

*Civil Society Follow-up of the Quebec  
City Summit of the Americas Plan of  
Action*

Report on Access to Justice and  
Independence of the Judiciary in  
Canada

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(FOCAL)  
Ottawa, Canada  
August 2004



## Executive Summary

This report on Access to Justice and Independence of the Judiciary in Canada is one part of a 34-month, hemispheric-wide analysis of how well national governments in the Americas are complying with the commitments to strengthen democracy made at the 2001 Summit of the Americas in Quebec City.

Based on the opinion of experts in the field and secondary research, this report reviews the status of access and independence issues in Canada, looking specifically at:

- a) Citizens ability to access a fair, equitable and efficient justice system;
- b) The independence of the judiciary to make fair and impartial judgments without interference or pressure from outside pressures.

The findings of the national study demonstrate that, in the area of Access to Justice:

In Canada public education about laws / rights is generally good, with people having a good understanding of their basic rights, especially in the criminal context. There is a need to make Canadians more "rights literate" (better understanding of the Charter of Rights and Freedoms), and provide more education about the mechanisms and bodies (tribunals, commissions and boards) that regulate many aspects of the lives of Canadians.

Funding for legal aid, ombudsman and other regulatory bodies has been in decline – which has affected the public's awareness of these services, as well as the number of clients they are able to serve. There is a particular need to identify the groups are that require additional support to access our justice system, including youth, very poor and homeless, working poor, immigrants and refugees, first nations and people with disabilities.

In many aspects of the system there is a high level of transparency and efforts are often made to resolve problematic issues and hold those responsible accountable, however, changes are slow to come and are often the result of media attention and public pressure. There is a need at all levels of the justice system to be proactive and identify problems and not have reform be driven by individual cases.

Canada has competent, independent and well-trained legal officials, including police, judges and lawyers. Our courts, police services and the bar associations are most often run efficiently and fairly. However human rights, cultural and sensitivity training must be more structured and broadly available – it must become a requirement for all those holding positions of power.

Regarding Independence of the Judiciary:

The Canadian judicial system has been successful in selecting and appointing independent, well-qualified and professional judges. Supreme Court judges are appointed by the federal government have tenure until 75 years of age, contingent upon good behaviour. There have been no cases of judicial corruption and no judge has been removed or suspended due to political pressures or other arbitrary influences.

Canada's Supreme Court is currently made up of 9 judges (4 judges are women), and all are white, and speak English and French. At the provincial level there is move to make judges more representative.

Judicial accountability to society is high, and there are several reliable sources of information about both the procedural aspects of the courts and judgments.

## **COMMITMENTS UNDER THE QUEBEC CITY PLAN OF ACTION: ACCESS TO JUSTICE AND INDEPENDENCE OF THE JUDICIARY**

Unfettered access to a fair and efficient justice system, supported by an independent and impartial judiciary, is one of the fundamental pillars of a democratic society. A functioning judicial system protects human rights, provides structure to personal and social relations, increases the transparency and effectiveness of government, and promotes economic growth. In recent years, governments, civil society and multilateral bodies active in the region have increasingly recognized the importance of the judicial system in the ongoing development of societies and governments. This sentiment was made explicit in the Quebec Plan of Action, where governments declared, "equal access to an independent, impartial and expeditious justice system is a fundamental pillar of democracy and social and economic development." In recognition of this, they pledged to promote initiatives in two areas:

**Access to justice.** "Supporting public and private initiatives and programs to educate people about their right of access to justice, and promoting measures to ensure expeditious, equitable and universal access to justice." A commitment was also made to exchange experiences regarding alternative mechanisms for administering justice, such as those applied to indigenous peoples.

**Independence of the judicial branch.** The countries pledged to "promote measures to strengthen the independence of the judicial branch, for example through initiatives related to transparency in the selection of judicial officials, judges' job security, appropriate codes of conduct and accountability mechanisms."

This report has the challenging goal of evaluating to what degree these commitments have been honoured in Canada. While not a comprehensive study, it does provide an overview of the key structures that affect and facilitate access to justice, while highlighting some of the challenges faced in Canada.

