing environmental laws in Pakistan. *Journal of Law and Social Sciences, 6*(1), 1-15. https://www.researchgate.net/publication/378365777_Beyond_the_Books_Real_World_Challenges_in_Implementing_Environmental_Laws_in_Pakistan

Scribd. (n.d.). *Forest policy in colonial India*. https://www.scribd.com/document/44380028/Forest-Policy-in-Colonial-India

Shahbaz, B., Ali, T., & Suleri, A. (2007). A critical analysis of forest policies of Pakistan: Implications for sustainable livelihoods. *International Journal of Sustainable Development & World Ecology, 14*(4), 346-356. https://www.researchgate.net/publication/225366406_A_Critical_Analysis_of_Forest_Policies_of_Pakistan_Implications_for_Sustainable_Livelihoods

Sindh Government. (1994). *Forest Act (Sindh Amendment) Act, 1994*. http://shehri.org/laws/Forest%20Act%20(Sindh%20Amendment)%20Act%201994.pdf

Sindh Forest Department. (2023). *Sindh Sustainable Forest Management Policy 2023*. https://sindhforests.gov.pk/page-sindh-sfmp

Sunderlin, W. D., Hatcher, J., & Liddle, M. (2008). *Reforms from the ground up: A review of community-based forest management in tropical developing countries*. https://www.researchgate.net/publication/43355932_Reforms_from_the_Ground_Up_A_Review_of_Community-Based_Forest_Management_in_Tropical_Developing_Countries

The Japan Times. (N.D.). *Military takes lead in Pakistan's 'Green Revolution'*. https://www.japantimes.co.jp/environment/2024/01/07/sustainability/military-pakistan-green-revolution/

Ullah, S., Aiman, M., Faridi, R., Hussain, S., & Ullah, M. (2023). Flood risk assessment and management in Khyber Pakhtunkhwa, Pakistan. *Journal of Flood Risk Management, 16*(2), 1-15. https://www.researchgate.net/figure/Socioeconomic-factors-promoting-deforestation-and-economic-incentives-to-control_fig1_369638648

UNFCCC. (n.d.). *Pakistan's NDC*. https://redd.unfccc.int/media/pakistan_redd__strategy_final-oct_2_2021_edited_by_iucn-new_minister.pdf

Wikipedia. (n.d.). *Forestry in Pakistan*. https://en.wikipedia.org/wiki/Forestry_in_Pakistan

Wikipedia. (n.d.). *Plant for Pakistan*. https://en.wikipedia.org/wiki/Plant_for_Pakistan

World Wide Fund for Nature-Pakistan. (n.d.). *Mangrove protection in the Indus Delta in Pakistan*. https://casestudies.naturebasedsolutionsinitiative.org/casestudy/mangrove-protection-in-the-indus-delta-in-pakistan/

Zaman, Z., & Ahmad, S. (2017). Illegal logging and wood consumption: Estimation and projection of illegal wood harvesting in Pakistan through system dynamics. *Journal of Environmental Science and Technology, 11*(2), 406-415. https://www.jespk.net/papers/2017/375-illegal-logging-and-wood-consumption-estimation-and-projection-of-illegal-wood-harvesting-in-pakistan-through-system-dynamics-11-2

# THE UNFULFILLED MANDATE: SYSTEMIC BOTTLENECKS AND THE LIMITS OF JUDICIAL REFORM IN CANADA'S POST-*JORDAN* ERA

1. Malik Shahid Jamil (Advocate) Malik Law Associates, Dist. Courts, Faisalabad, Pakistan
2. Munir Ahmed Dar (Advocate), Darwin's Law Office, Toronto ON. Canada M4L 3B7

- DOI: https://doi.org/10.5281/zenodo.17444998
- ORCID ID: https://orcid.org/0009-0007-1445-4176
- Google Scholar: https://scholar.google.ca/citations?user=7qq7WEkAAAAJ&hl=en
- ResearchGate ID: https://www.researchgate.net/profile/Munir-Dar-3?ev=hdr_xprf
- Clarivate Web of Science Researcher ID: OHV-2983-2025
- Academia.edu Scholar: https://yorku.academia.edu/munirdar

**Keywords:** *R. v. Jordan*, Section 11(b) of the Charter, right to a Speedy Trial, Judicial Stay of Proceedings, Court Delay, Judicial Vacancies, Digital Evidence Disclosure, Culture of Complacency

**Abstract:** The Supreme Court of Canada's landmark 2016 decision in *R. v. Jordan* represented a radical attempt to dismantle the criminal justice system's endemic "culture of complacency" by imposing strict, presumptive time ceilings on criminal trials. While successful in establishing a new baseline for assessing delays under Section 11(b) of the Charter, the *Jordan* framework has proven insufficient to resolve the underlying crisis of timeliness. This paper contends that the persistent problem of delay and the consequent staying of serious charges stem not from the judicial mandate itself, but from deep-seated, systemic deficiencies that the judiciary cannot unilaterally rectify. These include chronic judicial vacancies, the escalating complexity of modern litigation, and the overwhelming burdens of digital evidence disclosure. The analysis concludes that restoring timely justice requires a sustained, multi-jurisdictional commitment to resource allocation and institutional modernization, moving beyond the Court's prescriptive deadlines to address the foundational resource and administrative failures.

## I. Introduction

The guarantee of a trial within a reasonable time, enshrined in Section 11(b) of the *Canadian Charter of Rights and Freedoms*, is a cornerstone of a fair and effective criminal justice system. The adage "justice delayed is justice denied" underscores that timely adjudication is essential to protect the liberty of the accused, provide resolution for victims, and uphold public confidence in the rule of law.

For decades, this constitutional promise was systematically undermined by institutional inertia and a pervasive tolerance for delay. This crisis precipitated the Supreme Court of Canada's transformative decision in *R. v. Jordan*, which replaced a permissive, multi-factorial test with a stringent, ceiling-based framework. This paper will first delineate the *Jordan* framework and its rationale. It will then argue that the framework's limited success in achieving timely justice is attributable to three compounding systemic failures: a crisis in judicial appointments, the resource-

intensive nature of digital evidence disclosure, and chronic under-resourcing of Crown offices. These factors collectively create a structural bottleneck that judicial fiat alone cannot clear.

## II. The *Jordan* Framework: A Prescriptive Remedy for Systemic Delay

Prior to *Jordan*, the test for unreasonable delay from *R. v. Morin* (1992) employed a flexible, contextual analysis that often-justified extensive delays after the fact. The *Jordan* Court critiqued this approach for its complexity and failure to incentivize proactive efficiency, replacing it with a clear, two-stage framework designed to compel systemic change.

### A. The Presumptive Ceilings

The core of the *Jordan* decision is the establishment of presumptive ceilings:

1. **18 months** for cases proceeding in provincial court to the completion of trial.
2. **30 months** for cases in superior court, or for cases in provincial court that include a preliminary inquiry.

Any delay attributable to the defence such as defence-requested adjournments is deducted from the total delay. If the net delay exceeds the applicable ceiling, it is presumptively unreasonable.

### B. The Stay as an Incentivizing Remedy

When the ceiling is exceeded, the onus shifts to the Crown to justify the delay by demonstrating "exceptional circumstances." This category is narrowly defined to exclude predictable, systemic issues like institutional understaffing. If the Crown cannot meet this burden, the only constitutionally permissible remedy is a judicial stay of proceedings a dismissal of the charges. This potent remedy was intentionally designed to create an "irresistible pressure" on all justice system participants, including governments, to provide adequate resources and foster a culture of expediency.

## III. Systemic Bottlenecks Undermining the *Jordan* Mandate

While *Jordan* initially reduced the backlog of cases languishing under the old *Morin* standard, it has also led to a marked increase in stays for serious offences, signaling that its prescriptive remedy is straining against unaddressed structural flaws.

### A. The Judicial Vacancy Crisis

A primary institutional failure lies in the federal government's inability to maintain a full complement of judges. Chronic judicial vacancies, which often exceed 9% in some superior courts, directly cause the institutional delay *Jordan* sought to eliminate.

- **Impact on Court Capacity:** Vacancies force court administrators to cancel or adjourn trials, creating cascading backlogs. This places immense strain on sitting judges and often leads to the de-prioritization of civil and family law matters to avert *Jordan* crises in criminal cases.
- **Political and Administrative Failure:** Despite judicial warnings and a Federal Court declaration that the situation is "untenable," the appointment process has consistently failed to keep pace with retirements. This failure represents a critical political bottleneck that directly contravenes the systemic efficiency *Jordan* demands.

### B. The Digital Evidence Deluge and Disclosure Burdens

The *Jordan* ceilings were conceptualized without fully anticipating the seismic shift in the nature of criminal evidence. Modern cases, even for routine offences, now generate vast quantities of digital data.

