WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

Canada

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GENERAL OVERVIEW

1. Political system.

Canada is a federalist country and a member of the British commonwealth. It is divided into 10 provinces and 2 territories. It has a parliamentary democratic government in which the executive and legislative power is split between the central and provincial units.

Responsibility for the various parts of the criminal justice system is shared and divided among the federal, provincial, and municipal levels of government. The Constitution Act of 1867 defines and establishes the division of power and authority between the federal and provincial levels of government. The 2 territories receive their power from the federal authority, while the 10 provincial governments may grant certain powers to the local or municipal governments. For example, the provinces have the power to create police forces that have provincial or municipal jurisdiction, while the Royal Canadian Mounted Police (the federal police force) is concerned mainly with the enforcement of federal statutes, such as the Customs Act and Narcotic Control Act.

Under Section 91 of the 1867 Constitution Act, the Canadian Parliament has been given exclusive jurisdiction to pass criminal laws and legislate rules for criminal procedures. Under Section 92, the provinces have jurisdiction over the administration of justice in each province. This jurisdiction includes the interpretation of

the Constitution, the maintenance and organization of provincial courts in both civil and criminal jurisdictions, and civil procedure as applied in provincial courts. (Ekstedt and Griffiths, 1988: 4; Kurian, 1989: 49; MacIntosh, 1989: 11).

2. Legal system.

Although the legal system of Canada uses an inquisitorial process in some proceedings such as a coroner's inquest or a Royal Commission Inquiry, an adversarial process is used for both civil and criminal trials.

In a civil case, the plaintiff alleges that the defendant has committed some wrong against himself, while in a criminal case, the prosecution alleges that the accused has committed a criminal offense. In criminal cases, the accused is considered innocent until proven guilty beyond a reasonable doubt by the Crown prosecution. (Kurain, 1989: 57; Mewett, 1988: 26).

3. History of the criminal justice system.

The Canadian legal system emerges from two traditions: Roman law and English common law. The New France was established in 1664 in accordance with the laws of the English mother country. The English common law came to Canada via the English settlers and was even partially introduced into Quebec through the Conquest (1763). Today, civil law in Quebec is based on the Code Civil du Quebec which is derived from the French code Napoleon; whereas in the other Canadian provinces, civil law is based on the English common law. (Van Loon and Whittington, 1976: 160).

The criminal law is based on the Canadian Criminal Code, submitted to Parliament and enacted in 1892. Over the years numerous amendments and revisions have been made and in 1955, a totally new revised Criminal Code came into force. The Criminal Code is derived almost exclusively from the principles of English criminal jurisprudence and is uniform across the country. Under the terms of the 1867 Constitution Act, the federal government has exclusive jurisdiction to legislate criminal law. The Act also empowers the provinces to pass laws but only in those areas where they have been assigned responsibility, such as the provincially regulated Highway Traffic Act and Liquor Control Act. (Van Loon and Whittington, 1976: 160).

The Constitution is a set of rules that govern the ways Canadian laws are made and administered. It is the supreme law of Canada; even Parliament and the Legislatures are bound by its provisions. Laws inconsistent with the Constitution are legally invalid. The courts are responsible for deciding whether certain laws are

inconsistent. The courts interpret the Constitution and decide how its provisions apply to particular circumstances, which they have done since the time of Confederation in 1887. The Constitution, at that time called the British North American (BNA) Act, set limits on the powers of Parliament and the Legislatures, and established other governing requirements.

In April, 1982, a new dimension was added to the Constitution. The Canadian Charter of Rights and Freedoms became Part I of the Constitution Act. For the first time in Canada, the supreme law included guarantees of certain rights and freedoms which, subject to certain limitations, had to be observed by all who made or administered the law. The courts now had to decide whether legislation or actions by officials offended any of the rights and freedoms guaranteed in the Charter and in the old BNA Act. (Cromwell, 1988: 283; MacIntosh, 1989: 12).

Significant criminal justice legislation.

In 1959, the Parole Act created the National Parole Board. The NPB makes the decision to grant, deny, or revoke parole for all federal inmates. The Act was amended in 1977 to allow provinces to establish their own parole boards for provincial inmates. The NPB is also the primary paroling agent in the provinces which have not established their own parole board. (Ekstedt and Griffiths, 1988: 418).

The Narcotic Control Act (1970) is designed to control the flow of narcotics by making a federal crime of narcotic offenses. Violations of this act are prosecuted by federally appointed counsel. Besides listing the drugs which are illegal under this federal statute, it guides the prosecution and enforcement process (e.g. requirements for police officer entry, search, and seizure), sentencing, and the appeal process. (Carswell, 1989: 595-612).

The Bail Reform Act, enacted in 1971, was passed under a recommendation of the Ouiment Committee Report to prevent unnecessary detention of accused persons. It limits the warrantless arrest powers of the police by requiring suspects to be released if the police have no reasonable or probable grounds to believe that the public interest or safety would be in jeopardy. The Act also empowers the police officer in charge of lock-up to release a suspect in accordance with principles of the Criminal Code. (Generally, the suspect must be charged with a crime that has a 5-year or less prison sentence attached to it and the officer has no reasonable/probably grounds to believe "(1) that continued detention is necessary in the 'public interest', (2) that the accused is

unlikely to attend trial if released, or (3) that the issue of release is of such a serious nature that it should be dealt with by a Justice of the Peace.")(Griffiths,et.al., 1980: 84-85; 126-127).)

Finally, the Young Offenders Act (1985), which replaced the Juvenile Offenders Act of 1908, raised the age of minimum criminal responsibility to 12 years old for all provinces and territories. It also set the age of adult criminal culpability at 18 years old across the country.

The Act provides that only Criminal Code and federal statute offenses are prosecuted in youth courts, which handle young offenders aged 12 to 17. Young offenders may, at the recommendation of the youth court judge, be transferred to an adult court. They may also avoid formal prosecution and be put into a diversion or alternative measures program at the request of the prosecutor. Should formal prosecution occur, there is a broad range of sentencing options under this Act, from community service, restitution, treatment, or secure custody to absolute discharge. The provinces are given responsibility to handle cases involving persons under 12 years-old through a social service agency. (Canada Year Book 1990: 20.11-20.13).

CRIME

1. Classification of crime.

* Legal classification. Crimes are generally divided into summary, indictable, or hybrid offenses. Indictable offenses include only the most serious crimes, which are punishable by at least 2 years imprisonment in a federal penitentiary, such as murder, rape, and robbery. Since the Canadian Criminal Code is used by all provinces, territories, and municipalities, the definition of indictable offenses is uniform in all jurisdictions. Some indictable offenses, such as murder, treason, and piracy, are also called "supreme court exclusive" offenses. Other offenses, like theft, betting, and gaming, are called "absolute jurisdiction" offenses. (Ekstedt and Griffiths, 1988: 5).

Summary offenses are less serious, such as motor-vehicle offenses and creating a disturbance. Sentences can range from fines (maximum of $2,000) and probation, to a maximum of 6 months incarceration in a provincial prison. (All expenditure information is presented in Canadian dollars.) Unlike indictable offenses, summary offenses are most often defined by provincial or municipal legislation. For instance, there are varying provincial statutes for traffic violations. Thus, the provinces tend to have

jurisdiction on less serious offenses, while the federal government is given legislative authority for more serious offenses. (Birkenmayer, 1993; Ekstedt and Griffiths, 1988: 5).