For the purpose of evaluating the implementation of access to justice and independence of the judicial branch, key sub-themes in each of the two areas have been identified using the Quebec Plan of Action as the point of reference. This breakdown will also serve as the guiding structure of this report. Section I will review Canadian's current ability to access the justice system and will be divided into three parts. The first part looks at how Canadians are being educated about their rights, by whom and to what degree of success. The second part examines some of the official judicial structures and services to determine if Canadians have an "expeditious, equitable and universal" access to justice. Finally, the third part - "Fair treatment" for the poor, the disadvantaged and those subject to discrimination" - reviews how the system is serving some of the most vulnerable members of our society.

Section II will focus exclusively on the state of the judiciary in Canada, reviewing the measures in place to foster an independent, balanced and impartial court system that Canadians can rely on. Points of review will include transparency in judicial selection, job security for judicial authorities, appropriate codes of conduct and measures that ensure accountability to society.

## SECTION I: ACCESS TO JUSTICE

This section will review various mechanisms and circumstances that were created to provide citizens' access to a functioning justice system. The first part provides details about how Canadians are being educated about their rights, and then attempts to evaluate what degree of success these programs are having at imparting knowledge of rights. The second part examines some of the official judicial structures and services, including legal aid and ombudsman services, as well as aspects of the court system. Finally, the third part reviews how the system is serving some of the most vulnerable members of our society.

### *1.1 Education Of Individuals About Their Right Of Access To Justice.*

In Canada there are several governmental and non-governmental bodies that play an active role in providing education to the public about justice-related issues, including the federal and provincial governments, provincial legal aid providers, community-based organizations, universities and law societies. At the federal level, the Department of Justice funds the Public Legal Education and Information (PLEI)<sup>1</sup> program has been in place since the early 1960s and is mandated to provide information to Canadians about the justice system and laws. Through this program the Department of Justice funds a partner organization in each of the 13 provinces and territories – chosen by the provincial governments – which is responsible for providing educational services in their respective communities. Most of the organizations that provide services through the PLEI program also receive support from additional sources, including provincial governments, bar associations, and legal aid providers.<sup>2</sup>

The organizations use several different methods to educate the public, including: print and audio-visual materials; law lines (i.e. telephone) staffed with people to provide information and taped information available by phone; speakers, seminars and workshops; school-based law classes; electronic information; and popular theatre. The Ontario PLEI organization (Community Legal Education Ontario) circulates about a million copies of their materials each year. Publications are mainly in English, with some in French and other languages and many are available electronically. In Saskatchewan in 2002 the PLEI organization provided 83 free legal information sessions, and distributed 212,487 publications.<sup>3</sup>

The Canadian Department of Justice also provides additional project funding to other organizations and community members to deliver public legal education-related projects and they support the Access to Justice Network, an electronic network that provides various types of legal information and education in English and French ([www.acjnet.org](http://www.acjnet.org)). In addition, the Department of Justice, the Supreme Court, the Canadian Judicial Council and the Law Commission of Canada, among others, have web sites that provide useful and accessible information on a range of topics.

When asked, respondents agreed that the governments' programs that aim to educate the public on justice-related topics are generally able to reach a wide audience. All of the respondents did highlight the important role that non-governmental bodies play in providing these services, including provincial legal aid providers, NGOs, foundations, associations and bar associations. For example, in 2002 the province of Ontario's community legal clinic network distributed over 2 million pieces of public legal education material. One respondent noted that there was a need for educators to take better

advantage of the school system and provide better legal education about youth's rights under the law, as well as information about the programs and resources that are available to the public.

Beyond the education of the public, one expert highlighted the education programs about citizens' rights and justice related issues for those directly involved in the day to day functioning of the justice system, commenting on training programs for the judges, lawyers and government departments who make and enforce laws.

