

CANADA¹

General Information

Canada has ten provinces: Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan; and three territories: Nunavut, the Northwest Territories and the Yukon. In 2004 Canada's population was 31,946,300.² Per capita income in 2003 was US\$23,930,³ up from US\$20,290 in 1997. The country's GDP increased from US\$714.3 billion in 2002⁴ to US\$834.4 billion in 2003.⁵ In December 2004 the unemployment rate dropped 0.3% to 7%, its lowest level since May 2001.⁶ In terms of religious groups, the largest part of Canada's population is Roman Catholic (46%), 36% are Protestants (36%), with the remaining 18% distributed among other categories. Twenty-eight percent of inhabitants are of British origin, 28% of French and 15% of other European backgrounds. Two percent are Amerindian and 6% are of Asian, African or Arabian descent.

Canada has a federal government system, with both the Government of Canada and the provincial governments empowered to pass new laws. The federal government deals with matters that affect the entire country, such as the Criminal Code, inter-provincial commerce, telecommunications, immigration and extradition, and fisheries. The provinces enact laws in areas such as education, property rights and health services.

The official languages are English and French.

Judicial System Highlights

- Canada's legal system is based on the English common law tradition, except in the Province of Québec, where the civil code is heavily based on the French tradition.
- The Judicial Branch is composed of the Supreme Court, the Federal Court of Appeals, Provincial Court of Appeals, Provincial and Territorial Superior Courts, and Provincial Courts.
- During the 2002-2003 fiscal year the country allocated \$1.2 billion of total public expenditures to the courts nationwide, a 10% increase over the 2000-2001 period.⁷
- Also in 2002-2003 there were 2,068 judges, or 8 per 100,000 inhabitants,⁸ 2,218 prosecutors (7 per 100,000 inhabitants)⁹ and 59,412 police officers (186 per 100,000 inhabitants).¹⁰
- Figures for 2005 indicate that Canada has 38,000 attorneys, or 119 per 100,000 inhabitants.¹¹
- During the 2003-2004 period, the adult criminal courts processed 445,650 cases involving more than one million charges across ten of the country's thirteen provinces and territories (excluding Manitoba, the Northwest Territories and Nunavut). This represents 14,000 fewer cases than the previous year.¹²

- Between 2002 and 2003 the crime rate increased by 6% to 8,132 incidents per 100,000 inhabitants. This was the first substantial increase in over a decade and was the result of an increase in counterfeiting and property crimes.¹³

1. Institutions

The Court System¹⁴

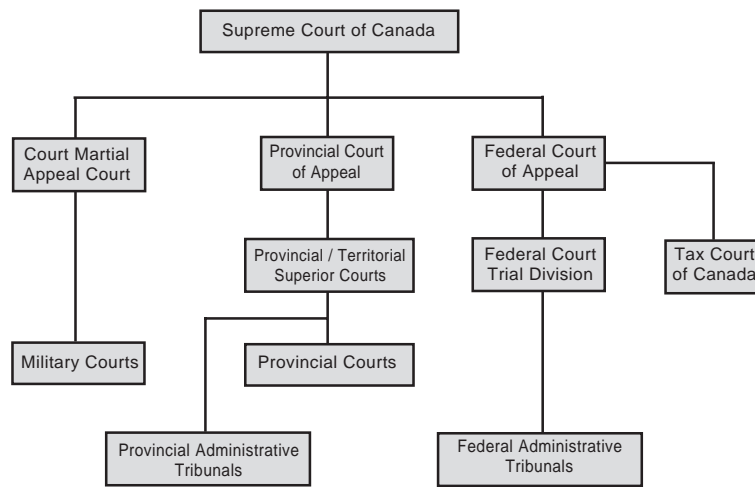
Canada has a complex court system that is composed of the provincial courts, which handle the great majority of cases; superior provincial and territorial courts, which rule on more serious criminal cases and appeals of provincial court judgments; the federal court, which is at the same level but handles different issues; the territorial and provincial courts of appeal and federal court of appeal; and the Supreme Court. During the 2002-2003 fiscal year, the country allocated \$1.2 billion of total public expenditures to the courts nationwide, an increase of 10% over 2000-2001.¹⁵

The following diagram presents the structure of Canada's court system:

Each province and territory has a provincial court and though their names and divisions vary,

¹ This chapter is mainly based on the report submitted to JSCA by Judith Bellis, Director and General Counsel of Judicial Affairs, Courts and Tribunal Policy of the Department of Justice of Canada. Use was also made of the information compiled and presented by Catherine Beer and Jennifer Ferguson and the responses to JSCA's 2003 questionnaire provided by Croft Michaelson, Director of the Strategic Prosecution Policy Section, Federal Prosecution Service, Department of Justice of Canada. Additional sources are cited individually.

Figure 1
Structure of Canada's Court System
 Source: Department of Justice Canada



their role is the same: to hear cases involving federal or provincial laws. These courts deal with most criminal offenses and an array of other, usually less serious or family-oriented issues. Some provincial courts only hear cases on specific types of matters, such as drugs or youth offenders.

Provincial and Territorial Superior Courts have also been established in each area. As mentioned, their structure is essentially the same throughout Canada. These courts try the most serious civil and criminal cases, and most have special divisions, such as family court.

The court system also includes specialized federal courts including the Tax Court of Canada and the military courts.¹⁶

The final level of justice is the Supreme Court, which is the final court of appeal. The Court sits in Ottawa and is composed of a Chief Justice and eight justices. According to the Supreme Court Act, three of the justices must come from Québec. This agency has jurisdiction over disputes in all areas of the law, including the Constitutional Code, the Administrative Code, the Criminal Code and the Civil Code.