- **The Scope of Digital Evidence:** Evidence is routinely collected from police body-worn cameras, smartphones, computers, cloud servers, and social media platforms, amounting to terabytes of information per case.
- **The Disclosure Burden:** The Crown's constitutional disclosure obligation now entails the collection, review, redaction, and forensic analysis of this digital deluge. This process is immensely time-consuming for both police services and Crown attorneys, whose offices are often understaffed and lack specialized digital forensics capacity. The delay attributable to these necessary pre-trial steps rapidly consumes the limited time within the *Jordan* ceilings.

### C. Systemic Under-Resourcing of Crown Offices

The effectiveness of the *Jordan* framework is predicated on the Crown having sufficient personnel to manage its caseload. Provincial and territorial governments, responsible for funding Crown offices, have been slow to respond to this need. A shortage of prosecutors directly impairs the system's ability to manage disclosure, prepare for trial, and bring cases to a hearing within the presumptive periods, forcing a triage approach that risks violating the Section 11(b) rights of accused persons in all but the most serious cases.

## IV. Conclusion

The Supreme Court of Canada's decision in *R. v. Jordan* was a necessary and courageous intervention that correctly identified a "culture of complacency" and provided a powerful judicial tool to combat it. However, the subsequent rise in stayed prosecutions reveals the limits of this judicial remedy. The persistent crisis of judicial vacancies, coupled with the resource-intensive realities of digital evidence and underfunded Crown offices, constitutes a structural impasse that deadlines cannot overcome. To truly fulfill the promise of Section 11(b), policymakers must transcend a reactive posture to *Jordan* stays and embrace a proactive, multi-jurisdictional strategy. This requires a sustained commitment to filling judicial vacancies, increasing prosecutorial and

digital forensics capacity, and modernizing court infrastructure. Without this demonstrated political will, the constitutional right to a timely trial will remain an unfulfilled mandate, and public confidence in Canadian justice will continue to erode.

## References

Department of Justice Canada. (n.d.). *Section 11(b) – Trial within a reasonable time*. Retrieved October 5, 2025, from https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art11b.html

Hameed, Y. (2024, February 20). *Federal Court of Canada declares judicial vacancies unacceptable*. Torys LLP. Retrieved October 5, 2025, from https://www.torys.com/our-latest-thinking/publications/2024/02/federal-court-of-canada-declares-judicial-vacancies-unacceptable

*R. v. Jordan*, [2016] 1 S.C.R. 631, 2016 SCC 27.

*R. v. K.G.K.*, [2020] 2 S.C.R. 85, 2020 SCC 28.

Vandersteen, L. (2018). R v Jordan: A Ticking Time Bomb. *The Manitoba Law Journal, 41*(4), 108–127.

# THE ACCESS TO JUSTICE CRISIS: SYSTEMIC IMPACTS OF SELF-REPRESENTED LITIGANTS IN THE CANADIAN JUDICIAL SYSTEM

1. Malik Shahid Jamil (Advocate) Malik Law Associates, Dist. Courts, Faisalabad, Pakistan
2. Munir Ahmed Dar (Advocate), Darwin's Law Office, Toronto ON. Canada M4L 3B7

- DOI: https://doi.org/10.5281/zenodo.17445296
- ORCID ID: https://orcid.org/0009-0007-1445-4176
- Google Scholar: https://scholar.google.ca/citations?user=7qq7WEkAAAAJ&hl=en
- ResearchGate ID: https://www.researchgate.net/profile/Munir-Dar-3?ev=hdr_xprf
- Clarivate Web of Science Researcher ID: OHV-2983-2025
- Academia.edu Scholar: https://yorku.academia.edu/munirdar

**Keywords:** access to justice, self-represented litigants, legal aid, court delays, procedural fairness, judicial administration, legal services, complexity of law

**Abstract:** The rising number of self-represented litigants (SRLs) in Canadian courts is a critical symptom of a systemic access to justice crisis. This paper examines the primary drivers of self-representation namely, the lack of affordable legal services and restrictive legal aid eligibility and the consequences for both judicial administration and substantive justice. Utilizing a review of scholarly literature, government reports, and judicial commentary, this research argues that the proliferation of SRLs is not merely a personal choice but a systemic failure that creates significant operational inefficiencies, including court delays and increased administrative burdens, while simultaneously compromising the adversarial principle of an equal playing field. The analysis concludes that without significant investment in legal aid, procedural simplification, and integrated legal services, the Canadian justice system risks undermining its foundational principles of fairness, efficiency, and accessibility.

## Introduction

The principle that justice must be accessible to all is a cornerstone of the Canadian legal system. However, this principle is increasingly at odds with the reality faced by a growing segment of the population: self-represented litigants (SRLs). SRLs are individuals who navigate formal legal proceedings without representation by a qualified lawyer. Their rising prevalence is not an isolated phenomenon but a direct consequence of two converging systemic issues: the high cost of legal services and the increasing complexity of substantive law and procedure, coupled with a legal aid system that fails to bridge the resulting gap (Canadian Bar Association (CBA), 2022).

This paper posits that the SRL crisis creates a negative feedback loop that undermines both the efficiency of the courts and the integrity of substantive outcomes. The inability of individuals to secure legal representation leads to procedural delays and increased demands on judicial resources, which in turn slows the system for all users, further exacerbating the cost and delay that initially created the problem. Moreover, the presence of an SRL in an adversarial process, particularly against a represented opponent, challenges the core tenet of equality before the law.

This research will first analyze the root causes of self-representation, focusing on the affordability of legal services and the inadequacies of the current legal aid model. It will then assess the dual impact of SRLs on the justice system: the operational strain on court efficiency and the fundamental challenge to procedural fairness. Finally, the paper will explore potential multi-faceted solutions aimed at addressing this systemic crisis.

## The Drivers of Self-Representation: Affordability and a Failing Safety Net

The decision to self-represent is rarely a positive preference but is most often a necessity forced by financial and structural constraints.

### The Affordability Gap

The cost of legal services in Canada has risen significantly, placing private legal representation out of reach for middle-income earners. As the CBA (2022) notes, individuals who do not qualify for legal aid but cannot afford market-rate legal fees are often referred to as the "disappearing middle," who are left with no viable option but to represent themselves. A complex legal dispute can easily require tens of thousands of dollars in legal fees, an insurmountable barrier for many families (Federation of Law Societies of Canada, 2020).

### The Legal Aid Shortfall

Legal aid in Canada is primarily designed to assist the most economically marginalized individuals, typically in serious criminal and limited family law matters. Eligibility thresholds are set well below the poverty line in most jurisdictions, excluding a vast portion of the population who are, for all practical purposes, indigent in the context of legal expenses (Hutchinson, 2019). Furthermore, legal aid plans are chronically underfunded, leading to restrictive scope-of-service policies that may not cover the full breadth of a legal proceeding, leaving even eligible clients to navigate parts of their case alone (Action Committee on Access to Justice in Civil and Family Matters, 2022).

## Systemic Impacts: Court Efficiency and Procedural Fairness

The influx of SRLs has profound implications for the administration of justice, impacting both the system's operational efficiency and its foundational commitment to fairness.

### Operational Strain and Court Delays

SRLs, who are unfamiliar with court rules, procedures, and the law of evidence, inevitably require more time and guidance from judges, court clerks, and registry staff. Judges, in an effort to ensure a fair hearing, must often assume a more inquisitorial role, explain procedures and ensure the SRL understands the process (Macfarlane, 2022). This "judicial coaching" is time-consuming and diverts the court from its traditional adjudicative function. Studies have shown that cases involving SRLs take longer to resolve, contributing directly to the court backlogs that plague many

jurisdictions (Canadian Forum on Civil Justice (CFCJ), 2018). This creates a paradox where the system's attempt to be fair to one litigant slows down justice for all others.

### The Compromised Adversarial System

The Canadian justice system is predicated on an adversarial model, where two legally represented parties present their best case before an impartial judge. The presence of an SRL disrupts this equilibrium. An unrepresented party is less likely to file proper pleadings, understand disclosure obligations, or object to inadmissible evidence, leading to an uneven presentation of the case (Macfarlane, 2022). This imbalance places the judge in a difficult position, torn between maintaining neutrality and intervening to prevent a miscarriage of justice. The result is often a hearing that fails to properly test the evidence and legal arguments, potentially leading to unjust outcomes regardless of the substantive merits of the case (Hutchinson, 2019). This undermines public confidence in the rule of law and the perception that the system is just.

## Discussion and Proposed Solutions

Addressing the SRL crisis requires moving beyond stopgap measures and implementing a coordinated strategy that targets its root causes.

First, **reforming and reinvesting in legal aid** is paramount. This includes raising financial eligibility thresholds to reflect a realistic cost of living and expanding the types of cases covered, particularly in areas of critical need such as family, housing, and immigration law (CBA, 2022).