It was noted that in general, **training for judges** is good, but there is room for improvement. Currently there are no objective bases or content guidelines for judges training. As a result, much of the current training material is determined by the interests and perspectives of the judges, based on their understanding of the issues and what they themselves identify as necessary. Standards for lawyers are more lax still, and currently there are no requirements for cultural or sensitivity training (e.g. anti-racism, discrimination) for practicing lawyers being admitted to the bar. Without an official requirement, there is no consistent framework for transferring this information, or for sustaining charter values to practicing lawyers. As a result, most lawyers in Canada get absolutely no training on these issues, mainly because they have to assume the financial costs of any additional training or career development. Most lawyers will choose courses and seminars that will improve their "marketability," and often cultural/sensitivity training are not financially viable. While there are conferences and free training sessions offered on these issues, these often only draw the attention of those that are already interested in the topic, not of those who perhaps need the training. Finally, training for government departments is scattered, but is better than other training programs offered as these programs benefit from access to a functioning framework that facilitates the organized and systematic transfer of information.

### **Knowledge Of Rights**

The impact of these efforts to educate Canadians about the laws and their rights has been reasonably successful. Based on the comments of the respondents it seems that in general there is a good understanding of basic rights within the population. However, while in many cases citizens understand their rights in a criminal law context – i.e. that if they are detained by the police they must be read their rights, be informed of why they are being detained and have access to a lawyer, most of the population is not "rights literate." Many do not understand the full range of rights that are provided for in the Canadian Charter of Rights and Freedoms, which is a part of the Canadian constitution and that sets out the fundamental rights and freedoms of individuals and groups in Canada.

Unfortunately, experts did indicate that there is a much lower level of awareness among citizens about how to actually access these rights. At a functional level most people have little knowledge about how to access or negotiate with the many administrative offices, tribunals and watchdog bodies that protect or enforce these rights, and regulate many aspects of their lives. These include bodies that deal with housing issues, human rights complaints, welfare and disability benefits, among others. Areas of particular concern that were highlighted were the need to provide more support and information to those people whose first language is not one of Canada's two official languages – English or French – as they are often unable to access the majority of information provided. Youth was also flagged as a segment of the population that often has little knowledge of the restorative justice practices available to them.

## ***1.2 Expeditious, Equitable And Universal Access To Justice***

In Canada we are served by a number of bodies and departments that strive to provide expeditious, equitable and universal access to justice to all citizens. These services are delivered with varying degrees of success. All require the ongoing and firm commitment of both federal and provincial governments to fund and educate citizens about these services. This section will examine the services and issues facing legal aid, ombudsmen offices, duty council services, as well as the efficiency of courts processing procedures.

### **Legal aid**

The administration of justice in Canada is a provincial/territorial responsibility and legal aid services are administered according to provincial laws. As such their organizational structure, eligibility requirements, and operating systems vary from one jurisdiction to the next. Legal aid is not necessarily free. Service is contingent upon financial eligibility, and some clients may be required to repay a portion of their legal fees, with rates determined by the individual province/territory. Provincial and territorial governments are also responsible for deciding what matters they will cover above the minimum coverage standards for criminal cases set by the federal government, and consequently legal aid services for civil cases also vary among provinces/territories. In some instances civil cases are only family matters; in other jurisdictions it may be expanded to include landlord-tenant issues, consumer protection and social assistance issues.

There are three basic models of legal aid service delivery that have been adopted within Canada: Judicare, the staff system and a mixed system. The judicare system – used in Ontario and New Brunswick – provides approved clients with a certificate that they can use to retain a private lawyer who is willing to take their case. The lawyer then bills the legal aid system for services provided. The staff system – used in Newfoundland and Labrador, Prince Edward Island, Nova Scotia, Manitoba and Saskatchewan – directly employs staff lawyers to provide legal services. The mixed system – existent in Quebec, Alberta and British Columbia – uses both staff and private lawyers to provide legal services.<sup>4</sup>

While legal aid is a provincial responsibility, funding for the provision of legal aid – for criminal and civil cases – has been shared between the federal and the provincial/territorial governments since the 1970s through the establishment of cost-sharing agreements. The contribution division used to be 50/50, however in the 1990s the federal government scaled back its contributions for criminal legal aid funding. Moreover, funds for civil legal aid are now included in the transfer payments made to the provinces and territories through the Canada Social Transfer, but these funds are not strictly earmarked for civil legal aid and are sometimes used for a variety of social programs.<sup>5</sup> In 2001-2002 the overall government contribution to legal aid was CND\$593 million, or 90% of legal aid revenue. During this period, there were 3,001 personnel in legal aid offices in Canada – 36% of which were lawyers.