Once all other appeals have been exhausted, a case can be presented to the Supreme Court, at which point the Court must grant permission or the right of appeal before hearing the case. Applications for this permission are usually written and are reviewed by three justices who accept or reject the request without explaining the reasons for their decision. Permission to appeal is not routinely approved and is only granted for cases that involve

matters of public importance or those that address important issues of law or a combination of laws and facts, or if the case is sufficiently important to merit this kind of attention.

Though it is independent of other government branches, the Supreme Court plays a special role as advisor to the federal government, which may ask the Court to consider issues involving any legal matter, particularly those that involve interpretation of the Constitution, the interpretation of any provincial or federal legislation, or the powers of Parliament or the provincial legislatures in their respective governments.

Judicial Organizations

Canada has several key judicial organizations that support the work of its justice institutions. These agencies operate separately from the three government branches.

The Office of the Commissioner for Federal Judicial Affairs was established to increase the independence of the judiciary by administering judicial salaries and other forms of remuneration, which had been handled by the Department of Justice. Since its inception the Office has taken on additional duties, including administration of the federal judicial appointments process and support of international cooperation in judicial matters.¹⁷

Canada's National Judicial Institute (NJI), which was founded in 1988, is an independent non-profit

organization that carries out the general coordination of judicial training in Canada and serves as the primary provider of this type of training. It is managed by a Board of Governors that includes two provincial court judges and three federally appointed judges and is funded jointly by the federal, provincial and territorial governments. The Institute develops and offers programs for federal, provincial and territorial governments. The NJI website¹⁸ has proved to be a key tool for achieving one of the organization's objectives, namely, to provide judges across the country with access to information on education and training opportunities available to them.

The Judicial Compensation and Benefits Commission (Quadrennial Commission) was established to oversee the remuneration of the federally appointed judiciary, which it does through a report that is published every four years. The report takes into account cost of living and other economic conditions in Canada, the role of financial security in ensuring independence, and the need to attract outstanding candidates to the judicial career.¹⁹

Finally, the Canadian Judicial Council was created in 1971 to serve as a forum for the senior judiciary for discussing a wide range of topics. The Council takes positions on matters that affect the judiciary, plays a key role in judicial education, and receives and considers complaints regarding the federally appointed judiciary.²⁰

Federal Government

The federal government has the exclusive authority to appoint and pay Superior Court judges in the provinces. Parliament also has the authority to establish a General Court of Appeals and courts designed to improve judicial administration, which it has used to create the Supreme Court, the Federal Court, and the Tax Court. It also has exclusive power over procedures in criminal jurisdiction courts. Federal authority over the criminal procedure code is designed to ensure fair, consistent treatment of offenders throughout the country.

The following are some key federal departments that address justice-related issues:

The Department of Justice works to ensure that Canada's legal system is fair, accessible, and efficient. It helps the federal government develop policies and draft and reform laws when necessary and also acts as government counsel, offering legal counsel and addressing cases under federal law, and representing the Government of Canada in court.

The Department's responsibilities reflect the double role of the Minister of Justice, who is also Canada's Attorney General, handling matters of general policy as they relate to the judicial system and serving as the Crown's main legal representative.

The Department of Justice helps other state agencies to develop, reform, and interpret laws. It also reviews all drafts of regulations to ensure their legal validity, clarity in both official languages, and consideration of both of Canada's legal systems (the Civil Code in Québec and Common Law in other provinces). It is also active in policy-making.

The Federal Prosecution Service (FPS) is responsible for federal cases and charges. Its members process crimes involving about fifty federal statutes in representation of the Attorney General, with the exception of criminal procedure code violations, which are processed by the provinces. These cases, which are frequently long and complex, fall into two main categories: drug-related offenses, which constitute the highest percentage of cases, and regulatory cases, which are handled by federal departments and agencies.

In addition to prosecuting cases, the FPS handles extradition cases and requests for legal advice received from abroad, administers the drug-related crimes fund, and serves as the authority on matters of the Criminal Code, national security, and the application of federal laws. This agency's central office, the Criminal Code Branch is located in Ottawa's Department of Justice. It also has thirteen other offices.

Lastly, the Correctional Service of Canada (CSC) is responsible for administering sentences of two years or more, managing institutions, and supervising offenders who have been granted parole.²¹

Provincial Government

The provinces have explicit jurisdiction over judicial administration, which includes the creation, organization, and maintenance of both civil and criminal provincial courts, as well as the civil procedures followed in those courts.

Legal Aid

Canada has a strong legal aid system, which is designed to provide economically disadvantaged Canadians with equitable access to justice. Legal aid services are overseen by the provinces and territories. Major areas of civil legal aid include family, poverty or social benefits law and legal aid for refugees.

Each province has a Legal Aid Division (LA). Their names are: the LA Society of Alberta, the LA of British Columbia, LA of Manitoba, the LA Commission of Newfoundland and Labrador, the LA Commission of Nova Scotia, LA of the Northwest Territories, LA of Ontario, LA of Prince Edward Island, the Judicial Services Commission-LA of Québec, and the LA Commission of Saskatchewan.

The provinces offer legal aid to all subjects of rights who have been accused of a crime in cases in which the punishment may involve incarceration. Some provinces also offer legal aid for civil cases, particularly in family law cases.

The federal government funds legal aid through a series of contribution agreements with the provinces and territories. The Department of Justice has allotted \$81.9 million for legal aid in criminal cases

in the provinces and territories since 1998-1999. In the case of the Northwest Territories, Yukon and Nunavut, criminal legal aid funds are administered through the Access to Justice Agreements, which are territory-federal agreements that combine three program elements (legal aid, native court worker, and public legal education and information) in a single financing accord.