Second, **procedural and substantive simplification** can make the system more navigable. This involves developing plain-language court forms, creating specialized streamlined procedures for certain case types, and promoting the use of alternative dispute resolution mechanisms that are less formal and more accessible (Action Committee, 2022).

Third, **integrating a range of legal services** is crucial. This "continuum of services" model recognizes that not every problem requires a full-service lawyer. It includes funding for legal advice clinics, pro bono services, and trained non-lawyer navigators who can provide limited, targeted assistance to SRLs (CFCJ, 2018). The embrace of technological solutions, such as online dispute resolution platforms, also holds promise for simplifying certain legal processes.

## Conclusion

The growing phenomenon of self-represented litigants is a clear indicator of a deep and systemic failure in Canada's access to justice framework. It is a problem born from economic disparity and institutional inadequacy, and its effects reverberate throughout the entire judicial system. The challenges SRLs pose to court efficiency and procedural fairness are not their fault, but rather a symptom of a system that has become too complex and expensive for its intended users. To break the negative feedback loop, a fundamental rethinking is required. Sustained investment in legal aid, a commitment to simplifying court processes, and the innovative deployment of a range of

legal services are not merely policy options but necessary steps to uphold the promise of equal justice for all. The integrity of the Canadian legal system depends on its ability to adapt and ensure it is truly accessible to everyone, not just those who can afford it.

## References

Action Committee on Access to Justice in Civil and Family Matters. (2022). *Access to Civil & Family Justice: A Roadmap for Change*. Department of Justice Canada. https://www.justice.gc.ca/eng/rp-pr/other-autre/roadmap-fiche/index.html

Canadian Bar Association. (2022). *Reaching Equal Justice Report: An Invitation to Envision and Act*. https://www.cba.org/Publications-Resources/Resource/Reaching-Equal-Justice

Canadian Forum on Civil Justice. (2018). *The Cost of Justice: Weighing the Costs of Fairer and Faster Access to Justice*. Osgoode Hall Law School. https://www.cfcj-fcjc.org/cost-of-justice

Federation of Law Societies of Canada. (2020). *Model Code of Professional Conduct*. https://flsc.ca/wp-content/uploads/2020/10/Model-Code-October-2020-Final-Eng.pdf

Hutchinson, A. (2019). *The self-represented litigant: A challenge for justice. *Dalhousie Law Journal*, 42(2), 451-478.

Macfarlane, J. (2022). *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (Final Report). https://representingyourselfcanada.com/wp-content/uploads/2022/05/NSRLP-Final-Report-2022.pdf

# THE PRE-TRIAL PUNISHMENT: A CRITICAL ANALYSIS OF BAIL DENIAL, PROCEDURAL DELAY, AND CARCERAL CONDITIONS

1. Malik Shahid Jamil (Advocate) Malik Law Associates, Dist. Courts, Faisalabad, Pakistan
2. Munir Ahmed Dar (Advocate), Darwin's Law Office, Toronto ON. Canada M4L 3B7

- DOI: https://doi.org/10.5281/zenodo.17451287
- ORCID ID: https://orcid.org/0009-0007-1445-4176
- Google Scholar: https://scholar.google.ca/citations?user=7qq7WEkAAAAJ&hl=en
- ResearchGate ID: https://www.researchgate.net/profile/Munir-Dar-3?ev=hdr_xprf
- Clarivate Web of Science Researcher ID: OHV-2983-2025
- Academia.edu Scholar: https://yorku.academia.edu/munirdar

**Keywords:** Pre-trial detention, bail reform, presumption of innocence, prison conditions, criminal justice, human rights, Section 11(e) of the Charter, administrative delay.

**Abstract:** The principle of "innocent until proven guilty" is a cornerstone of democratic justice systems, theoretically safeguarded by the right to reasonable bail. However, contemporary practices in many jurisdictions, including Canada, reveal a system of pre-trial detention that often functions as a form of punitive social control before any adjudication of guilt. This paper argues that the convergence of three systemic failures the expansive use of pre-trial detention, violations of the right to a timely bail hearing, and the inhumane conditions of detention facilities fundamentally undermines the presumption of innocence and violates domestic and international human rights standards. Through a review of legal scholarship, judicial decisions, and correctional reports, this research demonstrates that these factors collectively create a reality where pre-trial detention becomes a punishment in itself, disproportionately impacting marginalized populations and eroding the integrity of the criminal justice process.

## Introduction

The legal maxim "innocent until proven guilty" is not merely a procedural formality but a foundational pillar of justice in democratic societies. Its most critical practical application is the right to not be denied reasonable bail without just cause, a right enshrined in Section 11(e) of the *Canadian Charter of Rights and Freedoms*. The purpose of bail is to ensure an accused person's attendance in court while not jeopardizing public safety, not to punish individuals before their guilt has been established. Despite this legal and philosophical foundation, pre-trial detention has become a default outcome for a significant and growing segment of the accused population. This paper contends that the modern bail system is in a state of crisis, characterized by a trifecta of interrelated injustices. First, an increasingly risk-averse judiciary and restrictive legislative amendments have led to a high proportion of individuals being denied bail. Second, systemic delays frequently violate the right to a timely bail hearing, prolonging incarceration for administrative reasons. Third, those who are detained are often subjected to overcrowded, violent, and inhumane conditions in pre-trial facilities. This analysis will explore each of these failures, arguing that their cumulative effect is the de facto punishment of un-convicted individuals, a practice that contravenes fundamental rights and exacerbates social inequality.

## The Expanding Net of Pre-Trial Detention

The over-reliance on pre-trial detention is the primary driver of the crisis. This trend is fueled by a combination of judicial culture, public pressure, and legislative action.

## A Culture of Risk Aversion

The legal test for bail balances the "primary" grounds (ensuring court attendance), the "secondary" grounds (public safety), and the "tertiary" grounds (maintaining public confidence in the administration of justice). In practice, however, the tertiary ground, in particular, has become a catch-all justification for detention in cases involving serious offences, where media attention and public outcry can exert indirect pressure on the courts (Myers, 2017). Fears of being responsible for a high-profile re-offence have contributed to a conservative, risk-averse approach among many justices of the peace and judges, leading to a preference for detention over calculated release (Webster & Doob, 2018).

## The Impact of Legislative "Tough-on-Crime" Policies

Legislative changes have further narrowed the path to release. Reverse-onus provisions, which shift the burden from the Crown to the accused to demonstrate why they should be released, have expanded in scope. For example, amendments to the *Criminal Code* have created reverse-onus provisions for a wider range of offences, including those involving firearms and intimate partner violence (Government of Canada, 2019). This legal hurdle is often insurmountable for accused persons with limited resources, leading to their automatic detention even in cases where release might otherwise be warranted.

## Systemic Delay and the Violation of Timely Hearings

The right to a bail hearing is meaningless if it is not prompt. Section 11(e) of the Charter implicitly guarantees the right to a hearing within a reasonable time, a principle reinforced by Section 9's protection against arbitrary detention.

## Administrative and Resource Bottlenecks

In practice, accused persons are frequently held for days or even weeks before their bail hearing. These delays are not due to the merits of their case but to systemic inefficiencies: a lack of duty counsel, backlogged courts, and the logistical challenges of coordinating Crowns, defence, and sureties (Canadian Civil Liberties Association (CCLA), 2022). For every day of delay, the accused, who is legally innocent, suffers a deprivation of liberty. As noted in *R. v. Antic* (2017), "delay causes hardship... and undermines public confidence in the administration of justice" (para. 67).

## The Coercive Effect of Delay

Prolonged detention before a hearing creates immense pressure on accused persons to forgo their right to a bail hearing altogether. Faced with the prospect of waiting in jail for a contested hearing, many individuals feel compelled to plead guilty in exchange for an immediate release for time served (Kellough & Wortley, 2002). This dynamic subverts the adversarial process and coerces pleas from potentially innocent individuals, fundamentally corrupting the pursuit of justice.

### The Inhumane Reality of Pre-Trial Detention Facilities

The conditions of pre-trial detention constitute the third pillar of this punitive system. Detention centres are often more oppressive and dangerous than sentenced facilities, despite housing a population that has not been convicted.

### Overcrowding and Violence

Pre-trial facilities are chronically overcrowded, leading to heightened tensions, increased violence between inmates, and excessive use of force by staff (Office of the Correctional Investigator, 2021). Inmates are often locked in their cells for 23 hours a day with limited access to programming, recreation, or fresh air. The inherent stress and idleness exacerbate mental health issues and create a environment of fear and instability (Sapers, 2018).