Hybrid or dual offenses can be prosecuted either as summary or indictable offenses, at the decision of the prosecutor. For example, prosecutors typically decide to prosecute the crime of breaking and entering as summary offenses, having the effect of expediting case dispositions by moving the case to a lower court. (Birkenmayer, 1993; Kurain, 1989: 56; Understanding the Canadian Criminal Justice System, 1993: 1).

* Age of criminal responsibility. Under the Young Offenders Act of 1985, the age of adult culpability is 18 years-old. (Ekstedt and Griffiths, 1988: 89; Fourth United Nations Survey, 1993: 28).

* Drug offenses. For Canadian Police Statistic reporting purposes, the Canadian Centre for Justice Statistics divides drug offenses into the categories of trafficking/importation/cultivation and possession. It is a federal crime to traffic (e.g. manufacture, sell, give, administer, transport, send, deliver, distribute, or to attempt such actions), import, export, cultivate, or possess drugs listed under the Narcotic Control Act and under the Food and Drugs Act. (The Narcotic Control Act (1985) lists the following durgs to be illegal under Schedule 1: Opium, coca, cannabis sativa, phenylpiperidines, phenazepines, amidones, methadols,phenalkoxsams, thiambutenes, moramides, benzazocines, ampromides, benzimidazoles, phencyclidine, fentanyl, tilidine, carfentanil, and alfentanil. The drugs listed under the Food and Drugs Act are generally those which must be controlled, are available only for medical use, are legally restricted, or are used for non-medical purposes. Carswell, 1989: 546-547, 596-598; Fourth United Nations Survey, 1993).)2. Crime statistics.

The definitions of the following crimes are based on administrative definitions which are constructed by the Canadian Centre for Justice Statistics to aid Canadian Police report crime statistics to the Uniform Crime Report Survey and have legal standing under the Canadian Criminal Code.

* Murder. In 1990, the police recorded 589 incidents of first and second degree murder, at a rate of 2 per 100,000 population. Attempts are not included. (Canadian Crime Statistics 1990, 1991).

Under Section 231 of the Canadian Criminal Code, "Murder in the first degree is murder when it is planned and deliberate" or when the victim is "a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties; b) a warden, deputy warden, instructor, keeper, jailer, guard or other officer or a permanent employee of a prison, acting in the course of his duties; or c) a person working in a prison with the permission of the prison authorities and acting in the course of his work therein" or when death is caused while committing or attempting to commit hijacking an aircraft, sexual assault, sexual assault with a weapon (including threats to a third party or causing bodily harm), aggravated sexual assault, kidnapping and forcible confinement, or hostage taking. (Under Section 231 of the Criminal Code, subsection 3, "...murder is planned and deliberate when it is committed pursuant to an arrangement under which money or anything of value passes or is intended to pass from one person to another or is promised by one person to another, as consideration for that other's causing or assisting in causing the death of anyone or counselling another person to do any act causing or assisting in causing that death." (Carswell, 1989: 131).) "All murder that is not first degree murder is second degree murder". (Carswell, 1989: 131-132).

* Rape. In 1990, the police recorded 26,539 incidents of sexual assault for a rate of 100 per 100,000. Attempts are included. As of 1983, the terms "rape" and "indecent assault" were replaced by "sexual assault". (Canadian Crime Statistics 1990, 1991; Fourth United Nations Survey, 1993).

The definition of sexual assault can be ascertained by combining Sections 265 and 271 of the Canadian Criminal Code: Section 265 (Assault) states that "(1) A person commits an assault when [generally] without the consent of another person, he applies force intentionally to that other person, directly or indirectly, ... 2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault...". In Section 271 (Sexual Assault) the Commentary states that, "Sexual assault...is not defined, although an essential element, assault, is elsewhere defined for such purposes. In general, it is an assault under Section 265(1) committed in circumstances of a sexual nature such as to violate the sexual integrity of [the victim]. (Tremeear's Criminal Code, 1992: 459, 469).

* Theft. In 1990, the police recorded 50,293 incidents of major theft, at a rate of 189 per 100,000. This figure includes the theft of property worth over $1,000 (e.g. embezzlement, fraud, other misappropriation of money held under direction) and does not include motor-vehicle or bicycle theft, or shoplifting. Attempts are included. (Canadian Crime Statistics 1990, 1991).

Generally, under Section 322 of the Canadian Criminal Code, a person charged with theft is one "...who fraudulently and without colour of right takes, or...converts to his use or to the use of another person, anything, whether animate or inanimate, with intent, a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it...". (Carswell, 1989: 170).

* Serious drug offense. In 1990, the police recorded 7,153 incidents of cocaine trafficking, at a rate of 27 per 100,000. Attempts are included. (Canadian Crime Statistics 1990, 1991).

* Crime regions. The total crime rate per 100,000 for all of Canada was 9,273 in 1989, but for major cities it was higher (Toronto = 10,172 per 100,000; Montreal = 11,267 per 100,000; Edmonton = 15,472 per 100,000; Vancouver = 18,815 per 100,000). (Bayley, 1991: 9).

Newfoundland, Prince Edward Island, and Manitoba experienced greater increases of violent crime than other Canadian regions between 1981 and 1991. Manitoba had the highest rate of violent crime in Canada in 1991, with a rate of 6,294 per 100,000 population. (Canadian Crime Statistics, December 1992).

VICTIMS

1. Groups most victimized by crime.

Overall, the Canadian Uniform Crime Reports showed no significant differences in the amount of assaults reported to the police by men and women. However, women did have a higher amount of sexual assault victimization than men, while men had a higher incident of victimization for robbery. Men had more incidents involving aggravated assault and assault with a weapon, and less incidents of assaults not involving a weapon or serious injury, than did women. (These data are derived from the 1991 incident-based Uniform Crime Report survey, which includes the reports of 15 police departments, throughout the regions of New Brunswick, Quebec, Ontario, Saskatchewan, and British Columbia, for a total of 21,234 violent crime victims. They exclude victims under 18

years-old as well as regions with a population above 500,000. These incidents are estimated to comprise about 11% of the total amount of violent offenses reported to the police in 1991.(Juristat Service Bulletin, November 1992).)

Persons over 60 years old had a lower incident of crime victimization overall, although they had a higher incidence of robbery than their younger counterparts. In addition, teenagers and children had more reports of sexual assault than older age groups, while the opposite trend was found for assault. (These data are derived from an incident-based Uniform Crime Report survey, which includes information on violent crime victimizations from 13 police departments taken between 1988 and 1991, for a total of 43,299 victims. Cities with a population over 500,000 are excluded. (Juristat Service Bulletin, March 1992; August 1992).)

In 1988, the General Social Survey was conducted by Statistics Canada in which 100,000 Canadians over 15 years-old were interviewed by telephone. The interviewers asked the respondents about their experiences with crime during the year 1987. Information was recorded for the personal crimes of sexual assault, robbery, assault, and theft of personal property.

The GSS results showed men to have higher rates of total personal and violent victimization than women. Individuals between 15 and 24 years-old had personal victimization rates that were almost double and 7 times the rate of age groups 25 to 44 and 45 to 64, respectively. (Statistics for the elderly were not calculated due to the small sample.) Personal victimization rates were also 3 times greater for single, separated, or divorced individuals than married persons.

Furthermore, students, persons who participated in activities outside the home more than 30 times per month, and persons who consumed 14 or more drinks per week had higher personal victimization rates. The summary findings indicate that, "Generally speaking, men, young people, single people and students are at highest risk of personal victimization, along with those who are active outside the home in the evenings or regularly consume alcohol." (Juristat Service Bulletin, October 1990).