The Permanent Working Group on Legal Aid provides a forum for discussing issues related to legal aid. This agency reports to the deputy ministers at the various government levels.²²

The following tables provide information regarding the number of applications for legal aid that were filed and approved in each province and territory between 1999 and 2003.

Table 1
Number of Legal Aid Applications Filed
Source: Statistics Canada²³

	Applications Received				
	1999	2000	2001	2002	2003
Canada	838,993	849,369	850,109	814,025	773,254
Newfoundland and Labrador	11,340	10,751	11,548	13,698	8,834
Prince Edward Island	...	...	...	...	...
Nova Scotia	24,003	24,087	25,946	18,674	18,650
New Brunswick	5,186	5,278	2,468	2,382	2,507
Québec	257,673	253,326	264,270	266,037	263,658
Ontario	350,658	365,077	358,376	362,586	341,492
Manitoba	22,042	21,705	21,509	21,199	19,091
Saskatchewan	24,469	23,530	22,213	21,946	22,450
Alberta	42,365	45,386	48,185	50,533	50,544
British Columbia	98,535	96,880	92,232	53,606	42,176
Yukon	1,015	1,291	1,384	1,438	1,683
Northwest Territories including Nunavut	1,707	...	...	...	...
Northwest Territories	...	1,273	1,147	1,376	1,517
Nunavut	...	785	831	550	652

Note: Fiscal year ends March 31.

Source: Statistics Canada, CANSIM, Tables 258-0001 to 258-0004. Last modified: 2005-03-25.

Table 2
Number of Applications Approved
Source: Canada Statistics

	Applications Approved				
	1999	2000	2001	2002	2003
Canada	508,696	522,602	509,158	493,976	471,462
Newfoundland and Labrador	5,622	4,408	4,529	4,731	4,849
Prince Edward Island	1,209	1,185	1,385	1,478	1,265
Nova Scotia	15,481	15,150	14,759	14,685	14,847
New Brunswick	4,637	3,935	1,673	1,914	1,635
Québec	215,991	212,192	217,574	219,570	217,268
Ontario	140,903	159,338	145,227	137,693	121,700
Manitoba	17,374	17,627	17,518	22,498	20,508
Saskatchewan	21,891	22,057	20,677	19,119	19,151
Alberta	32,051	33,799	36,420	37,822	36,889
British Columbia	51,534	50,513	46,889	31,537	30,083
Yukon	1,003	800	957	1,391	1,565
Northwest Territories including Nunavut	1,000	...	...	...	...
Northwest Territories	...	813	782	1,169	1,074
Nunavut	...	785	768	369	628

Note: Fiscal year ends March 31.

Source: Statistics Canada, CANSIM, Tables 258-0001 to 258-0004. Last modified: 2005-03-25.

2. Procedures

Criminal Cases

The provincial courts try individuals accused of minor crimes. The trial is generally conducted in summary proceedings, meaning that the case is heard exclusively in that court, without further actions. The maximum penalty for this type of crime is usually a fine of US\$2000, six months in prison or both.

Crimes tried on the basis of an incriminating document are more serious. Defendants frequently have the option to decide whether to be tried by a provincial court judge or in a Superior Court jury trial. In either case, the judge issues the final ruling. Jury trials may be employed in some civil cases, although this is rare.

If charged with a serious crime, a preliminary hearing may be held to allow the judge to determine whether or not there is sufficient evidence to proceed. If the judge determines that the evidence is insufficient, the case is dismissed. Otherwise, a full trial is conducted.

All persons who are arrested and held in custody have the right to be brought before a judge or justice of the peace as soon as possible, usually within twenty-four hours of apprehension, unless police allow the person to be released upon payment of bail. Bail hearings that determine bond are known as justification hearings, as the prosecutor must put forth the reasons the accused should remain in custody. Should the judge decide to release an accused, he or she may choose to impose any conditions that s/he deems appropriate.

The prosecutor cannot require defendants in criminal trials to testify.

If sentencing is required in a matter, either the Crown or the Defense can request a Pre-Sentence Report. This document is prepared by Probation Services in consultation with the accused and anyone who may know the accused. The purpose of this exercise is to build a profile of the accused for consideration by the Court prior to sentencing. The report is presented to the court and reviewed by both attorneys at the sentencing hearing.²⁴

At that point the Crown or Defense may call evidence or make suggestions regarding the appropriate sentence. In Canada sentences range from an absolute discharge to significant jail time. The law provides for a variety of options, including probation, community service, fines, conditional sentence (often referred to as house arrest) and intermittent incarceration. There are also minimum and maximum sentences for some offenses, but the court generally has wide discretion. Sentences are

set in accordance with the guidelines set in the Criminal Code and by the Court of Appeal or the Supreme Court of Canada.²⁵

Following the trial or sentencing hearing, the Crown or Defense may appeal the conviction or the sentence or both. Depending on the level of the court involved, the appeal is heard by either a Supreme Court justice or the Court of Appeal. At this point the case is not retried and no new evidence is admitted. The court simply reviews the transcript and parties' submissions in order to determine whether or not a legal error has been made by the trial court.²⁶

If an error is discovered, the Court of Appeal may order that the verdict be changed or the matter be remanded back to court for a new trial or for determination of a particular issue. The Court of Appeal has wide latitude in how to deal with a matter but is careful not to give an opinion of what it thinks the ruling of the Trial Judge or Jury should have been.²⁷

Case Duration

Information from 2002 suggests that approximately one third (31%) of criminal procedures are resolved within one month and nearly half (46%) last between one and eight months. Eleven percent of cases last eight months to one year and 12% last longer than one year.²⁸

Civil Suits

The purpose of a civil trial is to determine whether the complainant has the right to restitution. The grounds for the claim are studied and if a case exists, the proper form or amount of restitution is determined. The judge listens to both parties to determine the facts of the case, and then must decide if the respondent has broken a law.