### Lack of Services and the Presumption of Innocence

Theoretically, pre-trial detainees should have greater access to legal resources and visits to assist in their defence than sentenced prisoners. In reality, limited phone access, restrictive visiting policies, and inadequate legal libraries severely impede their ability to prepare for trial (CCLA, 2022). This practical obstruction of the right to make full answer and defence further punishes individuals for their pre-conviction status and undermines the fairness of any subsequent trial.

## Discussion and Conclusion

The intersection of restrictive bail laws, procedural delays, and carceral brutality has created a system where the pre-trial phase operates as a shadow punishment. This system disproportionately ensnares the poor, racialized minorities, and those with mental health and addiction issues, who are less likely to have resources for sureties or private counsel and more likely to be perceived as "risky" by the courts (Ontario Human Rights Commission, 2023). The consequences are dire: loss of employment, housing, and family ties, and an increased likelihood of an eventual conviction and sentence.

To realign the bail system with its constitutional purpose, a multi-pronged reform agenda is essential. This includes:

1. **Legislative and Judicial Reform:** Reversing reverse-onus provisions and encouraging courts to use the "least onerous" form of release, as mandated by the Supreme Court in *R. v. Antic* (2017).

2. **Investment in Alternatives:** Significantly expanding and funding robust bail supervision programs and community-based supports that can effectively manage accused persons in the community.

3. **Addressing Conditions of Confinement:** Implementing binding standards to reduce overcrowding and improve conditions in pre-trial facilities, recognizing that the state's duty of care is heightened for un-convicted individuals.

In conclusion, the current state of bail and pre-trial detention represents a profound failure of the justice system. It punishes poverty, presumes guilt, and subjects legally innocent people to degrading and harmful conditions. Upholding the presumption of innocence requires more than rhetorical commitment; it demands a fundamental restructuring of pre-trial processes to ensure that liberty, not detention, is the default.

## References

Canadian Civil Liberties Association. (2022). *Set up to fail: Bail and the revolving door of pre-trial detention*. https://ccla.org/set-up-to-fail-bail-and-the-revolving-door-of-pre-trial-detention/

Government of Canada. (2019). *An Act to amend the Criminal Code (justice for victims of terrorism and bail reform)*. S.C. 2019, c. 13. https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2019_13/

Kellough, G., & Wortley, S. (2002). Remand for plea: Bail decisions and plea bargaining as commensurate decisions. *The British Journal of Criminology*, 42(1), 186–210. https://doi.org/10.1093/bjc/42.1.186

Myers, N. M. (2017). *Deciding and managing risk: The social organization of bail decisions*. University of British Columbia Press.

Office of the Correctional Investigator. (2021). Annual report 2020-2021. https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20202021-eng.aspx

Ontario Human Rights Commission. (2023). *A disproportionate impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*. http://www.ohrc.on.ca

*R. v. Antic*, [2017] 1 SCR 509, 2017 SCC 27.

Sapers, H. (2018). *A roadmap to strengthening public safety: Report of the Independent Advisor on Corrections Reform*. Ministry of Community Safety and Correctional Services, Ontario. https://www.mcscs.just.gov.on.ca/english/Publications/IAReport2018.html

Webster, C. M., & Doob, A. N. (2018). Penal reform and the price of being tough. In *Criminal justice in Canada: A reader* (5th ed., pp. 52-71). Nelson Education.

# CLIMATE CHANGE, FLOOD CATASTROPHE AND THE PAKISTAN LAW
## *(A Case Study of the 2022 Pakistan Floods)*

1. Ali Nejat (Advocate) Toronto, Ontario, Canada M4L 3B7
2. Munir Ahmed Dar (Advocate) Darwin's Law Office, Toronto ON. Canada M4L 3B7

- DOI: https://doi.org/10.5281/zenodo.17451341
- ORCID ID: https://orcid.org/0009-0007-1445-4176
- Google Scholar: https://scholar.google.ca/citations?user=7qq7WEkAAAAJ&hl=en
- ResearchGate ID: https://www.researchgate.net/profile/Munir-Dar-3?ev=hdr_xprf
- Clarivate Web of Science Researcher ID: OHV-2983-2025
- Academia.edu Scholar: https://yorku.academia.edu/munirdar

**Keywords:** Pakistan, year 2022 Floods, Climate Injustice, Legal and Governance Failures.

**Abstract:** The year 2022 Pakistan floods serve as a critical case study demonstrating the catastrophic interplay between global climate change and systemic legal and governance failures. Scientifically, the disaster is linked to the Clausius-Clapeyron relationship, which amplified extreme rainfall, exacerbated by unprecedented glacial melt that overwhelmed river systems. Legally, the catastrophe exposes profound deficiencies at three levels. International climate finance remains structurally inadequate to deliver timely relief for Loss and Damage (L&D), domestic governance failed through the decade-long non-implementation of key flood protection policies; and transboundary water agreements, like the Indus Waters Treaty (IWT), are ill-equipped to manage climate-altered river flows. Crucially, the landmark judicial precedent set by Asghar Leghari v. Federation of Pakistan highlights the domestic legal duty of the state to protect fundamental human rights from climate impacts, providing a powerful template for compelling governmental action. The analysis concludes that realizing climate justice requires a paradigm shift: leveraging domestic courts to enforce policy, adapting the IWT for climate resilience, and ensuring the Loss and Damage Fund becomes a functionally effective, grant-based mechanism. The floods ultimately underscore that institutional fragility, not just atmospheric physics, is the key variable in transforming extreme weather into humanitarian crises.

## I. INTRODUCTION

The year 2022 Pakistan floods were not merely a natural disaster of historic proportions but a profound manifestation of the complex legal and governance challenges inherent in a warming climate. This report presents a comprehensive legal analysis, demonstrating that the catastrophe arose from a critical confluence of global climate change mechanisms, international legal insufficiencies, and pervasive domestic governance failures. The report establishes a direct link between the physical drivers of the floods including amplified atmospheric moisture and glacial melt and a series of legal and institutional fragilities.

At the international level, the disaster exposes the inadequacies of current climate finance and the legal vacuum surrounding climate-induced displacement. While the principle of "loss and damage" has achieved conceptual recognition and an associated fund has been established, the financial and procedural mechanisms remain insufficient to provide timely and accessible relief for the most vulnerable nations. Domestically, Pakistan's institutional framework for disaster management, despite its legal mandate, proved ineffective, a failure forewarned by prior judicial rulings.

The landmark case of *Asghar Leghari v. Federation of Pakistan (2015)* stands as a testament to the judiciary's role in compelling governmental action, a precedent that highlights the profound legal duty of states to protect their citizens from climate impacts. Furthermore, the event underscores the growing legal and hydrological pressures on transboundary water agreements, such as the Indus Waters Treaty, which are increasingly challenged by climate-induced changes in river flow and a lack of cooperative flood management protocols. In its totality, the analysis demonstrates that while climate change provided the physical force, it was the human-made legal and institutional fragilities that transformed an extreme weather event into a humanitarian catastrophe, making a compelling case for a paradigm shift toward proactive, rights-based climate justice.

## II. GLOBAL FLOOD DYNAMICS IN A WARMING CLIMATE

The scientific foundation for linking global warming to extreme flood events is rooted in fundamental principles of atmospheric physics. The Clausius-Clapeyron (CC) relationship is a central tenet in this area, stating that the moisture-holding capacity of the atmosphere increases at a rate of approximately 7% per degree Celsius of warming. This physical relationship implies that as global temperatures rise, the atmosphere becomes capable of holding significantly more water vapor, which can then be released in the form of heavy rainfall events. Recent studies on high percentile precipitation intensities confirm this scaling, indicating that these events do indeed increase with temperature in a manner roughly proportional to the CC-scaling.

This intensification of rainfall is often a result of local convective clouds aggregating into larger, more organized cloud clusters. When these organized systems remain stationary over a particular location for an extended period, they can produce exceptionally large amounts of rainfall, dramatically increasing the risk of severe flooding. While local factors such as terrain, hydrological basin size, and synoptic conditions play a role, the influence of a change in temperature on these convective systems and the resulting precipitation is well-established in scientific literature. The physical evidence thus provides a direct causal pathway from rising global temperatures to the heightened frequency and intensity of extreme rainfall events that drive catastrophic floods. The Specific Mechanisms of the 2022 Pakistan Floods

The year 2022 Pakistan floods provide a harrowing case study of these global climate dynamics at a regional scale. The disaster was directly attributed to unusually heavy monsoon rains, which in July and August were nearly double the normal amount nationwide. In the provinces of Balochistan

and Sindh, rainfall totals were an astonishing 4.5 times higher than normal. This torrential downpour was "supercharged" by the development of two atmospheric rivers that funneled an immense amount of moisture into Pakistan's river basins. The country's natural drainage system and saturated flood basins were unable to cope with the sheer volume of water, leading to the unprecedented inundation.