With the reduction in public budgets, many provinces are facing funding restrictions and a reduction in services. This has led to a decline in what legal aid provides and what areas it supports. The figures in Table 1 indicate the number of applicants that have been approved for full service legal aid assistance in the past five years, with the figures rising between 1997 and 2001, and declining in 2002. Services beyond basic criminal and civil

matters, including landlord-tenant issues, consumer protection, social assistance issues, refugee cases and mental health concerns are becoming increasingly limited. Many advocates point out that Canada does not have adequate services to support the most vulnerable segments of the population in issues such as housing, workers rights, family law, and disabilities. Low-middle class/working poor often slip through the cracks because they access the system too late. The Canadian Bar Association (CBA), has launched a nationwide movement which seeks to entrench the provision of public legal aid to all citizens as a fundamental human right protected under the Constitution. According to the CBA this is the only way to ensure equal access to justice for everyone.<sup>6</sup>

**Table 1. Legal Aid Applicants Approved for full service in Canada**

Year	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002
Total cases	482,204	490,842	503,074	518,194	510,818
% of criminal cases	47%	46%	46%	45%	46%
% of civil cases	53%	54%	54%	55%	54%

Source: *Legal Aid in Canada: Resource and Caseload Statistics 2001/2002*, Table 8, p. 45. Figures are for applicants approved for full service legal aid services – excludes summary services. Does not include figures for the Province of Newfoundland and Labrador.

Despite the increasingly critical funding situation, there are some bright spots. In Canada there are specialized legal aid clinics that provide services to particular communities, including the African-Canadian and South-East Asian clinics and the Women’s Legal Education and Action Fund. These organizations have been successful at serving specific communities. Several of the clinics are engaged in “test-case litigation”, where a potentially precedent-setting case is taken to the Supreme Court with the purpose of testing the *Charter of Rights and Freedoms*. These cases create change at a systemic level and help the Common Law system evolve.

Some respondents did note that in large part the problems that exist with legal aid are not structural problems or philosophical questions about the rationale behind legal aid, but are mainly an issue of adequate funding. These services require increased and ongoing support. The federal government provided a CND\$20 million increase for criminal legal aid for the 2001-2002 and 2002-2003 fiscal years to the provinces and territories in order to help alleviate some of the pressures these jurisdictions are currently facing. This funding must be sustained and increased to meet the various needs of Canadian communities - advocates, funders and policy makers must ensure that the system is providing sufficient and appropriate services to the community.

## Ombudsman

Canadians are served by several ombudsmen at the federal and provincial level. At the federal level there are several commissions responsible for monitoring the rights of citizens in a variety of areas, these include:

- *Access to Information Commissioner*, who investigates complaints from individuals who feel they have been denied access to information granted to them under federal law.
- *Privacy Commissioner*, who deals with privacy rights, and undertakes investigations and audits of privacy-related complaints.
- *Federal Correctional Investigator*, whose primary function is to investigate and resolve individual offender/prisoner complaints, as well as to review and make recommendations on the correctional service’s policies and procedures to ensure that systemic areas of concern are identified and appropriately addressed.

- *Royal Canadian Mounted Police (RCMP) Public Complaints Commission* is an independent federal agency established in 1988 to review public complaints about members of the RCMP (the national police force). The Commission reports to the Commissioner of the RCMP and the Solicitor General.
- *The Commissioner of Official Languages*, who protects the language rights of Canadians by ensuring that members of the public can communicate with all federal institutions in English and French.
- *Canada Post Ombudsman* reviews complaints of customers of the federal postal service.
- *Canadian Forces Ombudsman* responds to complaints and concerns of issues related to the Department of National Defence and the Canadian Forces.
- Canada is also served by the Canadian Human Rights Commission, which has federal jurisdiction and ensures that the Canadian Human Rights Act is applied throughout the country.