2. Victims' assistance agencies.

The primary responsibility for supporting victim/witness rests with the office of the Crown Attorney. According to the Canadian Criminal code, society ultimately is the victim, and the "victim of the crime" is ignored. (Baril, 1984: 259; Weiler and Desgagn,, 1984: 19).

Most police departments and judicial districts have victim- witness assistance programs. There are also both private and government sponsored victim service agencies. All the provinces, except for Prince Edward Island, have Criminal Injuries Compensation Boards, in which victims are compensated by the government for distress, out-of-pocket expenses, salary loss, etc. Health expenses are covered by the universal health care system in Canada. (Birkenmayer, 1993; Carswell, 1989: 391-392).

The administration of these programs vary among jurisdiction. These variations mainly occur in the type of crime a victim may be compensated for or the method by which compensation is awarded (e.g. total sum or periodic installments). Generally, property damage is not covered by such programs. (Canada Year Book 1990, 1989: 20.12-20.16).

3. Role of victim in prosecution and sentencing.

Under Section 735 of the Criminal Code, victims can file a victim impact statement with the court for consideration by the judge at the post-disposition stage prior to sentencing. (Section 735 of the Canadian Criminal Code states: "For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged...the court may consider a statement...of the victim of an offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence." (Carswell, 1989: 391-92).) Judges may use victim impact statements to guide sentencing decisions. The role of the victim is generally very limited because of the precept that crimes are committed against the "Crown", thus the true victim is the State, not the individual who is victimized. (Baril, 1984: 263).

4. Victims' rights legislation.

Although broad "Victims' Rights" legislation does not exist, there have been increasing systematic efforts in each province and territory to consider victims when making amendments to already existing Acts and portions of the Criminal Code. For instance, a 1992 law amends the Parole Act to allow victims to be informed when the offender is eligible for parole. (Birkenmayer, 1993).

POLICE

1. Administration.

Police forces are generally divided into provincial, municipal, and federal units. (Griffiths, et.al., 1980: 47; Understanding the

Canadian Criminal Justice System, 1993: 2).

The Royal Canadian Mounted Police (RCMP) is the federal police agency. It is primarily responsible for enforcing federal statutes and executive orders, providing protective services, policing airports and government buildings, and policing remote geographical territories. Crimes listed under Federal statute include acts violating the Bankruptcy Act, Canada Shipping Act, Customs Act, Excise Act, Explosives Act, and Immigration Act. Sometimes the RCMP combines efforts with municipal or provincial forces (e.g. organized crime, narcotics). (Fourth United Nations Survey, 1993; Griffiths, et.al., 1980: 49; Juristat, 1991: 3; Kurian, 1989: 51).

The RCMP is the only policing agency serving the Yukon and Northwest territories, which per square miles, account for more than one-third of Canada. The RCMP chain of command can be diagrammed as the following, from lowest to highest: RCMP Commissioner (Deputy Minister) -----> the Solicitor General of Canada (the acting Minister of Justice) ---> Parliament. (Griffiths, et.al., 1980: 48-49; Kurian, 1989: 51).

The RCMP has also been contracted out by 8 provinces to provide provincial police services. In these provinces, the RCMP derives its authority from its headquarters in Ottawa and the provincial attorney generals. Thus, although the RCMP is a federal agency, their jurisdictional responsibility can extend into the provinces as well. (Bayley, 1993; Griffiths, et.al., 1980: 48-49; Kurian, 1989: 50).

Municipal police forces have jurisdiction over the most heavily populated areas (e.g. Metropolitan Toronto), utilize the largest amount of police resources, and are comprised of city, village, county, and township police forces. Most forces are organized along lines similar to the Ottawa municipal police force (highest to lowest): Attorney General ---> Chief of Police ---> Deputy Chief of Field Operations (traffic and patrol), Deputy Chief of Staff Operations (investigations), and Deputy Chief of Administration and Staff Services. The provinces, by law, must financially support municipal police forces. "Municipal forces enforce all laws relating to their area of jurisdiction which includes the Criminal Code, provincial statutes, the bylaws of the municipality and (in recent years) certain federal statutes, such as the Narcotic Control Act and Food and Drugs Act." (Griffiths, et.al., 1980: 50; Kurian, 1989: 55).

Police services can be contracted out on the municipal level as well. For instance, various cities and towns may contract the provincial police or the RCMP, which acts as provincial

police in 8 provinces, in lieu of establishing their own municipal police. In cases where the RCMP is contracted out to a municipality, the unit is accountable to the municipal chief executive. (Griffiths, et.al., 1980: 50; Kurian, 1989: 55).

Provincial policing is largely decentralized. Ontario and Quebec are currently the only provinces which operate their own provincial police. Generally their duties cover those geographic areas not already covered by the municipal police although there are continuous exchanges of information between the two agencies. The Ontario Provincial Police is headed by the Ontario Provincial Police Commissioner, who is supervised by the Solicitor General. The Commissioner oversees three separate department heads: the Provincial Commander of Field Operations, the Provincial Commander of Services, and the Provincial Commander of Investigations. (The Field Operations department is divided into three separate field divisions (e.g. Field "A" Division, "B" Division, "C" Division) with each field covering delineated districts.

The Services department is divided into separate branches for program evaluation, budgeting, policy and planning, tele-communications, and divisions for administrative services (e.g. training, staff, media, and records management), and support services (e.g. transport, quartermaster stores, and systems support). Both divisions are headed by a separate division commander.

Finally, the Investigations department is divided into the Special Investigation Division (e.g. Anti-Rackets branch; criminal investigation and general investigation branch) and the Investigation Support Division (e.g. Intelligence, security, technical support, and registration branches). Both divisions are headed by a separate division commander. (Ontario Provincial Police 1989 Annual Report, 1990: 3).)

The Provincial Minister of Justice supervises the Commissioner of the Quebec Police Force. The Commissioner has a "chief inspector or inspector" responsible for each of the 8 district divisions. The Criminal Investigations Bureau, the anti-terrorist Security Service, the Special Intelligence Service, and the Scenes of Crime Service are a few of the departments operating under the Operations Service division of the force. (Kurian, 1989: 54-55).

Other types of policing agencies include: the RCMP Marine Services, the Air Section of the RCMP, the Canadian Pacific Railway Police, the Canadian National Railway Police, and the National Harbors Board Police. Although the Department of National Revenue, the Department of Justice, the Post

Office Department, and the Immigration Service primarily only have investigative powers, they may collaborate with the RCMP towards law enforcement efforts. As of 1985, there were at least 18 private security/policing agencies. (Andrade, 1985: 38; Kurian, 1989: 50-51).

2. Resources.

* Expenditures. The 1990 budgeting resources allocated to police was $5,248,530,000. (Fourth United Nations Survey, 1993: 14).

* Number of police. In 1990, the total number of full-time police personnel was 75,364, of which 59,476 were male and 15,888 were female. The total number of sworn personnel was 56,034 and the total number of non-sworn personnel (civilian) was 19,330. (Birkenmayer, 1993; Fourth United Nations Survey, 1993: 14).

A description of police personnel as of December 31, 1989 tallied the number of police by police force. Out of a total of 73,332 police personnel, 54,233 were police officers (sworn personnel), 63% of which were classified as municipal police, 26% as provincial police, 6% as Royal Canadian Mounted Police (RCMP), and 5% as RCMP administrative or law enforcement service officers. (Juristat, 1991: 4).