A critical amplifying factor in this catastrophe was the role of glacial melt. Prior to the onset of the monsoon season, Pakistan experienced a period of record-high temperatures, with some areas topping 50°C (122°F). This extreme heat caused more meltwater than usual to enter the Indus River and its tributaries, which were already overflowing. As a result, the river systems were "primed," or pre-loaded, with a massive volume of water even before the monsoon rains began. This sequence where a global warming trend (manifested via the Clausius-Clapeyron effect) fuels a specific weather event (atmospheric rivers), which then converges with a local priming condition (heatwave-driven glacial melt) to overwhelm already fragile systems demonstrates a complex yet discernible chain of amplification. The culmination of these factors was not merely a severe flood but a disaster of unparalleled scale that submerged approximately one-third of the country. This scientifically based causal chain provides a robust foundation for the legal arguments related to attribution and accountability.

## III. THE HUMANITARIAN AND ECONOMIC CATASTROPHE: A CASE FOR LEGAL REDRESS

The physical drivers of the 2022 floods unleashed a humanitarian and economic catastrophe of staggering proportions. The disaster affected more than 33 million people, killed over 1,700, and displaced an estimated 8 million people from their homes. The World Bank's Post-Disaster Needs Assessment (PDNA) estimated total damages at USD 14.9 billion and economic losses at USD 15.2 billion, with reconstruction needs exceeding USD 16.3 billion. The sectors hit hardest were housing, agriculture, and transport, with over 2 million homes damaged or destroyed and 5.4 million acres of crops ruined.

The devastation was disproportionately felt by the poorest and most vulnerable communities, who had the least capacity to cope and recover. The floods were projected to increase the national poverty rate by 3.7 to 4.0 percentage points, potentially pushing between 8.4 and 9.1 million more people below the poverty line. The disaster also triggered a severe public health crisis, with a fourfold increase in malaria cases from the previous year, highlighting the devastating secondary impacts of the floodwaters. The economic devastation, including a projected 2.2% loss in gross domestic product (GDP), will have lasting impacts on lives and livelihoods.

A deeper examination of this dynamic reveals a vicious, self-reinforcing cycle of vulnerability and loss. The most exposed communities often live in fragile homes and lack the financial savings to prepare for or recover from such an event. When a disaster strikes, it does not just cause immediate damage; it wipes out the very assets and livelihoods (such as crops and livestock) that people rely

on for survival. This renders them even more susceptible to the next climate-related shock, of which there is a heightened risk due to the growing frequency of extreme weather events. This cycle is particularly pronounced in a country like Pakistan, which is ranked among the ten most vulnerable to climate change despite contributing less than one percent to global carbon emissions. This profound inequity between historical responsibility and present-day suffering forms the ethical and legal basis for a new approach to international justice and accountability.

## IV. INTERNATIONAL LEGAL AND GOVERNANCE FRAMEWORKS

### The Evolving Landscape of International Climate Law

The 2022 Pakistan floods occurred within an international legal framework still grappling with the concept of liability and compensation for climate impacts. Mitigation—addressing the causes of climate change by reducing emissions and adaptation adjusting to its unavoidable impacts are the two pillars of the UN climate regime. However, even with effective mitigation and adaptation, a "locked-in" level of warming is already causing unavoidable negative impacts, giving rise to the legal and diplomatic concept of "loss and damage" (L&D).

The term was formally recognized at the 19th Conference of the Parties (COP19) in 2013 with the establishment of the Warsaw International Mechanism for Loss and Damage. Article 8 of the Paris Agreement, adopted in 2015, further solidified the importance of addressing L&D, although it explicitly states that it "does not involve or provide a basis for any liability or compensation". This deliberate exclusion of liability and compensation remains a point of contention, particularly for vulnerable developing countries.

### The principle of "Loss and Damage" and the Global Fund

Following years of intense negotiations, a significant step was taken at COP27 in 2022 with the agreement to establish a fund to compensate vulnerable nations for climate-induced disasters. This was operationalized at COP28 with the launch of the Loss and Damage Fund, which will be hosted by the World Bank for an interim period. However, a critical gap exists between the legal recognition of the fund and its functional implementation. Financial commitments at COP29 remained well below the estimated USD 400 billion needed annually.

This reveals a deep-seated chasm in international climate law. The international community has achieved a symbolic and conceptual legal victory by establishing the fund, but it has not yet created a functionally effective instrument for providing a rapid, grant-based financial response. The decision to appoint the World Bank as host has drawn criticism from developing countries and civil society, citing concerns over its potential reliance on loans over grants and a lack of a climate aligned organizational culture. The experience of other climate funds, such as the Green Climate Fund (GCF), has shown that complex bureaucratic and fiduciary standards can create a significant burden of proof and lead to protracted accreditation processes that disproportionately disadvantage the most vulnerable countries. The legal precarity of this arrangement means that while a

mechanism for L&D exists on paper, its ineffectiveness in practice undermines the very purpose it was created to serve.

### International Climate Litigation: Precedents and Principles

Parallel to international negotiations, a growing body of climate change litigation is seeking to hold states and corporations accountable for their contributions to the climate crisis. This area of law, which often employs attribution science to link anthropogenic warming to specific extreme events, is increasingly central to claims against governments for their failure to regulate emissions or adapt to foreseeable impacts. Landmark cases like *Urgenda v. The Netherlands (2019)* and *Verein Klima Senior innen Schweiz v. Switzerland (2024)*, where the European Court of Human Rights ruled that state inaction violated human rights, have established powerful legal precedents.

This litigation is evolving from a tort-based model focused on private damages to a public law, human rights-based model focused on governmental obligation and constitutional duty. This evolution underscores a strategic shift: rather than merely seeking compensation, legal challenges are compelling government action and ensuring that domestic policies are meaningfully implemented. In this regard, the judiciary is emerging as a critical check on executive and legislative inertia, with courts actively shaping and enforcing governmental duties to protect citizens from climate harms.

### The Legal Status of Climate-Induced Displacement

The 2022 Pakistan floods displaced millions of people, yet the legal framework for "climate migrants" remains a significant and complex challenge. Neither the United States nor international law provides a universally accepted definition of climate migrants, and existing legal frameworks, such as the Refugee Convention, are ill-suited to address displacement caused by environmental factors rather than persecution.

While the International Court of Justice (ICJ) has taken a step forward by recognizing the principle of non-refoulement the obligation of states not to return individuals to situations of real risk of irreparable harm its advisory opinion on climate change devoted little attention to the issue of displacement and did not provide comprehensive legal guidance on concrete protection mechanisms, such as temporary visas. This creates a massive legal and humanitarian challenge for countries like Pakistan, where millions of people, now internally displaced, face an uncertain future and a potential inability to return to their homes or livelihoods.

## V. NATIONAL LEGAL AND INSTITUTIONAL RESPONSES IN PAKISTAN

### Pakistan's Domestic Framework for Climate Action and Disaster Management

In the wake of the devastating year 2010 floods, Pakistan enacted a multi-tiered legal and institutional framework for disaster management. This includes the National Disaster Management Act of 2010 which established the National Disaster Management Commission (NDMC) and its provincial and district counterparts. The country also developed a National Climate Change Policy in year 2012, which was designed to mainstream climate change into key sectors and focus on adaptation measures, recognizing Pakistan's high vulnerability to extreme events.

This framework was intended to shift Pakistan's approach from a reactive, response-oriented system to a proactive one focused on disaster risk reduction (DRR). The policies provided a comprehensive plan for building climate resilience, including measures to improve water security, protect agriculture, and enhance early warning systems.

**Institutional Incoherence and Implementation Failures**

Despite the existence of a robust legal and institutional framework, the year 2022 floods revealed a profound governance deficit. The multi-tiered system suffered from a lack of coordination, clear mandates, and adequate resources. A particularly damning example of this implementation failure is the National Flood Protection Plan-IV (NFPP-IV), which was conceived after the 2010 floods to mitigate future risks. The plan, with an estimated cost of Rs. 332.246 billion, had yet to be started by 2018-19 due to bureaucratic delays and financial constraints, with the project's umbrella PC-I (project concept) still awaiting clearance. This failure to implement structural and non-structural flood protection measures exposed the country's fragile physical infrastructure and left it acutely vulnerable to the year 2022 deluge.

**The Leghari Precedent as a Legal Check on Governance Failure**

This pattern of governmental "lethargy and delay" in implementing climate policy was directly challenged in the landmark year 2015 case of *Asghar Leghari v. Federation of Pakistan (*.2015). A Pakistani farmer sued the government, arguing that its inaction violated his fundamental constitutional rights to life and dignity. The Lahore High Court made history by agreeing with the petitioner, ruling that the government’s failure to implement its own climate policy "offended the fundamental rights of the citizens".