The trial opens with the complainant's case. He or she may call witnesses and present documents, photographs, and other types of evidence. The defense may then cross-examine the complainant's witnesses and present evidence and call his/her own witnesses. Witnesses for the respondent may be cross-examined by the complainant's attorney.

The judge must ensure that the evidence presented and questions raised are relevant to the case and that testimony based on hearsay and rumors are not entered as evidence.

Finally, the parties present summaries of their arguments, after which the judge considers the

evidence and explains it and any relevant laws to the jury. Finally, the jury deliberates the matter and reaches a verdict.

In virtually all cases the losing party has a right of appeal either to the Division Court or the Court of Appeal. It is, however, important to note that appeal courts deal only with errors in law (the idea is that trial judges are in a much better position to determine the facts).²⁹ The final instance for such appeals is the Supreme Court of Canada.

3. Case Volume and Movement

*Criminal Cases*³⁰

Adult Criminal Court Statistics (ACCS) compiles data on courts in ten provinces and territories (excluding Manitoba, the Northwest Territories and Nunavut) on an annual basis. These figures cover approximately 90% of the total caseload. In 2003–2004 adult criminal courts processed 445,650 cases, approximately 14,000 fewer than the previous year.

The ACCS concluded that cases had become increasingly complex and lengthy over the previous ten years. Specifically, 51% involved multiple charges, up from 44% in 1994–1995, and the average number of days needed to resolve a case increased from 137 in 1993–1994 to 226 in 2003–2004.

Defendants were found guilty in 58% of cases, which represents a slight decrease from the 2001–2002 conviction rate of 60%. Three percent of defendants were acquitted and 36% of cases were stayed. The results in the remainder of cases were categorized as “other.”

An average of 35% of convictions resulted in a prison sentence. In the provinces and territories, however, the rate ranges from 58% in Prince Edward Island to 24% in Saskatchewan. The data shows that this rate has remained stable over the previous decade, though the percentage of guilty verdicts that led to sentences involving probation has risen while that of those receiving fines has fallen.

4. Crime Rates

Table 3
Crimes Committed in Canada by Type of Offense 1999–2003
Source: Statistics Canada³¹

	1999	2000	2001	2002	2003
	rate per 100,000 inhabitants				
All incidents	8,530.40	8,432.60	8,453.70	8,507.00	8,884.80
<i>Criminal Code Offences (excluding traffic offences)</i>	7,751.70	7,666.50	7,655.40	7,708.30	8,132.40
Crimes of violence	958.2	984.4	983.8	969.2	962.8
Homicide	1.8	1.8	1.8	1.9	1.7
Attempted murder	2.3	2.5	2.3	2.2	2.2
Assaults (level 1 to 3) ¹	728	761.6	763.9	751.6	746.5
Sexual assault	78.5	78.2	77.5	78.1	74.1
Other sexual offences	10.9	10.2	8.7	8.8	8
Robbery	94.5	88.1	88	85	89.6
Other crimes of violence ²	41.3	41.3	41.1	40.8	40.7
Property crimes	4,275.70	4,080.90	4,003.50	3,974.50	4,121.40
Breaking and entering	1,046.10	955.9	900.9	878.7	899.5
Motor vehicle theft	530.8	522.4	543.5	516.3	540.7
Theft over \$5,000	74	69.6	67.2	63.2	63.6
Theft \$5,000 and under	2,231.20	2,160.50	2,126.30	2,127.80	2,220.40
Possession of stolen goods	96.4	93	86.9	95.8	103.6
Fraud	297.2	279.6	278.8	292.8	293.5
Other <i>Criminal Code</i> offences	2,517.90	2,601.20	2,668.10	2,764.60	3,048.30
<i>Criminal Code Offences (traffic offences)</i>	387	366.4	387.6	374.9	366.3
Impaired driving	282.9	258.2	266.7	255.2	243.6
Other traffic offences ³	125.4	124.9	123	122.9	122.7
Federal statutes	391.7	399.8	410.7	423.8	386.2
Drugs	263.6	287	288.2	295.8	271.8
Other federal statutes	128.1	112.7	122.5	127.9	114.4

1. “Assault level 1” is the first level of assault. It constitutes the intentional application of force without consent, attempt or threat to apply force to another person, and openly wearing a weapon (or an imitation) and accosting or impeding another person. «Assault with weapon or causing bodily harm» is the second level of assault. It constitutes assault with a weapon, threats to use a weapon (or an imitation), or assault causing bodily harm. “Aggravated assault level 3” is the third level of assault. It applies to anyone who wounds, maims, disfigures or endangers the life of complainant.
2. Includes unlawfully causing bodily harm, discharging firearms with intent, abductions, assaults against police officers, assaults against other peace or public officers, and other assaults.
3. Includes dangerous operation of motor vehicle, boat, vessel or aircraft, dangerous operation of motor vehicle, boat, vessel or aircraft causing bodily harm or death, driving motor vehicle while prohibited and failure to stop or remain.

The Canadian system classifies crimes into three areas: Criminal Code offenses (which accounted for 91.5% of the crimes committed in 2003), drug trafficking cases (which represented 4.1%), and matters covered under federal statutes (4.4%).