At the provincial level eight of the thirteen provinces and territories have their own ombudsman: Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec, Saskatchewan, Yukon, have provincial Ombudsmen.<sup>7</sup> Eleven of the thirteen provinces/territories have a human rights commission or tribunal. While complete data is not available for all jurisdictions, here are some examples of the caseloads of provincial ombudsman:

**Table 2. Provincial Ombudsman Cases – Some examples**

Year	2000	2001	2002
Ontario <sup>8</sup>	25,638	21,186	21,757
British Columbia <sup>9</sup>	10,905	9,581	10,281
Manitoba <sup>10</sup>	777	718	--
Saskatchewan	--	2,435	2,647

Source: Provincial Ombudsman data

The figures indicate that the number of individuals served each year has varied in the past years. In the case of the Ombudsman of Ontario, the number of cases attended to have been falling since 1997. The Ombudsman's office attributes the decline in part to budgetary reductions, which have limited public education campaigns and thus reduced the public's knowledge and understanding of what services are provided. The Ombudsman of British Columbia notes that their office has suffered a 15% budget cut in 2003-2004, and there is a 20% proposed cut for 2004-2005.

### Public Defender system

In Canada duty council services supplement provincial legal aid services. Duty council is legal service provided without charge by a lawyer at a location other than the legal aid office, in many cases for unrepresented individuals who are about to make an appearance in court. Cases coming before a circuit court are typically provided duty council services.<sup>11</sup>

**Table 3. Duty Council Services**

Year	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002
Total cases	786,700	799,586	808,492	849,987	994,598

Source: Legal Aid in Canada: Resource and Caseload Statistics 2001/002, pg. 65.

## Court Processing - Sentencing And Wait Times

Once in the system, the accused must navigate the court system to receive a final decision on their case. Fortunately, in the majority of cases the average delays between when charges are laid and the pronouncement of judicial sentences in Canada is reasonable. As Canada has both federal court and independent provincial/territorial courts, waiting times for judgments vary from jurisdiction to jurisdiction, with larger urban areas often experiencing more backlogs and delays than smaller jurisdictions.

The Canadian Charter of Rights and Freedoms protects the right to a prompt trial, and proceedings against an accused may be stayed if it is proven there have been excessive delays, and Charter rights have been violated. Findings of excessive delay depend on various factors, including the cause of the delay and whether the delay caused prejudice to the accused. The relevant timeframe to consider in a case where unreasonable delay is being argued is the length of time from the date of the charge to the end of the trial. Ontario courts, for example, consider delays of between 11 and 14 months as meeting the threshold test for a consideration of whether there has been unreasonable delay. Reports indicate that in Canada in 2000-2001 the median elapsed time from the first to the last court appearance was 87 days (almost 3 months), an increase of 9% over the 1996 average of 80 days. The median for cases of violent crime, which often take longer to process, was 126 days (approximately 4 months), a 7% increase over 1996-1997 figures.<sup>12</sup> Despite the increase in court processing times, the current waiting times are much less than the 11-14 months threshold test for a consideration of unreasonable delay.

However, individuals in pre-trial custody progressively comprise a larger share of the incarcerated population. While the rate of crime and the number of individuals in sentenced custody have been generally decreasing, admissions to custodial remand or "pre-trial" detention – when a person is held in custody awaiting further court appearance – have also seen a relative increase from an average daily count of 23% - 30% between 1986 and 1996-1997, to an average of 40% in 2000-2001. During that year, on any given day 7,400 adults (40% of 18,400) held in provincial/territorial custody were in being held in remand, awaiting court appearance.<sup>13</sup>

The average daily count has been affected by the length of time that people remain in custodial remand. In 2000-2001, 53% of adults released from remand detention had been in custody for one week or less, a decline from 1990 figures. However, the number who spent more than one week in custody increased. A small percentage (2% - 5%) spent 3 months or more in custody.<sup>14</sup>

Government sources list several reasons to account for the increasing percentage and length of stay of pre-trial detainees. One reason is that despite a declining crime rate in Canada, violent crime – which remanded custody is often used for – has been declining at a slower rate than other types of crime, raising the relative percentage of criminal activity that is violent. Court processing times have also increased (also linked to the relative increase of violent crime cases, which take longer to process), which affects the length of remand stays. Finally, accused individuals are being held in remand more often before the first court appearance, often due to the unavailability of a justice of the peace to adjudicate the case. Legislative changes have also affected the figures.