This ruling is not merely a legal victory but a powerful institutional check on governance failure. The court's decision established the principle of "climate justice," linking a state's legal duty to protect fundamental human rights with its obligation to take meaningful action on climate change. As part of its ruling, the court created a Climate Change Commission and a Standing Committee to oversee the government's progress and ensure the effective implementation of its climate policies

The Leghari case demonstrates a powerful and innovative use of domestic law to bridge the gap between policy formulation and policy implementation, a model with profound implications for other vulnerable nations seeking to compel their governments to act.

## VI. TRANSBOUNDARY WATER MANAGEMENT: THE LEGAL AND HYDROLOGICAL CHALLENGE TO THE INDUS WATERS TREATY

### The Indus Waters Treaty (IWT): A Framework Under Pressure

The Indus Waters Treaty (IWT) of year 1960, a water-sharing agreement between India and Pakistan brokered by the World Bank, has long been hailed as a model of successful hydro diplomacy, having endured three wars and numerous political crises. The treaty allocates control of the eastern rivers (Ravi, Beas, and Sutlej) to India and the western rivers (Indus, Jhelum, and Chenab) to Pakistan. It also established the Permanent Indus Commission to address implementation questions and a dispute resolution mechanism involving a neutral expert and a court of arbitration.

However, the treaty's foundational assumptions are being profoundly challenged by a warming climate. Research indicates that the Indus basin is being affected unevenly, with different tributaries experiencing dramatically different rates of glacial melt. The rivers allocated to India are projected to see peak discharge earlier (by year 2030) than those allocated to Pakistan (by year 2070), altering the historically stable flow patterns upon which the treaty was based. This creates immense legal and hydrological pressure, as the existing framework lacks a formal mechanism to address these climate-driven changes in flow.

### Geopolitical Tensions and Legal Disputes

Climate-induced hydrological shifts are compounded by persistent geopolitical tensions. Recent years have seen a number of legal and diplomatic disputes, including Pakistan's objections to India's Kishanganga and Ratle hydroelectric projects. In a significant escalation, India suspended the treaty in year 2025 following a terror attack, though a Permanent Court of Arbitration (PCA) ruling in June 2025 reaffirmed its authority and stated that the treaty does not provide for unilateral abeyance.

The PCA's ruling served as a powerful legal and political signal that established international treaties hold even when bilateral relations are strained. It underscored the legal resilience of the IWT. However, the larger challenge remains unaddressed: the IWT, designed for a stable climate, lacks the necessary provisions for cooperative flood-release management and joint basin monitoring in a world of altered and unpredictable river flows. The treaty’s continued relevance depends on the willingness of both parties to move beyond political rhetoric and adapt its framework to the new hydrological realities imposed by climate change.

## VII. LEGAL AND POLICY RECOMMENDATIONS FOR CLIMATE RESILIENCE

Based on the preceding analysis, the following legal and policy recommendations are presented to strengthen Pakistan's resilience to future climate-induced flood disasters.

### Strengthening Domestic Governance and Enforcement

The year 2022 floods were a direct consequence of the failure to operationalize existing laws and policies. The government must immediately overcome the bureaucratic and financial hurdles that have delayed the implementation of the National Flood Protection Plan-IV (NFPP-IV) for over a decade

An important recommendation is to leverage the legal precedent of the Leghari case by establishing a standing judicial or quasi-judicial body to monitor the progress of climate and disaster management policies, thereby ensuring accountability and compelling the executive to act on its legal duties. The National Disaster Management Authority (NDMA) and its provincial counterparts must also be reformed to improve coordination, clarify mandates, and ensure adequate resource allocation, which would enhance the effectiveness of early warning systems and disaster response efforts

### Enhancing Transboundary Water Cooperation

The legal framework for transboundary water management needs to be adapted to the new climate reality. India and Pakistan should establish a formal, climate-focused dialogue within the Permanent Indus Commission to address altered flow patterns, coordinate flood-release management from upstream dams, and conduct joint basin monitoring. Such a collaborative approach would reinforce the IWT as a form of "climate-era infrastructure," providing a stable and cooperative mechanism for managing shared water resources in an increasingly unpredictable world.

### Advancing Climate Justice Through Law

Pakistan should continue its leadership role in advocating for a robust, grant-based, and accessible Loss and Damage Fund at the international level. Domestically, the judiciary should continue its pioneering role, as seen in the

Leghari case, by creating legal precedents that link governmental inaction on climate change to human rights violations, thereby compelling a proactive, rights-based approach to climate policy. Furthermore, new legislation should be developed to protect climate-induced internally displaced persons (IDPs), providing them with legal status, support, and access to humanitarian aid.

## VIII. CONCLUSION

The year 2022 Pakistan floods were a catastrophic event that laid bare the complex interplay of global climate change, international legal inadequacies, and critical domestic governance failures. The analysis presented here has established a clear, scientific connection between the physical mechanisms of a warming climate and the unprecedented scale of the disaster. This physical reality

underscores the urgent need for a legal framework that can provide meaningful accountability and support.

At the international level, while the Loss and Damage Fund represent a significant diplomatic step, its operational limitations and funding shortfalls reveal a profound gap between legal recognition and functional implementation. This forces a reliance on alternative legal avenues, such as climate litigation, which is emerging as a powerful tool for compelling state and corporate action. Domestically, the floods exposed the systemic institutional incoherence and policy implementation failures that have plagued Pakistan for over a decade. Yet, the judiciary, through the landmark Leghari case, has demonstrated a willingness to fill this void, establishing a legal precedent that links governmental inaction to the violation of fundamental human rights. This pioneering approach offers a model for other nations seeking to compel their governments to fulfill their climate-related duties.

The experience of the Indus Waters Treaty further highlights that even the most enduring legal agreements are ill-equipped to manage the systemic and unpredictable changes wrought by a warming climate. This necessitates a paradigm shift from a reactive to a proactive legal and governance posture, both domestically and internationally. The future of climate resilience hinges not just on scientific and technological innovation but on the ability of legal and political systems to evolve, enforce, and adapt to the challenges of a climate-changed world. The case of the year 2022 Pakistan floods stands as a stark reminder that without robust, enforceable, and equitable legal frameworks, extreme weather events will continue to spiral into humanitarian catastrophes, with the most vulnerable bearing the brunt of a crisis they did not create.

## REFERENCES

American Bar Association. (2024, October 15). *Climate migration*. https://www.americanbar.org/groups/crsj/resources/human-rights/2024-october/climatemigration/

British Red Cross. (2022). *Climate change and Pakistan flooding affecting millions*. https://www.redcross.org.uk/stories/disasters-and-emergencies/world/climate-changeand-pakistan-flooding-affecting-millions

Climate Change Laws of the World. (2010). *The National Disaster Management Act 2010*. https://climate-laws.org/document/the-national-disaster-management-act-2010_3c7d

Climate Litigation Explorer. (n.d.). *Leghari v. Pakistan*. https://clxtoolkit.com/casebook/leghariv-pakistan/

Columbia Law School. (2025, July 26). A single paragraph's promise: The ICJ's advisory opinion on climate change and the understated question of human displacement. *Sabin Center for Climate Change Law*. https://blogs.law.columbia.edu/climatechange/2025/07/26/a-single-paragraphs-promisethe-icjs-advisory-opinion-on-climate-change-and-the-understated-question-of-humandisplacement/

The Editors of Encyclopaedia Britannica. (2022). *Indus Waters Treaty*. Britannica.com. https://www.britannica.com/event/Indus-Waters-Treaty

The Editors of Encyclopaedia Britannica. (2022). *Pakistan floods of 2022*. Britannica.com. https://www.britannica.com/event/Pakistan-floods-of-2022

European Centre for Development Policy Management. (2025). *A broken promise? Loss and damage finance. Can Europe help?* https://ecdpm.org/work/broken-promise-loss-anddamage-finance-can-europe-help

Global Water Forum. (2025, September 11). *Weaponizing rivers: The Indus Water Treaty verdict and the limits of power*. https://www.globalwaterforum.org/2025/09/11/weaponizingrivers-the-indus-water-treaty-verdict-and-the-limits-of-power/

Humanitarian Outcomes. (2022). *Floods in Pakistan: Rethinking the humanitarian role*. https://humanitarianoutcomes.org/sites/default/files/publications/pakistan_floods_1122.pdf.