The crime rate per 100,000 inhabitants increased 3.7% between 1999 and 2003. This reflects a 4.9% increase in Criminal Code offenses, a 5.3% decrease in drug trafficking and a 1.4% decrease in the number of cases handled in view of federal statutes. However, the rate of drug-related crimes per 100,000 inhabitants, which are included in the rate of crimes handled according to federal statutes, increased 3.1% between 1999 and 2003.

5. Prison Population

According to statistics released by the International Centre for Prison Studies in their *World Prison Brief*, in 2001 there were 36,024 persons incarcerated in Canada's 221 penitentiary establishments (68 federal and 153 provincial prisons), or 116 prisoners per 100,000 inhabitants. The institution also indicated that 21.1% of the prison population was in preventive custody awaiting sentencing.

Table 4
Prison Population per 100,000 Inhabitants 1991-2002
Source: International Centre for Prison Studies (World Prison Brief)

Year	Total number of persons incarcerated	Prison population per 100,000 inhabitants
1991	33,527	119
1994	37,740	129
1997	39,250	131
2000	36,143	117
2001	36,024 ³²	116 ³³

The average cost of maintaining a prisoner rose from CAN\$129.59 to \$148.67 during this period, which represents a 14.7% increase in real terms given that the comparison is made on a common base.³⁴

A Statistics Canada study entitled *Adult Correctional Services in Canada, 2000/01*³⁵ indicates the following:

- In 2000-2001, an average of 151,500 offenders were held daily under custodial or community supervision by federal, provincial and

territorial correctional service agencies. This figure is virtually unchanged from 1999-2000.

- Four out of five adult offenders were under community supervision by correctional services authorities. In 2000-2001, there were 119,900 adult offenders supervised in the community, the same number as in the previous year. Most were on probation (80%), while others were serving a conditional sentence, were on parole from the provincial or federal system, or were on statutory release under the federal system.
- Those in custody accounted for one in five (or 31,500) adult offenders under correctional service supervision. In 2000-2001, more than half (60%) of inmates were held in provincial or territorial facilities, a figure consistent with previous years.
- The imprisonment rate for the 2000-2001 period was 133 adults per 100,000 inhabitants, which is 2% lower than the previous year. This rate refers to the average number of adults in custody (pretrial detention, remand or serving sentence) compared to the entire adult population. This rate has decreased by 13% since 1994-1995, when it reached its historical high of 153 per 100,000 inhabitants.
- Over a one year period in 2000-2001, a total of 235,000 adults were admitted to custody in the provincial/territorial and federal systems, an increase of 3% over the previous year. Admissions for repeat offenses accounted for half of provincial/territorial custodial admissions, new sentences for 36% and temporary detention (e.g. immigration holds) for 11% of provincial/territorial custodial admissions. Admissions to federal custody accounted for 3% of total admissions.
- The number of admissions to provincial/territorial custody increased for the second consecutive year, largely due to the increase in repeat admissions. Admissions to remand increased by 8% from the previous year to 118,600 adults in 2000-2001, while sentenced admissions decreased by 5% to 80,928.
- As in previous years, almost half (48%) of sentenced custody admissions to provincial/territorial institutions in 2000-2001 were short-term sentences (one month or less), while almost half of sentenced admissions to federal institutions were for terms under three years.
- There were 17,084 conditional sentence program admissions in 2000-2001, an increase of 17% from 1997-1998.

6. Related Areas

Alternative Dispute Resolution (ADR)

Alternative dispute resolution is vibrant and flourishing in Canada, and ranges from unassisted negotiation to binding arbitration. ADR alternatives have developed to include such specialized forms as executive mini-trial, judicial mini-trial and early neutral evaluation. Negotiation and mediation are the most common non-adjudicative processes.³⁶

The Canadian government supports ADR through Dispute Resolution Services (DRS), a government agency.³⁷ Established in 1992, its mandate is to promote a greater understanding of ADR and assist in its integration into government policies, operations and practices. One DRS project is the DR Fund, which has provided CAN\$ 6.9 million to federal organizations to design and implement dispute resolution programs since 1998. Various branches of the Canadian government actively promote ADR in their own affairs, including the Department of Justice, the Canadian Food Inspection Agency, the Immigration and Refugee Board and the Canadian Human Rights Commission.³⁸

In addition, numerous private agencies offer dispute resolution services in Canada. Among the largest is the ADR Institute of Canada (ADR Canada), which serves as a national clearinghouse for information and provides training and accreditation for mediators and arbitrators.³⁹ It also promotes national standards for various forms of dispute resolution.

Restorative justice programs are also increasingly popular in Canada, particularly in regard to aboriginal justice initiatives. The Department of Justice promotes restorative justice programs, including victim-offender mediation, family group conferencing, sentencing circles, consensus-based decision-making on the sentence and victim-offender reconciliation panels. The Conflict Resolution Network of Canada reports that restorative justice programs exist in all of the provinces and territories.⁴⁰

Legal Profession

Canada has a total of twenty-two law schools.⁴¹ Figures for 2005 indicate there are 38,000 attorneys in Canada, or 119 per 100,000 inhabitants.⁴²

The country also has fourteen law societies: one for each territory, one for each of the

provinces other than Québec and two for the Province of Québec. In that province the *Chambre des notaries de Québec* governs the province's notarial profession, and the *Barreau du Québec* governs attorneys.