### ***1.3 “Fair Treatment” Of The Poor, The Disadvantaged And Those Subject To Discrimination.***

When determining the accessibility and effectiveness of a justice system it is instructive to evaluate how that system serves disadvantaged sectors of a society, those that – due to lack of resources, education, information, language barriers and/or other types of discrimination – may encounter obstacles when dealing with formal institutional structures. The next section reviews some of the challenges that these sectors face in Canada, as well as the success and shortcomings of strategies implemented to support them.

#### **Justice for First Nations**

Throughout the hemisphere First Nations communities face many challenges in their efforts to achieve recognition, self-determination and equality; the ability to seek and receive fair and equitable access to justice is but one of these challenges.<sup>15</sup> First Nations communities in Canada also confront challenges when trying to successfully navigate the federal and provincial justice systems. High levels of poverty, social dislocation and discrimination within and towards First Nations communities makes the prevention and resolution of conflict even more difficult. The 2001-2002 report of the Correctional Investigator stressed concern about the over-representation of aboriginal people in Canadian prisons, who account for 17% of the federally incarcerated population while representing only 2.8% of the Canadian population.<sup>16</sup>

When discussing access to justice the Quebec Plan of action made specific reference to indigenous communities and the need to “[p]romote cooperation to exchange experiences in alternative dispute resolution mechanisms to expedite the administration of justice”. Although First Nations do face many challenges in the justice system, and are clearly over-representation in federal prisons, experts did note that the Canadian government does grant a relatively high level of legitimacy to **alternative justice mechanisms applied by indigenous communities**. Canada’s First Nations communities have their own justice administration system, and in general there is a high level of acceptance and training within the judicial system about alternative methods of delivering justice. The players and administrators of justice at the federal and provincial levels are open and willing to work with and incorporate these new ideas and methods. Further, the justice mechanisms applied by indigenous communities in Canada are well developed and sophisticated, and a variety of different models have been developed which are used in different contexts and settings depending on the case and community. Thinking on these models continues to evolve and are proving so successful that they are beginning to be used in other non-aboriginal contexts and communities.

Current models, including circle sentencing, restorative justice projects, and victim offender meetings, try to incorporate the needs of the community and the offender into the sentencing process. These methods, however, can only be implemented by the request of the defence counsel and with the consent of the judiciary, Crown and local Aboriginal band council. They cannot be used in cases of serious or violent crime or when mediation has been rejected.<sup>17</sup>

#### **Figure 1. New Approaches in the sentencing and court processes**

**Sentencing circles.** Sentencing circles, pioneered in the Yukon Territorial Court in the early 1990s, are now used in much of the country, mostly at the provincial court level and in cases involving Aboriginal offenders and victims. After a finding or admission of guilt, the court invites interested members of the community to join the judge, prosecutor, defence

counsel, police, social service providers, community elders, along with the offender, the victim and their families and supporters, and meet in a circle to discuss the offence, factors that may have contributed to it, sentencing options, and ways of reintegrating the offender into the community. Everyone is given the chance to speak. Often the circle will suggest a restorative community sentence involving some form of restitution to the victim, community service, and/or treatment or counselling. Sometimes members of the circle will offer to help ensure that the offender lives up to the obligations of the community sentence, while others may offer to provide support to the victim. It is important to note, though, that sentencing circles do sometimes recommend a period of custody. However, the judge is not bound to accept the circle's recommendation.

**Alternative Dispute Resolution Systems (ADR)** refers to the wide variety of methods by which conflicts and disputes are resolved outside the courtroom. ADR allows people to settle their differences through means that are more informal, less expensive, and often quicker than court proceedings, such as mediation and arbitration. As with administrative tribunals, the relationship between the courts and ADR is complementary. The courts themselves often make use of ADR – for example, some provinces now insist on mediation as part of the litigation process.

Source: Department of Justice. *Canada's Court System*. Available at: <http://canada.justice.gc.ca/en/dept/pub/trib/page3.html#sentencing> (consulted on January 15, 2003).