Khan, K. F., & Azhar, S. (2022). Addressing foundational issues for effective flood risk management: A review. *IWA Publishing, Water Policy*, *27*(3), 334-345. https://iwaponline.com/wp/article/27/3/334/107138/Addressing-foundational-issues-foreffective-flood

Meijgaard, C. J., et al. (2019). Addressing foundational issues for effective flood risk management: a review. *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences*, *377*(2153), 20190551. https://doi.org/10.1098/rsta.2019.0551

Ministry of Climate Change, Government of Pakistan. (2012). *National Climate Change Policy*. https://mocc.gov.pk/SiteImage/Policy/NCCP%20Report.pdf

Ministry of Climate Change, Government of Pakistan. (2012). *National Climate Change Policy*. https://www.gcisc.org.pk/National_Climate_Change_Policy_2012.pdf

Ministry of Water Resources, Government of Pakistan. (n.d.). *Brief on National Flood Protection Plan-IV (NFPP-IV)*. https://www.mowr.gov.pk/SiteImage/Misc/files/plan%204.pdf

Moazzam, F. Z. (2025, May 22). Q&A: Pakistan will have to adapt to floods as the new normal. *Dialogue Earth*. https://www.eco-business.com/news/qa-pakistan-will-have-to-adapt-tofloods-as-the-new-normal/

Nayak, J. J., Sreekanth, S. S., Reddy, M. C. R., Thomas, S. P., Rao, T. R., & Rao, M. M. (2020). *Journal of Meteorological Society of Japan*, *98*(6). https://www.jstage.jst.go.jp/article/jmsj/98/6/98_2020-058/_html/-char/en

Pandey, S. & Serdeczny, O. (2024, May 20). *The loss and damage fund must be accessible to those it was set up to serve – the most vulnerable to climate change*. Climate Analytics. https://climateanalytics.org/comment/the-loss-and-damage-fund-must-be-accessible-tothose-it-was-set-up-to-serve-the-most-vulnerable-to-climate-change

Sabin Center for Climate Change Law. (n.d.). *Asghar Leghari v. Federation of Pakistan*. *Climate Case Chart*. https://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-ofpakistan/

Sabin Center for Climate Change Law. (n.d.). *Climate change litigation databases*. https://climatecasechart.com/

Singh, V. (2025, May 19). Climate crisis exposes flaws in Indus pact as some rivers may dry up quicker. *Hindustan Times*. https://www.hindustantimes.com/india-news/climate-crisisexposes-flaws-in-indus-pact-as-some-rivers-may-dry-up-quicker-101746211618179.html

The World Bank. (2022, October 28). *Pakistan: Flood damages and economic losses over USD 30 billion and reconstruction needs over USD 16 billion - new assessment*. https://www.worldbank.org/en/news/press-release/2022/10/28/pakistan-flood-damagesand-economic-losses-over-usd-30-billion-and-reconstruction-needs-over-usd-16-billionnew-assessme

UNEP. (n.d.). *What is Loss & Damage?* https://www.unep.org/topics/climate-action/loss-anddamage/about-loss-and-damage

UNFCCC. (2015). *Decision -/CP.21. Adoption of the Paris Agreement*. https://unfccc.int/files/adaptation/groups_committees/loss_and_damage_executive_committee/application/pdf/ref_8_decision_xcp.21.pdf

Wikipedia. (2025, September 24). *Climate change litigation*. https://en.wikipedia.org/wiki/Climate_change_litigation

Wikipedia. (2025, September 22). *National Disaster Management Act, 2010*. https://en.wikipedia.org/wiki/National_Disaster_Management_Act,_2010 Wikipedia. (2025, September 21). *Indus Waters Treaty*. https://en.wikipedia.org/wiki/Indus_Waters_Treaty

Zahra, I. (2025, May 22). Pakistan's floods expose decades of mismanagement. *The Friday Times*. https://www.thefridaytimes.com/30-Aug-2025/pakistan-s-floods-expose-decadesof-mismanagement

# THE INTEGRATED GLOBAL ANTI-CORRUPTION STRATEGY: CANADA'S ROLE IN ACHIEVING SUBSTANTIAL AND SUSTAINABLE REDUCTION UNDER UNITED NATIONS SUSTAINABLE DEVELOPMENT GOAL 16.5

1. Salam Ahmed (Paralegal). Toronto Ontario Canada M4L 3B7
2. Munir Ahmed Dar (Advocate) Darwin's Law Office, Toronto ON. Canada M4L 3B7

- DOI: https://doi.org/10.5281/zenodo.17451382
- ORCID ID: https://orcid.org/0009-0007-1445-4176
- Google Scholar: https://scholar.google.ca/citations?user=7qq7WEkAAAAJ&hl=en
- ResearchGate ID: https://www.researchgate.net/profile/Munir-Dar-3?ev=hdr_xprf
- Clarivate Web of Science Researcher ID: OHV-2983-2025
- Academia.edu Scholar: https://yorku.academia.edu/munirdar

**Keywords**: SDG 16.5, Integrated Global Anti-Corruption Strategy (GACS), Canada, Ultimate Beneficial Ownership (UBO), Illicit Financial Flows (IFFs), Asset Recovery, UNCAC, Whistleblower Protection, Financial Reward Program, Market-Creating Innovations (MCIs), Freezing Assets of Corrupt Foreign Officials Act (FACFOA).

## Abstract

The global effort to meet United Nations Sustainable Development Goal (SDG) Target 16.5 to substantially reduce corruption and bribery in all their forms has largely stalled since 2015. This stagnation highlights the need for a holistic strategy that integrates international legal mechanisms with domestic action, a process in which high-income countries like Canada must take a leadership role. This paper analyzes the proposed Integrated Global Anti-Corruption Strategy (GACS) through the lens of Canada's contributions and deficiencies, focusing on three critical areas: financial integrity, asset recovery, and incentivized disclosure. While Canada has advanced its legal strategy by committing to a Beneficial Ownership (UBO) registry and strengthening its legal framework for asset recovery (UNCAC, FACFOA), persistent weaknesses in whistleblower protection and the lack of a federal financial reward program compromise its ability to disrupt transnational corruption and meet its global commitments. We argue that Canada's substantial and sustainable contribution to SDG 16.5 requires immediate, comprehensive action to close these gaps, particularly by adopting a robust rewards-based disclosure model and actively leveraging its diplomatic and development finance capacity to support Market-Creating Innovations (MCIs) in victim states.

## I. Introduction: The Imperative for a New Paradigm under SDG 16.5

Corruption is a fundamental obstacle to global progress, impeding economic development and undermining the foundational elements of SDG 16: Peace, Justice, and Strong Institutions. The failure to achieve measurable progress toward Target 16.5 evidenced by the Transparency

International Corruption Perceptions Index (CPI) stagnation necessitates a strategic shift away from fragmented anti-corruption models. The new paradigm, the GACS, demands coordinated action across seven pillars, three of which are fundamentally dependent on the legal and institutional actions of key financial jurisdictions, including Canada: financial integrity, robust enforcement, and incentivized disclosure.

Canada is a signatory to all major international anti-corruption instruments, including the UN Convention Against Corruption (UNCAC) and the OECD Anti-Bribery Convention, making its domestic legal strategy a critical component of global reduction efforts. Its role is two-fold: to ensure its own jurisdiction is not a safe haven for illicit financial flows (IFFs) and to actively support the capacity of victim states to recover stolen assets and build resilience.

## II. Financial Integrity: Canada's UBO Commitment (Pillar I)

The primary concealment method for IFFs is the use of anonymous corporate structures, which appear "almost without exception, at the center of major international cases of corruption." The global standard, driven by the Financial Action Task Force (FATF), mandates public, verified Ultimate Beneficial Ownership (UBO) registers.

Canada has made significant progress in aligning with this standard, committing to implement a public and searchable registry of beneficial owners (Individuals with Significant Control) of federal corporations by the end of (enacted via Bill C-42). This move is essential to fulfilling its global legal strategy, enabling both domestic and foreign law enforcement to trace criminal proceeds.

However, the success of this pillar hinges on two factors critical to Canada's implementation:

1. **Data Verification**: Simply mandating disclosure often results in self-certification, which is easily circumvented. For the registry to be an effective deterrent, Canada must implement robust mechanisms for cross-referencing and verification of data submitted to Corporations Canada.
2. **Provincial Harmonization**: Canada's federal structure complicates the implementation of a unified registry. Substantial global impact requires continued coordination and pressure to ensure all provincial jurisdictions adopt harmonized, publicly accessible registers to prevent criminal actors from exploiting inter-jurisdictional loopholes.

## III. Enforcement and Asset Recovery (Pillar II)

Effective enforcement is critically dependent on maximizing the recovery of stolen public assets, a principle enshrined in UNCAC Chapter V. While asset recovery is complex and slow, developed states like Canada serve as key holding jurisdictions for illicit wealth. Canada's legal strategy for asset recovery includes the Freezing Assets of Corrupt Foreign Officials Act (FACFOA) (SC 1998, c. 34), which allows the government to freeze assets of corrupt foreign officials upon the written assertion of a foreign state, providing a crucial window of up to five years for the requesting

state to pursue formal forfeiture proceedings. Furthermore, Canada is an active partner in international asset recovery networks and provides hands-on technical assistance to requesting states in the drafting and coordination of Mutual Legal Assistance (MLA) requests.