Attorneys are subject to the laws, rules and regulations of the law society to which they belong. The main responsibilities of these societies are to admit attorneys to practice within their society, set professional standards, provide professional liability insurance, and discipline members when warranted. The Federation of Law Societies of Canada acts as umbrella organization for these institutions.⁴³

Finally, the Canadian Bar Association (CBA) is a voluntary organization that was formed in 1896 and incorporated by a Special Act of Parliament on April 15, 1921. It currently represents some 38,000 attorneys, judges, notaries, teachers of law and law students. Approximately two-thirds of all practicing attorneys belong to the CBA. Its mandates are to improve the law and the administration of justice; promote access to justice and equality in the legal profession and in the justice system; improve and promote the knowledge, skills, ethical standards and well-being of members of the legal profession; represent the profession nationally and internationally; and to promote its members' interests.⁴⁴

7. Judicial Reform Projects Underway

The Government of Canada is currently developing several initiatives in this area. This section describes some of the key projects that have been approved and/or implemented in the past few years.⁴⁵

Civil Marriage Act

On February 1, 2005, the Civil Marriage Act drafted to grant same-sex couples the legal ability to contract civil marriage was passed by the Government of Canada in the House of Commons. The bill will give same-sex couples the same civil legal recognition of commitment that is currently granted to married couples while respecting religious freedom.⁴⁶

Parliamentary Review of the Anti-Terrorism Act

This piece of legislation is one of several that form the government's anti-terrorism strategy and was

designed to protect the safety, security and fundamental rights of the country's citizens. One of the key safeguards contained in the Act is a requirement that its provisions and operation be fully reviewed by Parliament after three years. On December 9, 2004 the House of Commons adopted a motion to authorize the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness to carry out said review, which was begun by its Public Safety and National Security subcommittee. The Senate adopted a similar motion to establish a Special Committee to undertake a separate review on December 13, 2004. The committees have been granted one year to report back to Parliament.⁴⁷

Protection of Children and Other Vulnerable Persons

The Canadian government has begun an effort to increase amendments to current laws regarding child sexual exploitation. These amendments build on recent criminal law reforms. On October 8, 2004 the Canadian government introduced legislation in the House of Commons that would, among other things, broaden the definition of child pornography, increase maximum sentencing, introduce new sexual exploitation and voyeurism offenses, and facilitate testimony for vulnerable victims and witnesses, including children.⁴⁸

Modernization of Mental Disorder Provisions of the Criminal Code

In 2002 the House of Commons Standing Committee on Justice and Human Rights submitted a report and set of recommendations to the Government regarding the mental disorder provisions in the Criminal Code. Said provisions apply to individuals who are not criminally responsible due to a mental disorder or found unfit to stand trial for the same reason. In response, the Government submitted reforms to the House of Commons in October 2004. The proposed amendments focus on such issues as permanently unfit defendants, and powers of victims and the police to enforce provisions and evaluation orders.⁴⁹

Aboriginal Justice

The Government of Canada is committed to supporting and working with members of aboriginal communities, as reflected in the Department of Justice's efforts to reduce the number of aboriginal people who come into conflict with the criminal

justice system, make the system more culturally relevant, and increase the number of individuals from these communities who serve in law enforcement and the justice system.

In late 2004 the Department of Justice released the second *One Day Snapshot of Aboriginal Youth in Custody Across Canada*, a report that documents the number of Aboriginal youth in custody on a given day, in this case June 4, 2003. According to this publication, the number of aboriginal youth in custody dropped 36% (from 1,128 to 720) between 2000, when the first edition of the report was released, and 2003. However, the second report notes that young members of these communities are eight times more likely to be in custody than their non-aboriginal counterparts.

In response to these and other figures, the government has renewed its commitment to this area, as is demonstrated by several significant programs implemented in the 2004/05 fiscal year. These include the following efforts:

- CAN\$470,000 in funding was provided by the Department of Justice's Youth Justice Policy sector in 2003/04 to be used by provinces and territories to investigate the degree of overrepresentation of aboriginal youth in the country's prison system and how federal programs can address this problem.
- CAN\$1.2 million of funding was made available to the provinces and territories so that they could support and test these programs in 2004/05.
- CAN\$1.5 million were dedicated to capacity development programs for aboriginal youth justice programs through the DOJ Youth Justice Renewal Fund, to be developed in 2004/05.⁵⁰

Youth Criminal Justice Act (Assented to 19 Feb 2002)

This statute repeals and replaces the Young Offenders Act and establishes principles, procedures and protections for processing youth under the Criminal Code and other federal laws. The Act establishes a range of extrajudicial measures, judicial procedures and protections for young people accused of committing crimes. It also encourages the participation of parents, victims, communities, youth justice committees and others in the youth justice system. The Act sets out the range of sentences available to youth courts and establishes provisions for custody and supervision as well as rules for record-keeping

and privacy protection. It features transitional provisions and makes consequential amendments to other Acts.

Courts Administration Service Act (Assented to on March 27, 2002)

This statute merges the current administrative services of the Federal Court of Canada, the Court of Appeals of the Martial Court and the Tax Court of Canada into one body: the “Courts Administration Service.” It amends the Federal Court Act and related legislation, creating a separate Federal Court of Appeals. It also endows the Tax Court with superior court status and makes a number of important amendments to other federal statutes.

Criminal Law Amendment Act, 2001 (Assented to June 4, 2002)

The enactment of this law amends the Criminal Code by:

- Adding offenses and other measures that provide additional protection to children from sexual exploitation, including any exploitation involving the Internet.
- Increasing the maximum penalty for criminal harassment.
- Making home invasion an aggravating circumstance for sentencing purposes.
- Bringing into being the offense of disarming or attempting to disarm a peace officer.
- Codifying and clarifying the review of allegations of miscarriage of justice before the Minister of Justice.
- Reforming and modernizing criminal procedure with respect to:
 - procedural aspects of preliminary investigations
 - the disclosure of expert testimony
 - rules of Court for case management and preliminary investigations
 - electronic documents and remote appearances
 - a plea comprehension inquiry scheme
 - private prosecution
 - the selection of alternate jurors
 - restriction on the use of agents

This enactment also amends the following Acts:

- a) the National Capital Act, by increasing the maximum fine available; and
- b) the National Defense Act, by providing for digital fingerprinting.⁵¹

Creation of New Institutions

When the new territory of Nunavut was created in 1999, a new type of court was also established in Canada. The Nunavut Court of Justice merges the powers of a Superior Court and a Provincial or Territorial Court, allowing the same judge to review all cases that exist throughout the territory (*single-level trial court*).