3. Technology.

* Availability of police automobiles. Although no national statistics exist on the availability of police automobiles, provincial data for Ontario is available. As of December 31, 1989, the Ontario Provincial Police had 4,521 sworn police officers and had available the following transport vehicles: 1,625 automobiles, 330 utility transport units (e.g. vans, buses, prisoner transports), 61 motorcycles, 192 trailers, 166 snow vehicles, 107 marine vehicles, and 2 helicopters, for a total of 2,483 transport units. (Ontario Provincial Police 1989 Annual Report, 1990: 18-19).

* Electronic equipment. Statistics do not exist on the national availability of electronic equipment, but do exist for separate policing departments. For instance, the Systems Support branch of the Ontario Provincial Police supplies departments with computers, user programs, and telecommunications equipment. The OPP is supplied armament through the Support Services division. (Ontario Provincial Police 1989 Annual Report, 1990: 17).

The Identification Services Branch of the RCMP provides fingerprint information and criminal

records to both federal and provincial police departments through the National Fingerprint Identification System. All police departments have access to the Canadian Police Information Centre, also run by RCMP, and can obtain information on, for example, missing persons and property, and wanted offenders. The RCMP's National Criminal Intelligence Repository and Crime Detection Laboratory are also available for use by other policing authorities. (Griffiths, et.al., 1980: 49; Kurian, 1989: 51).

* Weapons. RCMP officers are authorized to carry Smith and Wesson .38 special revolvers and .308 Winchester rifles. Ontario Provincial Police carry .38 revolvers. Other police also carry standard .38 revolvers and batons. Bullet proof vests are available to all police officers. (Birkenmayer, 1993; Kurain, 1989: 53-54).

4. Training and qualifications.

RCMP recruits must complete a 6 month training session, consisting of physical training and course work. The course work includes courses in interpersonal relations, how to write reports, and how to take fingerprints. The recruits spend an additional 6 months doing field training. They are required to pass a written examination and must have a college education. In addition, they must be between 18 and 29 years old, single, and have a driver's license. Recruits are initially appointed by the Solicitor General for a five-year period. Their "contract" is renewed pending satisfactory performance. After appointment, recruits periodically take additional courses. (Kurian, 1989: 56; Griffiths, et.al., 1980: 51).

Training periods for other police departments average about 6 weeks at a training academy. Most larger municipalities have their own training academies, while others may use federal training facilities. Most police officers must obtain community college or university degrees. Recruits must pass structured physical fitness tests and must be at least 21 years-old. For additional education, persons can take courses at the RCMP's Canadian Police College in Ontario. (Birkenmayer, 1993; Kurian, 1989: 56).

Persons under 21 can serve in the Cadet program. In Ontario, cadet training takes place at the Ontario Provincial Police Training College. Cadets volunteer to serve as auxiliary police, riding alongside patrolmen or aiding crowd control efforts. The Cadet program enables young people to gain a competitive edge for policing positions. (Birkenmayer, 1993; Kurian, 1989: 54).

5. Discretion.

* Use of force. Under Sections 26 and 27 of the Criminal Code, when making an arrest or seeking to prevent a crime, the police may not use more force than is necessary. "Everyone who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess." (Carswell, 1989: 21-22; Griffiths, et.al., 1980: 88).

* Stop/apprehend a suspect. Police can make an arrest with or without an arrest warrant. An arrest warrant may be issued by the Justice of the Peace if probable grounds exist that the public interest would be served by this action, such as a high risk that the suspect will leave the area. Arrest warrants are mainly used for persons who fail to appear in court, are at-large, or fail to pay a fine. Under Criminal Code Section 28, police are required to inform the suspect about the reason for the arrest. (Birkenmayer, 1993; Carswell, 1989: 28; Griffiths, et.al., 1980: 85).

After the arrest, the suspect must be brought to the Justice of the Peace within 24 hours for further processing. At that point, the Justice of the Peace decides whether to further detain or release the suspect before his or her trial appearance. Barring public safety risks, pre-trial detention is discouraged and most suspects are released after arrest. (Griffiths, et.al., 1980: 85; Kurain, 1989: 57).

Most arrests are made without a warrant, although no official statistics exist as to the exact proportion. Warrantless arrests can occur if the police are certain or have probable grounds to believe the suspect has committed or is about to commit an indictable offense; is committing a crime within view of the police officer; or has an outstanding arrest warrant. Except for very serious offenses, police are constrained by the Bail Reform Act of 1971 to making warrantless arrests only if they believe that an arrest is the only way a suspect will show up for trial or if the "public interest" necessitates it (e.g. prevention of suspect committing future offenses or destroying evidence). (Birkenmayer, 1993; Griffiths, et.al., 1980: 84).

Warrantless arrests are made at the discretion of the police officer, who can release the offender on his or her own recognizance or bring him to the Justice of the Peace (lowest ranking judicial officer). The Justice then decides whether to grant bail. The bailing process can last up to 8 days. (Birkenmayer, 1993).

* Decision to arrest. An alternative to arrest is the "appearance notice" which a police officer can issue. The notice ensures the suspect will appear for trial by specifying a time and place (e.g. court house or police station) for attendance. Another option the police may exercise is to request that the Justice of the Peace issue a summons for the suspect to appear at trial. (Griffiths, et.al., 1980: 85).

* Search and seizure. Police are allowed to search the person and property in the course of making an arrest. Without an arrest being made, they generally require authorization for the search from a Justice of the Peace. The Justice will usually authorize the search if he or she thinks there is probable cause to believe the property could contain evidence that a crime was committed. The search warrant must specify the items and/or persons to be seized and the place to be searched. The search usually must be conducted during daylight hours. However, evidence obtained by an illegal search can still be introduced as evidence at trial.

There is also a type of search which is carried out by a writ of assistance, available only to RCMP officers and issued by a judge in the Federal Court of Canada. A "writ" allows RCMP officers to search, with some degree of reasonableness, any person or property which they believe to be connected to an offense violation of the Customs and Excise Acts, the Narcotic Control Act, and the Food and Drugs Act. The search can be conducted day or night, and allows for the seizure of narcotics or contraband and a search of persons. The writ remains active until the police officer is no longer operating within the confines of the Act. (Bayley, 1993; Griffiths, et.al., 1980: 86-87).

* Confessions. A citizen must answer the questions of a police officer and may be subject to arrest for obstructing justice for refusal to do so. In some provinces, drivers of motor vehicles are required, when stopped, to give their name and address to the police officer. (Griffiths, et.al., 1980: 90-92).

A confession can be entered into court as evidence of a crime only if it can be proved that it was given voluntarily. Although not required by law, the arresting police officers will inform a suspect of the right to remain silent and the right to counsel in order to prove that a confession statement was made voluntarily. (Griffiths, et.al., 1980: 90-92).

6. Accountability.

Every police jurisdiction has some form of civilian review process. The larger police departments have internal investigation and affairs bureaus and methods of appeal. Police commissions have been established in a majority of the provinces which set forth disciplinary standards and handle police officer disciplinary problems, including those associated with municipal police. For instance, failure to comply with the reasonable/probable grounds needed to make an arrest can result in a civil suit. (Birkenmayer, 1993; Griffiths, et.al., 1980: 51-52, 85; Kurian, 1989: 55).

Citizens are allowed to file a civil suit against a police officer. While the RCMP has internal resources to handle disciplinary measures, some provinces employ full-time persons who investigate complaints. Other provinces use a complaint board (e.g. Alberta, Citizen's Law Enforcement Appeal Board). Under the British Columbia Police Act, complaints are handled in a uniform manner in all police departments in the province of British Columbia. If the department is unable to satisfactorily address the complaint, the issue is brought up at a local Police Board public hearing. (Griffiths, et.al., 1980: 95-96).

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of accused.