Canada's commitment to SDG 16.4 (strengthen the recovery and return of stolen assets) must prioritize:

- **Bridging the Capacity Gap**: Canada can significantly enhance its global role by increasing its specialized, continuous technical assistance to victim states, focusing on complex financial data analysis and asset tracing, as facilitated by international forums like the Stolen Asset Recovery (SAR) Initiative.
- **Transparent Developmental Return**: Following best practices established by the Addis Process, Canada must ensure that assets returned to victim states are monitored transparently and demonstrably linked to poverty alleviation or social development projects, a key requirement for maximizing the long-term impact on institutional accountability.

## IV. Incentivized Disclosure: Canada's Legislative Deficiency (Pillar IV)

The collective action problem, where the cost of reporting a bribe outweighs the perceived benefit, is a major barrier to high-level enforcement. High-impact disclosure must be incentivized through robust legal protection and financial rewards.

On this critical pillar, Canada's legal strategy is demonstrably weak. While the Public Servants Disclosure Protection Act (PSDPA) offers limited protection for federal employees, it has been widely criticized as ineffective, offering weak reprisal safeguards and lacking a single successful reinstatement case since its enactment. Furthermore, Canada's federal anti-corruption framework lacks a financial reward program for whistleblowers, a mechanism that has proven overwhelming successful in generating high-quality transnational intelligence for U.S. programs, collecting over $37 billion since 2011.

To fulfill its global duty under SDG 16.5, Canada must:

- **Enact a Rewards-Based Model**: Establish a federal whistleblower rewards program, similar to the one implemented by the Ontario Securities Commission (OSC) for provincial securities violations, to incentivize disclosures in transnational corruption cases, including those involving the Corruption of Foreign Public Officials Act (CFPOA).
- **Strengthen Legal Protection**: Overhaul the existing framework to guarantee confidentiality, provide comprehensive remedies for retaliation, and establish an independent oversight body to enforce legal protections, thereby addressing the systemic flaw that currently protects "the corrupt, not the courageous."

## V. Development-Centric Prevention and Technology (Pillars V & III)

A sustainable anti-corruption strategy must address the economic roots of corruption, particularly the scarcity that fuels bribery and rent-seeking. Pillar V requires anti-corruption funding to support Market-Creating Innovations (MCIs) in emerging economies, expanding legitimate economic activity and reducing the motivation for corruption. Canada, through its development assistance and trade agencies (e.g., Global Affairs Canada, CanExport Innovation), has the capacity to strategically integrate MCI support into its foreign policy, leveraging its own innovation funds to support private-sector models that displace corrupt legacy systems.

Simultaneously, Canada's commitment to Technological Enablement (Pillar III) must extend globally, supporting open-data governance models like Ukraine's ProZorro in developing nations, thereby institutionalizing proactive integrity and continuous compliance.

## VI. Conclusion

Canada's role in achieving SDG Target 16.5 is paramount, given its status as a major financial centre and its commitments to international legal instruments. The nation has successfully advanced its legal strategy regarding UBO transparency and asset recovery. However, the Integrated Global Anti-Corruption Strategy highlights two critical and interdependent deficiencies that compromise Canada's global contribution: the weak legal framework for whistleblower protection and the absence of a financial reward program. By urgently closing these gaps, actively leveraging its legal mechanisms for asset recovery, and integrating MCI support into its development finance strategy, Canada can significantly accelerate global progress toward a substantial and sustainable reduction in corruption and bribery in all their forms.

## References

Bill C-42, *An Act to amend the Canada Business Corporations Act and to make consequential amendments to other Acts*. (2023, April18). https://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c42.html

Clement, G. (2025). Canada's whistleblower laws protect the corrupt, not the courageous: Garry Clement for Inside Policy. *Macdonald-Laurier Institute*. https://macdonaldlaurier.ca/mli-library/papers/

Fenergo. (2025). *Canada's Beneficial Ownership Evolution*. Fenergo Resources. https://resources.fenergo.com/

Global Affairs Canada. (2024). *Corruption*. Government of Canada. https://www.international.gc.ca/transparency-transparence/bribery-corruption/2023-2024.aspx?lang=eng

Innovation, Science and Economic Development Canada. (n.d.a). *Strategic Innovation Fund*. Government of Canada. https://ised-isde.canada.ca/site/ised/en/programs-and-initiatives/strategic-response-fund/strategic-innovation-fund

Ontario Securities Commission. (2016, July). *OSC Whistleblower Program*. https://www.osc.ca/en/enforcement/osc-whistleblower-program

Langseth, P. (2002, October). *The Integrated Global Anti-Corruption Strategy: Achieving Substantial and Sustainable Reduction by Following Global Legal Strategy*. Vienna,

World Bank Group. (2013). *Canada Asset Recovery Action Plan Implementation Road Map*. StAR Initiative. https://star.worldbank.org/sites/default/files/2023-05/StAR-brochure-2023-English.pdf

World Bank Group. (2021). *Seeking Asset Recovery from Canada: A Practical Guide*. StAR Initiative. https://star.worldbank.org/sites/default/files/2023-05/StAR-brochure-2023-English.pdf

# CALL LETTER

## SUBJECT: JOIN THE CONVERSATION: A CALL FOR PAPERS FOR THE CANADIAN LEGAL RESEARCH JOURNAL

**Dear Researchers, Scholars and Legal Pioneers**

In an era of unprecedented global challenges from climate crises and digital transformation to shifting geopolitical orders the role of rigorous legal scholarship has never been more critical. The **Canadian Legal Review Journal (CLRJ)** is dedicated to providing a premier platform for the insightful analysis that these complex issues demand. We are now inviting you to contribute to our upcoming volumes and help shape the legal discourse in Canada and beyond.

The CLRJ is a peer-reviewed, open-access publication committed to fostering a dynamic exchange of ideas on both domestic and international legal frontiers. We believe that the most compelling legal insights often emerge at the intersection of theory and practice, and we are eager to publish work that challenges conventions, illuminates emerging trends, and offers innovative solutions.

**We welcome submissions across a broad spectrum of topics, including but not limited to:**

1. Administrative Law, Canadian
2. Canadian Engineering Laws
3. Canadian Human Rights Act
4. Canadian Immigration and Refugee Act
5. Canadian Medical Laws
6. Canadian Jurisprudence
7. Constitutional Law, Canadian
8. Canadian Police Laws
9. Contracts
10. Corporate Law, Securities Regulation, and Insolvency
11. Criminal Justice Reform, Sentencing, and Penology
12. Criminal Law, Canadian
13. Environmental Law, Climate Justice, and Resource Governance
14. Foundations of Canadian Law
15. Global Laws
16. Health Law, Biotech Ethics, and Pandemic Preparedness
17. Indigenous Law and Reconciliation
18. International Human Rights and Humanitarian Law
19. International Trade, Investment, and Arbitration
20. Law Studies, Comparative with a Canadian Focus
21. Professional Responsibility, Canadian
22. Property Law
23. Technology Law, AI Governance, and Digital Rights
24. Torts

25. United Nations Laws

**Why Publish with the CLRJ?**

- **Rigorous Peer Review:** Receive constructive feedback from esteemed experts in your field.
- **Wide Dissemination:** As an open-access journal, your work will be freely available to a global audience of legal practitioners, academics, and policymakers.
- **Rapid Publication Process:** We are committed to an efficient editorial process from submission to publication.
- **Interdisciplinary Dialogue:** We encourage submissions that bridge law with other disciplines such as political science, economics, philosophy, and technology studies.

We invite submissions from established academics, practicing jurists, doctoral candidates, and exceptional graduate students. We are seeking comprehensive articles, shorter commentary pieces, and case notes. CLRJ is a Peer-Reviewed and Open System Journal (OJS) and free of any fee or cost to all contributors.

**Submission Guidelines:**

- Manuscripts should be original, unpublished works.
- For full article submissions, please aim for 6,000-10,000 words (excluding footnotes).
- All citations must conform to the Canadian Guide to Uniform Legal Citation (McGill Guide).
- Please include a 150-word abstract and 5 - 15 keywords.

The deadline for consideration for our next monthly CLRJ issue is October **31, 2025**. Submissions and inquiries should be directed to email at munirdar@clrj.ca or upload to the website www.clrj.ca.

By contributing to the CLRJ, you are not just publishing a paper you are engaging in a vital conversation about the future of law and justice. We look forward to reading your groundbreaking work.

Sincerely,

**The Editorial Board**
Canadian Legal Review Journal (CLRJ)
Website: www.clrj.ca,
Email: munirdar@clrj.ca