As most Nunavut communities are small and isolated from the capital of Iqaluit, the court travels to them “on circuit.” The Circuit Court includes a judge, a secretary, a court reporter, a prosecutor, and at least one defense attorney. Court officials and victim/witness assistance staff may also travel with the circuit court, depending on the cases to be heard. Local interpreters are engaged whenever possible, or accompany the court when deemed necessary. In addition to regular sessions in Iqaluit, the court travels by air to most communities in intervals that vary from six weeks to two years, depending on the caseload.

Additionally, sentencing circles, initiated in the Yukon Territory at the beginning of the nineties, are used today in a large part of the country, mainly at the territorial court level and in cases that involve indigenous criminals and victims. Although such sentencing circles are not courts themselves, they can be a valuable tool for gathering opinions and advice from community members, so as to help the judge pass an effective and appropriate sentence.

Sentencing circles work in the following way: after the discovery or admittance of guilt, the court invites interested members of the community to join in a circle comprised of the judge, prosecutor, the defense, police, social services providers and community elders, together with the criminal, the victim and their respective families and supporters. The circle is used to discuss the crime committed, possible contributing factors, sentencing options and the ways and means of reintegrating the criminal back into the community. All participants have the opportunity to express their opinion. In general, the circle will propose a restorative sentence towards the community; this involves some form of compensation to the victim, community service, and treatment or therapy. The judge is not bound by law to accept the recommendations of the circle.

8. Websites

Supreme Court of Justice

http://www.scc-csc.gc.ca/home/index_e.html

This website provides institutional information, rulings, new publications of the Official Gazette, information on cases, a virtual library, lists of frequently asked questions and links and contact information. Available in English and French.

Department of Justice

<http://canada.justice.gc.ca/>

Users may review institutional information, strategic planning, directory, programs and services, mission and values. The website also includes a list of publications of the Department of Justice and Attorney General's Office, provides access to federal laws and information about Canadian society from legal perspectives and includes a press room for the media containing articles, press releases, press files, speeches, schedule of activities, links for the media and important information. Other features include a glossary, search engine, FAQs, overview of the Canadian legal system and basic information. In English and French.

Legal Aid

http://canada.justice.gc.ca/en/ps/pb/legal_aid.html

This page within the Department of Justice site provides information about legal aid related to civil and criminal issues, recent publications and news. In English and French.

Office of the Commissioner for Federal Judicial Affairs

http://www.fja.gc.ca/home/index_e.html

This website provides information in English and French on the institution's mission and organization, downloads of official documents and publications, a search engine and contact information. Available in English and French.

Government of Canada

http://www.canada.gc.ca/main_e.html

Site in English and French with information on the Canadian government and Prime Minister. Also contains information on government services and contacts; publications by agency and department, provinces, and territories. News and press files. General information for Canadians and foreigners, also for businesspeople, on economy, work, taxes, health, public safety, and other topics of interest to Canadian society.

National Judicial Institute

www.nji.ca

The NJI web site provides information on the institution, its mission, objectives and activities. Describes the organization, content and schedule of courses offered by the NJI. Also contains information on specialized seminars and other activities. Includes publications, member organizations. Available in English and French.

Human Security Program

<http://www.humansecurity.gc.ca>

The Human Security Program (HSP) of the Ministry of Foreign Affairs and International Trade of the Government of Canada was established in June 2000. Its creators define it as a proactive mechanism of the Canadian government to address the human dimensions of globalization.

The program has supported more than 150 projects in six continents that are aimed at strengthening international community measures for facing threats to human security and to foster political governance. Canada has set five foreign policy priorities related to human security, namely: civilian protection, peace operations support, conflict prevention, governance and accountability, and public safety.

9. Directory

Canadian Department of Justice

Address: Communications Branch
Ottawa, Ontario K1A 0H8
Phone: (613) 957-4222
Fax: (613) 954-0811
Website: www.canada.justice.gc.ca

Federal Prosecution Service

Assistant Deputy Attorney General
Address: Justice Canada, Department of Office of the Assistant Deputy Attorney General
100 Metcalfe Street, 6th Floor
Ottawa, Ontario K1A 0H8
Phone: (613) 957-4626
Fax: (613) 954-4737

Canadian Bar Association

Address: 902-50 O'Connor Street, Ottawa, Ontario K1P 6L2
Phone: (613) 237-2925 or (613) 237-1988
Toll Free: 1-800-267-8860
Fax: (613) 237-0185
E mail: info@cba.org

Legal Aid Ontario

(contains links to 13 Community Law Organizations in Ontario)
Address: 375 University Avenue, Suite 404, Toronto, ON M5G 2G1
Phone: (416) 979-1446
Fax: (416) 979-8669
Toll Free: 1-800-668-8258