* Rights of the accused. The Canadian Bill of Rights guarantees certain rights to persons charged with a crime. Any person charged with an offense has the right: "a) to be informed without unreasonable delay of the specific offence; b) to be tried within a reasonable time; c) not to be compelled to be a witness in proceedings against that person in respect of the offence; d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; e) not to be denied reasonable bail without just cause; f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment; g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations; h) if finally acquitted of the offense, not to be tried for it again, if finally found guilty and punished for the offence, not to be tried or punished for

it again; and i) if found guilty of the offense and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment". (Mewett, 1988: 23).

These rights are effective when a person has been charged with an offense. The word charge does not have any precise meaning in law, but merely means that steps have been taken that will lead to criminal prosecution. (Mewett, 1988: 23).

At trial accused persons may testify in their own defense, but cannot be compelled to testify. They cannot be forced to help incriminate themselves at trial by being compelled to be a witness.

The right of the accused not to be forced to testify also generally applies to their wife or husband. A spouse must testify for the accused if called as a witness, but cannot be called as a witness for the prosecution. In the case of spouses, there are certain exceptions concerning sexual offenses and offenses involving a victim under the age of 14, in which a spouse can be compelled to testify for the prosecution. (Mewett, 1988: 26).

* Assistance to the accused. Presently, all provinces and territories will appoint an attorney to represent persons who, if convicted, may be imprisoned or may lose their means of financial support. When defendants first appear at trial, they are given an opportunity to hire a lawyer if they have not already obtained one.

In jurisdictions where there is a private legal aid scheme, an accused person who cannot financially afford a lawyer can, if his or her application to legal aid is accepted, select a lawyer of his or her choice from a list of lawyers who have agreed to participate in the legal aid panel. In cases where the accused is applying for legal aid, in order to allow counsel to prepare the case, the matter will usually be held over for 2 weeks, during which time a trial date is set.

When the accused presents the court with a letter from his or her lawyer setting out the trial dates, the lawyer has gone on the record as representing the client. This means that the lawyer is committed to act for the client and will, unless his or her name is removed from the record, be obligated to appear at the accused's trial. Before setting a trial date, the lawyers will want to ensure that they are prepared to represent the accused and that their fees are secure. If an accused cannot get legal aid and cannot agree with a lawyer as to an appropriate fee, the judge will inform the accused that the matter has been marked preemptory, meaning that it

will proceed to trial whether or not a lawyer is representing the accused. (Canada Year Book 1990: 20.8; MacIntosh, 1989: 376-377).

Someone who is charged with an indictable offense must appear in court personally to set a trial date. However, an accused who is charged with a summary conviction offense may appear through an agent. An agent is a person who can legally represent the accused, such as a lawyer, tutor, or curator. An accused charged with a summary conviction offense may not have to appear at trial, but technically must have an agent appear instead. Although a lawyer can appear without a client at trial, the trial judge can order that the accused to be present. (MacIntosh, 1989: 376-377).

In fiscal year 1989-1990, approximately 568,510 criminal and civil cases were handled by legal aid attorneys, paralegals, and private attorneys working on a fee-for-service basis. (Juristat, 1991: 7).

2. Procedures.

* Preparatory procedures for bringing a suspect to trial. Before a suspect can be criminally prosecuted, another person must put forth information before a Justice of the Peace in which he or she swears the accused has committed a specified offense or that there are reasonable grounds to believe that someone has committed a specified offense. In most cases, the person who swears on the information presented to the justice will be a police officer, but any private person having knowledge of a criminal offense may be the informant.

Once the justice of the peace having jurisdiction has received the information, he or she must decide whether a case has been presented that warrants prosecuting the alleged offender. This is the first judicial determination in the prosecution process. It is not a determination of whether the alleged offender is guilty; it is only a determination that there are grounds that, absent any explanation or defense, would warrant the alleged offender being put on trial. (Mewett, 1988: 13-14).

Once the justice of the peace having jurisdiction over an offense has received information, and decides there are grounds to support a prosecution, the justice can issue process (e.g. issue a summons), which is an order directed to the accused requiring him or her to appear on a certain date at a particular court. The judge may also choose to issue an arrest warrant, which authorizes the police to arrest the person in question. Whichever of the 2 processes

are issued, the laying of the information must be established, before there is any procedural contact with the accused. (Mewett, 1988: 14).

On the other hand, there are cases where the police encounter a person in the act of committing an offense, or who has just committed an offense. Here, the police act on their own initiative and start the process of an arrest. They then have time to go to a justice of the peace and lay the information. In this case, the laying of the information would occur after the first procedural contact with the accused. (Mewett, 1988: 47).

Finally there is a judicial interim release hearing, in which the accused is put in temporary custody while waiting to be brought before the justice. This generally occurs if the police believe that it would be in the best interest of the public to hold the accused or that the offense is of a serious nature. (Understanding the Canadian Criminal Justice System, 1993: 6).

Appeals at the level of indictable offenses are made to the Provincial Court of Appeal. Persons appealing the sentence of a summary offense must go to the district or county court judge.

* Official who conducts prosecution. Crimes are considered to be offenses committed against the state, symbolized by the Queen of England. Since the state is regarded as the aggrieved party, all criminal trials are conducted in the name of the state. (Mewett, 1988: 13, 88).

The process of moving toward a prosecution is a matter of discretion on the part of the police. In fact, many times the police officer acts as the informant, another term for the prosecutor. The prosecutor can also be a private person, in which the cases are referred to as private prosecutions.

Each province of Canada has an organized state prosecution machinery under control of the provincial Attorney General. Those offenses prosecuted by the federal government have a similar federal prosecution machinery operating under the control of the Minister of Justice and Attorney General for Canada. Part of this machinery consists of staff members (lawyers) of various localities (counties, district or cities) with various titles (e.g. Crown Attorney, Crown Prosecutors, City Prosecutors, Federal Prosecutors, and part-time agents). These staff members have many duties and functions, one of which is to prosecute criminal offenses on behalf of the Queen. (Mewett, 1988: 88-89).

* Alternatives to trial. For most serious indictable offenses, the accused has no choice but to stand trial by a superior court of criminal

jurisdiction sitting with a jury, barring an agreement between the accused and the Attorney General for a trial without a jury. However, there is another group of indictable offenses that are not considered serious enough to require a trial either by judge and jury or by a federally appointed judge. In these cases, the accused must be tried by a provincial court judge unless, for some exceptional reason, the judge decides otherwise. These types of offenses include theft under $1000 (when prosecuted as an indictable offense), most gaming and betting offenses and some other fraud and property offenses of a relatively minor nature.

For all other indictable offenses, the accused has a choice in how he or she wishes to be tried. He can choose one of the three different courts of criminal jurisdiction available. Under the Criminal Code, there are 3 levels of trial courts: the superior court of criminal jurisdiction, the court of criminal jurisdiction, and the summary conviction court. (Mewett, 1988: 67-68).

Pre-Trial Diversion Programs also exist toenable offenders who have been charged but have not yet been convicted, to be diverted out of formal criminal proceedings to an alternative method of case resolution. Adult diversion programs, largely based on the alternative measures provided under the Young Offenders Act, include personal service programs such as restitution and helping the victims repair property damage, as well as alcohol/drug rehabilitation and educational programs. (Birkenmayer, 1993; Ekstedt and Griffiths, 1988: 83).

* Proportion of prosecuted cases going to trial. 75% or 80% of persons accused of crime elect trial by provincial court judge. These defendants essentially give up the right to a preliminary inquiry and their case proceeds directly to trial. About 80% of defendants tried by a provincial court judge plead guilty. (Mewett, 1988: 82).

Only about 10% of the cases are brought to trial before a judge and jury. (Birkenmayer, 1993).

* Pre-trial incarceration conditions. Interim release of persons awaiting trial is encouraged. However, legislation has attempted to define the circumstances where pretrial detention is necessary. Criminal Code Section 457 provides that, in the cases of ordinary offenses, the detention of an accused in custody is justified when "a) on the primary ground of ensuring attendance in court, or b) on the secondary ground

"the public interest or for the protection or safety of the public ... including any substantial likelihood that the accused will, if he is released from custody, commit a criminal offence or an interference with the administration of justice." (Archibald, 1988: 87).

* Bail procedure. The principle governing bail hearings, generally, is that an accused charged with an offense other than one of the very serious offenses listed in Section 469 of the Criminal Code, is entitled to be released, but must return to appear in court on the day of trial. This principle applies unless there is reason to believe that additional measures must be taken to ensure appearance at trial. If the Crown Attorney can show cause why the accused should be detained in custody or why the accused should not be released on his or her unconditional undertaking, the accused will not be released. If the Crown prosecutor cannot show cause why the accused should be detained in custody, but can convince a judge that the accused should not be released without conditions, a justice or a judge will release the accused only under certain conditions. (MacIntosh, 1989: 72).

* Proportion of pre-trial offenders incarcerated. In fiscal year 1990-1991, there was an average daily number of 4,711 inmates being held while awaiting trial or adjudication. (Fourth United Nations Survey, 1993: 36).

JUDICIAL SYSTEM

1. Administration.

The structure and nature of the court system varies by the particular province or territory. There are presently 12 judicial jurisdictions: Newfoundland, Prince Edward Island, Nova Scotia, British Columbia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, Yukon, and North West Territories. (Fourth United Nations Survey, 1993).

Generally, the hierarchy of courts can be diagrammed as the following (highest to lowest): Supreme Court of Canada (Appeals for summary and indictable offenses)---->Court of Appeal (Appeals for summary and indictable offenses)----> District/County Court (Summary Appeals and indictable trials)----> Provincial Court- Criminal Division (Summary and indictable trials; Summary appeals; preliminary hearings)--->Summary offenses/Municipal/Provincial Offenses/Traffic Safety Court (summary trials). (Canada Year Book 1990: 20.5).

The Criminal Code provides for three levels

of trial courts: the superior court of criminal jurisdiction, the court of criminal jurisdiction, and the summary conviction court. The superior court of criminal jurisdiction is the highest level of trial court in each province. Its actual designation differs from province to province. It may be called the Supreme Court of the Province, the Superior Court, or the Court of Queen's Bench. It is always presided over by a federally appointed court judge, addressed as Mr. or Madam Justice X, or My Lord or My Lady. The Superior Court of criminal jurisdiction has jurisdiction to try all indictable offenses and, in criminal cases, usually sits with a jury. However, with the consent of the Attorney General and the accused, the trial in a superior court of criminal jurisdiction may be held without a jury. (Mewett, 1988: 67-68).

The court of criminal jurisdiction has jurisdiction to try all indictable offenses except those which must be tried by a superior court of criminal jurisdiction. The court of criminal jurisdiction usually includes a jury, to be presided over by a federally appointed judge, such as a district or county court judge. Cases can also be tried in this court without a jury, so long as it is presided over by a federally or provincially appointed judge. (Kurain, 1989: 56; Mewett, 1988: 67-68).

The lowest level of criminal court is the summary conviction court. This is a court with limited territorial jurisdiction presided over by a provincial court judge or magistrate with jurisdiction to try only summary conviction offenses. (Mewett, 1988: 67-68).

2. Special courts.

* Youth court. Youth courts process cases involving "young persons"; described by the Young Offenders Act of 1985 to be offenders between 12 and 17 years-old. (Fourth United Nations Survey, 1993: 28).

Offenders under 12 years old cannot be charged with a crime. They are usually dealt with through mental health resources. Family courts exist, but they do not handle domestic violence cases. Domestic violence cases are handled by criminal courts in all jurisdictions. (Birkenmayer, 1993).

* Circle court. Circle courts are used in criminal cases exclusively involving native Canadian defendants, which tend to originate in the more remote regions of Canada. Circle courts attempt to integrate native culture with modern Canadian law. Generally, the court actors (e.g. judge,

prosecutor, defense attorney, defendant, and victim) sit in a circle along with the defendant's peers. A panel of the defendant's peers, usually the elder statesmen in the group, can then help determine sentences by making recommendations to the sentencing judge. Their recommendations are almost always adhered to by the judge. Birkenmayer, 1993).

3. Judges.

* Number of judges. In 1991, there was a total of 1,817 judges and magistrates, of which 1,636 were male and 181 were female. (Fourth United Nations Survey, 1993: 30).

* Appointment and qualifications. There are three general levels of judges: Justice of the Peace, Provincial court Judge, and Federal Judge. Judges for the Supreme Court, Federal Court, and Tax Court are all appointed by the Office of the Commissioner for Federal Judicial Affairs. Provincial superior, district, and county court judges are appointed by the Provincial Attorney General. (Canada Year Book 1990: 20.6; Fourth United Nations Survey, 1993: 30).

All judges must be attorneys with at least 10 years experience before appointment (15 years is the standard for some Federal judge positions). Judicial manuals serve as a part of the training, as well as mentoring systems whereby a new appointee sits next to a practicing judge. After appointment, judges annually attend continuing education seminars. (Birkenmayer, 1993).

PENALTIES AND SENTENCING

1. Sentencing process.

* Who determines the sentence? It is the discretion of the trial judge to pass sentence, regardless of whether a jury is present. However, for certain offenses, the judge may be limited by the maximum, minimum, or fixed penalty provided under statute. (Criminal Code Section 717). When imposing sentences, judges refer to the principle "justice must always be tempered with mercy." for guidance. (Carswell, 1989: 377-378; Mewett, 1988; Fiske, 1988: 241; Kurain, 1989: 56).

* Is there a special sentencing hearing? The sentence may be imposed at the date of the verdict or on a subsequent date. (Code of Penal Procedure, 1990: 228).

* Which persons have input into the sentencing process? In certain cases, the psychological

profile of an offender may constitute an important consideration in sentencing. The report of a psychologist or psychiatrist is important in this regard. If there are indications that the offender is psychologically handicapped and requires treatment, the judge will consider this mental status when imposing sentence. The judge can recommend to the penal authorities that such treatment be arranged or provided for in an institution. (Fiske, 1988: 245).

2. Types of penalties.

* Range of penalties. The range of penalties typically in use is: life imprisonment, deprivation of liberty, control in freedom, warning or admonition, fine, Community Service Order, and restitution/compensation. ("Deprivation of liberty includes various forms of detention, including security measures, combined or split sentence (where at least one part of the sentence involves deprivation of liberty) and all other sanctions involving deprivation of liberty (i.e. where the person is forced to stay at least one night in an institution of any kind)." (Fourth United Nations Survey, 1993: 29).)

Some inmates with a sentence of 90 days or less, are given intermittent sentences, which is mandated by the court, in which they serve time inprison on the weekends. The maximum term of imprisonment is life for indictable offenses and 6 months for summary offenses. (Birkenmayer, 1993, Kurain, 1989: 56).)("Control in freedom includes a probation order, a conditional sentence with additional supervision requirement and other forms of so-called liberty (i.e. cases where the person is required to fulfill special requirements with regard to supervision)." (Fourth United Nations Survey, 1993: 29).