Notes

- ² Statistics Canada, CANSIM 11, Table 051-0001. Projected population as of July 1, 2004.
- ³ World Bank, *World Development Indicators*, 2004.
- ⁴ *Ibid.* The data for 2003 are preliminary estimates.
- ⁵ *Ibid.*
- ⁶ Statistics Canada, Labour Force Survey, January 7, 2005.
- ⁷ Canadian Centre for Justice Statistics, *Overview of the Courts: Personnel and Expenditures Survey*, November, 2004.
- ⁸ *Ibid.*
- ⁹ Canadian Centre for Justice Statistics, *Police Resources in Canada 2004*, November, 2004.
- ¹⁰ *Ibid.*
- ¹¹ See <http://www.cba.org/CBA/Info/Main/history.asp>. Includes only members of the Canadian Bar Association.
- ¹² Mikhail Thomas, "Adult Criminal Court Statistics, 2003/04," *Juristat*, Vol. 24, No. 12, Statistics Canada Catalogue no. 85-002-XIE2004012. Available online at <http://www.statcan.ca>.
- ¹³ Canadian Centre for Justice Statistics, *Crime Statistics in Canada*, 2003.
- ¹⁴ For more information on Canada's court system, see the Department of Justice Canada publication "Canada's Court System," which is available online at <http://canada.justice.gc.ca/en/dept/pub/trib/index.html>.
- ¹⁵ Canadian Centre for Justice Statistics, *Overview of the Courts: Personnel and Expenditures Survey*, November, 2004.
- ¹⁶ The Tax Court of Canada's website is www.tcc-cci.gc.ca. and that of the Court Martial Appeal Court is www.cmaccacm.ca.
- ¹⁷ For more information see the CFJA Website, www.fja.gc.ca.
- ¹⁸ See www.nji.ca/index.html.
- ¹⁹ Information taken from the Commission's Website, www.quadcom.gc.ca.
- ²⁰ More information is available at the Council's Internet site, www.cjc-ccm.gc.ca.
- ²¹ See www.csc-scc.gc.ca/text/home_e.html.
- ²² For more information on legal aid see http://canada.justice.gc.ca/en/ps/pb/legal_aid.html.
- ²³ These tables were taken directly from the Statistics Canada website.
- ²⁴ See <http://www.daleydemont.ns.ca/pages/criminallaw.html>.
- ²⁵ *Ibid.*
- ²⁶ *Ibid.*
- ²⁷ *Ibid.*
- ²⁸ JSCA *Report on Judicial Systems in the Americas* 2002-2003.
- ²⁹ See <http://www.hammondsborne.ca/civil.html>.
- ³⁰ Mikhail Thomas, "Adult Criminal Court Statistics, 2003/04," *Juristat*, Vol. 24 No. 12, Statistics Canada Catalogue no. 85-002-XIE2004012. Available at <http://www.statcan.ca/>.
- ³¹ Source: Statistics Canada, CANSIM, table (for fee) 252-0013. Last Modified: 2004-11-18.
- ³² Figures for 2001, Solicitor General, Canada, includes 12,794 federal prisoners (CSC), 18,666 provisional prisoners and 4,564 juvenile offenders in custody.
- ³³ Based on an estimated national population of 31.08 million inhabitants in mid 2001, Statistics Canada.
- ³⁴ See the Statistics Canada website.
- ³⁵ Dianne Hendrick and Lee Farmer, "Adult Correctional Services in Canada, 2000/01," *Juristat*, Vol. 22 no. 10, Statistics Canada – Catalogue no. 85-002-XIE.
- ³⁶ Descriptions of various types of ADR in Canada are available at: <http://www.adrcanada.ca/news/faq.html>.
- ³⁷ Dispute Resolution Services website: http://canada.justice.gc.ca/en/ps/drs/drs_programs.html.
- ³⁸ For more information please see the various department WebPages: Department of Justice - <http://www.justice.gc.ca/en/ps/drs/icms/index.html>; Canadian Food Inspection Agency - http://www.justice.gc.ca/en/ps/drs/food_inspection.html; Canadian Human Rights Commission - http://www.chrc-ccdp.ca/adr/what_is_it_en.asp; Immigration and Refugee Board - http://www.irb-cisr.gc.ca/en/about/tribunals/iad/adr/protoc_e.htm.
- ³⁹ See <http://www.adrcanada.ca/mc.pdf>.
- ⁴⁰ See <http://www.crnetwork.ca/RJ/canada.asp?target=Adult>.
- ⁴¹ Research and Statistics Division Report 2003-3f.
- ⁴² See <http://www.cba.org/CBA/Info/Main/history.asp>. This figure only includes members of the Canadian Bar Association.
- ⁴³ For more information see the Federation of Law Societies of Canada Website, <http://www.flsc.ca>.
- ⁴⁴ This information was taken from the CBA Website, www.cba.org/CBA/Gate.asp.
- ⁴⁵ For more information on the current work of the Department of Justice, see the Departmental Performance Report 2003/04 (www.tbs-sct.gc.ca/rma/dpr/03-04/JUS-JUS/JUS-JUSd34_e.asp) and the Report on Plans and priorities 2004/05 (www.tbs-sct.gc.ca/est-pre/20042005/Jus-Jus/Jus-Jus45_e.asp).
- ⁴⁶ For more information see http://canada.justice.gc.ca/en/news/fs/2004/doc_31244.html.
- ⁴⁷ This information was taken from the website http://canada.justice.gc.ca/en/anti_terr/index.html.
- ⁴⁸ See http://canada.justice.gc.ca/en/news/nr/2004/doc_31248.html.
- ⁴⁹ See http://canada.justice.gc.ca/en/news/nr/2004/doc_31252.html.
- ⁵⁰ This information was taken from http://canada.justice.gc.ca/en/news/nr/2004/doc_31302.html. The snapshot report is available online at <http://canada.justice.gc.ca/en/ps/yj/updates/updates.html>.
- ⁵¹ For more information see <http://laws.justice.gc.ca/en/2002/13/text.html>.