Some probation conditions may include having to attend a government sponsored community correctional center or a privately run community-based residential center, both aiming towards offender reintegration into the community through guidance, supervision, and training. In addition, government sponsored Attendance Centre programs are used alone or as a condition of probation. They require the offender to attend a specified program on a regular basis. Probation orders vary across Canadian jurisdictions, with some offenders having very little contact with the probation agency. (Annual Report, 1991; Ekstedt and Griffiths, 1988: 83).) ("Warnings and admonition include suspended sentences, conditional sentences, finding of guilt without sanctions, formal admonitions, formal warnings, imposing of duties without control, conditional

dismissal, conditional discharge." (Fourth United Nations Survey, 1993: 29).) (If the offender is unable to pay the fine, the offender has the choice of participating in a Fine Option Program. Under this program, an offender can work toward fine payment by donating time and effort toward community service. (Ekstedt and Griffith, 1988: 84).)
(Often as a probation condition, an offender is ordered to donate time and effort to the community by performing an assigned task or contributing a certain number of hours towards the completion of a service-oriented task. (Ekstedt and Griffiths, 1988: 84).) (Offenders are required to repay their victim(s) for costs incurred as a result of their crime. (Ekstedt and Griffith, 1988: 83-4; Fourth United Nations Survey, 1993: 29).)

Prisons are typically used as a last resort in sentencing. Barring a serious crime such as murder, it is unusual for a first- time offender to be incarcerated. The majority of offenders have served 4 or 5 probationary terms before they are given prison sentences. The emphasis in Canadian corrections on reintegrating the offender into the community has led to community-based corrections, such as probation and Attendance Centre Programs, frequently being used as a sentencing option. (Birkenmayer, 1993; Ekstedt and Griffiths, 1988: 83-84; Kurain, 1989: 56).

* Death penalty. The death penalty was abolished by the Parliament of Canada in 1976. (Ekstedt and Griffiths, 1988: 402).PRISON

1. Description.

* Number of prisons and type. As of December 31, 1990, there was a total of 221 small adult prisons, from a 100 to 499 inmate capacity. There were 162 provincial prisons, including jails, and 2 municipal prisons. There were 59 Federal penitentiaries. Data do not exist as to the number of minimum or maximum prisons because most prisons are a hybrid, having both maximum and minimum security wings and sometimes, even a half-way house on the premises. (Birkenmayer, 1993; Fourth United Nations Survey, 1993: 40).

* Number of prison beds. As of December 31, 1990, there were a total of 32,916 prison beds. (Fourth United Nations Survey, 1993: 40).

* Number of annual admissions. In fiscal year 1990-1991, there was a total of 114,818 admissions into both federal and provincial prisons, of which 105,267 were male and 9,551 were female. There

were 4,296 admissions into the Federal Penitentiaries. (Birkenmayer, 1993; Fourth United Nations Survey, 1993: 43-44).

* Average daily population/number of prisoners. In fiscal year 1990-1991, the average daily population in prisons was 29,509. (Fourth United Nations Survey, 1993: 43).

* Actual or estimated proportions of inmates incarcerated. The following are the yearly percentages for Federal prison admissions in fiscal year 1990-1991 by crime type. (Fourth United Nations Survey, 1993: 43).

Drug Crimes (includes illicit trafficking and simple possession).	15%
Violent Crimes (includes intentional and nonintentional homicide, assault, rape, and robbery).	50%
Property Crimes (includes theft, burglary, fraud, and embezzlement).	22%
Other Crimes (includes kidnapping, criminal negligence, and offensive weapons).	13%

2. Administration.

* Administration. The prison system is organized according to sentence length. Initially, all inmates with incarcerative sentences are placed in provincial prisons. Those with a sentence total of 2 or more years imprisonment are eventually transferred to federal penitentiaries, while offenders with a sentence of 2 years-less one day are held in the provincial prisons. (Birkenmayer, 1993; Ekstedt and Griffiths, 1988: 71-72).

A federal offender usually spends a minimum of 30 days in a provincial prison before he or she is transferred to a federal prison. In those 30 days, the offender may appeal a conviction or sentence. If the appeal is waived, he or she is moved to a federal prison within two weeks. During those two weeks, the offender is given a classification assessment (e.g. maximum or minimum security risk). If the sentence is successfully appealed, the inmate can be let out on bail and the sentencing scheme becomes invalidated. Other federal offenders are held in

provincial institutions under transfer agreements that exist between the province and the federal government (Prince Edward Island and Ontario are the only provinces which do not have such an agreement). (Annual Report, 1991: 18-19; Birkenmayer, 1993).

Correctional programs are administered through line ministries or departments. ("Jurisdictions...vary in the degree of centralization found within their individual government agencies. Correctional systems also differ in the number of agencies assigned responsibility for corrections. For example, the provinces of Quebec, Ontario, and British Columbia have autonomous parole boards, while in the remaining provinces and territories, provincial cases are referred to the National Parole Board. Other jurisdictional differences can be found in the services available to correctional agencies, such as those relating to computer systems, financial services, and research analysis." (Annual Report, 1991: 18).) Each government has a ministry or department that is responsible for correctional service administration (e.g. Ministry of Attorney General, Correctional Services Division in British Columbia; Department of Social Services, Corrections Service in Northwest Territories). (Ekstedt and Griffiths, 1988: 91).

Maximum security facilities are administered by both federal and provincial governments. Federal penitentiaries are headed by Commissioners, who are supervised by the Solicitor General of Canada.

Provincial jails are operated under the domain of the Department of Social Services or Department of Health and Welfare. All prisons have a warden or superintendent who oversees prison operations. Municipal correction facilities are used primarily as minimum security lock-up facilities. (Birkenmayer, 1993; Ekstedt and Griffiths, 1988: 95; Kurain, 1989: 57).

Under the Constitution Act, the Penitentiary Act, and the Criminal Code, federal and provincial jurisdictions each have distinct responsibilities in regards to the provision of correctional services. However, the 2 systems may interact through exchange-of-service agreements. Federal offenders, who serve an average of 3 years, can serve time in provincial institutions and visa-versa. About 200 inmates a year are processed through exchange of service agreements which are entered into primarily for programming reasons. For example, provincial prisons may have better employment programs than federal prisons. These agreements often concern inmate transfer across jurisdictions, parole and community

assessments, and the delivery of health, psychiatric, and educational services. (Exchange of service agreements present the possibility of double counting prisoners, which would effect the national statistics. "This is a function of combining data retrieved from individual information systems across Canada." (Annual Report, 1991: 18).) (Birkenmayer, 1993; Ekstedt and Griffiths, 1988:4-5; Annual Report, 1991).

Under the Prison and Reformatories Act, each province or territory must follow the general guidelines for the administration and operation of the prison, but they abide by their own legislative and regulatory guidelines in determining the manner in which correctional services are to be delivered. (Annual Report, 1991).

There are no private prisons. Private half-way houses or group homes are available to provide inmates access to community resources and programs that would not be available under a government facility. (Annual Report, 1991: 20; Birkenmayer, 1993).

* Number of prison guards. As of 1990, there were a total of 1,930 persons on the management staff and 11,955 on the custodial staff in adult prisons. ("Management staff refers to the staff whose primary responsibility is the management and policy administration of staff and institutional programmes.") ("Custodial staff refers to the staff whose primary responsibility is the guarding of all inmates both to prevent escape and to maintain order in the institution." (Fourth United Nations Survey, 1993: 41-2).)

About 10% of the custodial staff are female. There are no data on ethnicity. (Birkenmayer, 1993).

* Training and qualifications. Correctional officers must generally obtain community college or university degrees, which include law and security courses. They must also participate in local training programs, consisting of about 6 weeks of class work and on-the job training using a buddy system (Ontario uses 3 weeks of field work). In all prisons, training for correctional officers is an on-going process throughout the year. The training officer, usually an assistant or deputy superintendent, conducts drills and day-long training sessions. (Birkenmayer, 1993).

* Expenditure on prison system. In fiscal year 1990-1991, budget allocations for prisons totaled $1,766,294,000. (Fourth United Nations Survey, 1993: 45).

3. Prison conditions.

* Remissions. After serving at least one-sixth of their sentence, federal and provincial inmates can be released on full or day parole. The National Parole Board, run under the Ministry of the Solicitor General, is responsible for granting parole to all federal inmates. Inmates in provincial prisons can also be granted parole by the NPB if no provincially-run parole program is available. Currently, only the provinces of Quebec, Ontario, and British Columbia have their own parole programs. Although the NPB may make the initial decision about whether to grant parole, there are separate federal and provincial correctional services responsible for overseeing parolees. (Annual Report, 1991; Ekstedt and Griffith, 1988: 87-88).

The Mandatory Release Program is a federal program in which inmates who have served 2/3 of their sentence with good-time behavior are released into the community but remain under correctional authority until their time warrant expires. Although they are accountable to a parole officer, they are technically not on parole as there is no parole board (NPB or provincial) that makes a decision concerning their release. The parole officer serves as a resource for the inmate, aiding in obtaining housing and employment, and helping with personal problems. (Birkenmayer, 1993).

Temporary Absence programs are used in provincial prisons and allow inmates to be released, unsupervised, for a mandated period of up to 15 days. If they do not return, they are deemed absent without leave (AWOL). Since prisoners can be given a back-to-back series of 15 day releases, these programs are sometimes used as an early release mechanism for provincial prisoners (avoiding the initial parole process). Temporary absence is generally granted by the prison superintendent for humanitarian reasons. For example, the inmate may be needed to attend to a family matter or require care that is only available at a hospital. The program also gives pre-parolees time to situate themselves with housing and employment. (Birkenmayer, 1993; Ekstedt and Griffith, 1988: 83-84).

* Work/education. All correctional facilities (except jails, where inmates stay up to 90 days) have opportunities for work inside the prison. Prisoners can work in an industrial laundry, on farms, machines, and make license plates, shoes, and clothes. There are also opportunities, through temporary absence programs, to work outside of the prison.

Inmates can also pursue an education and obtain a degree up to a PhD, although they are usually released before they finish their doctorate. Professors typically visit the prison to teach courses. (Birkenmayer, 1993).

* Amenities/privileges. Most prisons do not allow conjugal visits, however provincial prisons allow inmates to be released on a weekend pass for conjugal visitation. Inmates in both federal and provincial prisons must compile a list of people they wish to have visit them in the prison. Generally, provincial inmates are allowed 2 face-to-face visits a week which take place in open low- security areas within the prison. Some minimum security facilities have outside areas designated for visitation. Federal inmates are allowed 1 visit per week under high security, often through glass. (Birkenmayer, 1993).

Offenders in the Northwest Territories are often placed in a Land Program. This program is designed to accommodate the hunter-gatherer culture and lifestyle still prevalent among the native people of those regions. The inmates, mostly Eskimo, are allowed to be armed for the purpose of hunting caribou. The caribou they hunt provide meat for themselves, their families, and the community. Spousal and child support is counted by the number of caribou obtained (they would otherwise starve if the primary hunter was incarcerated and not allowed to hunt). The guards are not armed themselves, but oversee the inmates. Since the program's establishment in 1990, there have been no incidents of escapes or violence. (Birkenmayer, 1993).

EXTRADITION AND TREATIES

* Extradition. Canada has a signed extradition treaty with the following countries: Albania, Argentina, Austria, Belgium, Bolivia, Chile, Columbia, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, France, Germany, Greece, Guatemala, Haiti, Hungary, India, Israel, Italy, Liberia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Portugal, Romania, Salvador, San Marino, Spain, Sweden, Switzerland, Thailand, Togo, Uruguay, United States, Yugoslavia (Serbia) (Birkenmayer, 1993).

* Exchange and transfer of prisoners. The Transfer of Offenders Act (1978) allows for the prison transfer and exchange of Canadian and foreign offenders to their home country (Ekstedt and Griffiths, 1988: 423).

Canada has prison transfer agreements with

the following countries: United States, Mexico, Peru, France, Spain, Sweden, United Kingdom, Bolivia, Cyprus, Austria, Denmark, Finland, Greece, Luxembourg, Netherlands, Switzerland, Turkey, Thailand, Italy, Belgium, Germany, Malta, Bahamas, Norway, Czech Republic, and Slovak Republic. (Birkenmayer, 1993).

* Specified conditions. The following Articles describe some of the requirements of the extradition treaty signed between Canada and the U.S. on December 3, 1971 in Washington D.C.

Article 1: "Each Contracting Party agrees to extradite to the other,...persons found in its territory who have been charged with, or convicted of, any of the offenses covered by Article 2 of the Treaty committed within the territory of the other, or outside thereof under the conditions specified in Article 3(3) of this Treaty." (United States Treaties and Other International Agreements, 1977: 986).

Article 2: "(1) Persons shall be delivered up according to the provisions of this Treaty for any of the offenses listed in the Schedule annexed to this Treaty, provided these offenses are punishable by the laws of both Contracting Parties by a term of imprisonment exceeding one year. (2) Extradition shall also be granted for attempts to commit, or conspiracy to commit or being a party to any of the offenses listed in the annexed schedule. (United States Treaties and Other International Agreements, 1977: 986).

Article 6: "When the offense for which extradition is requested is punishable by death under the laws of the requesting State and the laws of the requested State do not permit such punishment for that offense, extradition may be refused unless the requesting State provides such assurances as the requested State considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed." (United States Treaties and Other International Agreements, 1977: 989).

Article 10: "(1) Extradition shall be granted only if the evidence be found sufficient, according to the laws of the place where the person being sought shall be found, either to justify his committal for trial if the offense of which he is accused had been committed in its territory or to prove that he is the identical person convicted by the courts of the requesting State." (United States Treaties and Other International Agreements, 1977: 991).

Article 11: "(1) In case of urgency a Contracting Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition

through the diplomatic channel...(3) A person arrested shall be set at liberty upon the expiration of forty-five days from the date of his arrest pursuant to such application if a request for his extradition accompanied by the documents specified in Article 9 shall not have been received." (United States Treaties and Other International Agreements, 1977: 992).

Article 14: "(2) If a warrant or order for the extradition of a person sought has been issued by the competent authority and he is not removed from the territory of the requested State within such time as may be prescribed by the laws of that State, he may be set at liberty and the requested State may subsequently refuse to extradite that person for the same offense." (United States Treaties and Other International Agreements, 1977: 993).

A protocol signed at Ottawa on January 11, 1988 amended the 1971 extradition treaty between the U.S. and Canada by replacing the scheduled list of specific crimes with a "dual criminality" clause. The clause makes any crime which is punishable by one or more years in prison, in both the USA and Canada, an extraditable offense. Parental child abduction became a new offense subject to extradition under this protocol. In addition, terrorist acts or crimes associated with terrorism, such as murder, manslaughter, malicious assault, kidnapping, and specified explosives offenses, are no longer excluded under the political offense exception to extradition of the 1971 treaty. (Protocol Amending the Extradition Treaty with Canada, 1990).SOURCES

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