One of the ways by which the government provides recognition and support to indigenous communities' administration of justice is through the provision of financial support for relevant programs and services. In October 1996 the government established the Aboriginal Justice Strategy (AJS) to support aboriginal community justice initiatives and community-based justice programs. The program works in partnership with First Nations communities to design and deliver justice services. As of 2001 the program received CND\$6.8 million per year in federal funding, which was matched with equal or greater sums from provincial/territorial governments to support 90 programs offering services in 280 communities.<sup>18</sup> In 2001, the AJS was renewed by the federal government for another five years, with about CND\$57.5 million slated for the program over that period.

### **Policing Vulnerable Communities**

Turning attention to policing in Canada, there is agreement that in general the **actions of the police are compatible with the requirements of a democratic state** and Canada does not have a corrupt police culture. In general, feedback on **the respectful treatment of victims, complainants and anyone** else who contacts the police has generally been positive. However, there have been individual cases of police corruption, racism and abuse of power and authority that have to be looked at carefully. The most visible case is the 1999 complaint about corruption and abuse of authority on the part of the Toronto Police Service's central drug squad. While a 2000 investigation saw all charges dropped, in August 2001, the Toronto Police Chief asked the Royal Canadian Mounted Police (RCMP) to undertake an independent investigation into allegations of theft and use of excessive violence by members of the drug squad. After a 30-month, CND\$3 million investigation, 6 police officers were charged with 40 individual counts, including conspiracy to obstruct justice, perjury, theft, extortion and assault causing bodily harm, and will now face trial.<sup>19</sup> The Toronto Police Force is underscoring that this is not a systemic problem, but instead an isolated case, and is seeking to regain the trust of the community.

There have also been complaints about policing practices in First Nations communities. The case of Darrell Night stands out. Mr. Night, a member of the *Cree Nation* in Saskatoon, was picked up by the police one evening in January 2000 and driven outside

of the city limits and dropped off. The RCMP undertook an investigation and two officers from the Saskatoon Police Service were convicted of unlawful confinement and sentenced to 8 months of prison. This case has given First Nations communities reason to believe that the 6 other aboriginal men who have been found frozen in Saskatoon were exposed to the same treatment, and has reinforced the perception within the community that they are being targeted and abused by police officers.<sup>20</sup>

It was noted by respondents that police have come along way in the area of sexual assault, but the service and treatment are still uneven and there is need to look at specific populations and provide more training. Another positive step highlighted was the existence of special units that deal with specific issues (e.g. sexual assault, hate crimes). These units tend to be especially well-trained and provide very good service to the public.

While misconduct and abuse of power are not consistent or endemic to all police forces in all communities, and vary from place to place, differences do exist in the treatment of vulnerable groups, based on class, income level and ethnic aspects. While thorough and meticulous investigations were undertaken and charges have been laid against the officers involved in the abuses described above, ongoing caution is required. There is a sufficient amount of misconduct to be of concern and police authorities and the community must remain vigilant against such behaviours.

In an effort to eliminate these types of cases from happening at all, Canadian police do get some **training on human rights**, but it is optional and is not a requirement to become a police officer. As a result of the lack of standardized requirements, the training is uneven. Some police departments offer very good training while some do none at all. What it is often offered are the basics of "community policing" and "cultural sensitivity," and much of it is "reactive," i.e. it is offered when the police is in trouble and would like to restore its image, for example because of a story in the news. This type of training is considered insufficient in one respondent's estimation. It is suggested that police need more thorough, specific and standardized training, specifically on how to exercise discretion when exercising powers with all members of society. Another respondent noted that police and court workers should be given training and be familiarised with the contents of the International Human Rights Conventions (e.g. the UN Convention on the Rights of the Child) to which Canada is a signatory.

### **Formal use of the Justice system by Disadvantaged Groups**

Uncovering a clear picture of the proportion of vulnerable and lower-income groups that seek recourse through the formal judicial system is difficult. While the general consensus seems to be that only a moderate proportion of this population reports issues, it was repeatedly noted that it is hard to comment on the level of trust because in many cases the data on this issue is unavailable. The only way to get this type of information is through community-based organizations that work directly with at-risk populations. The lack of data indicates the need for a strong and well-funded infrastructure designed to compile and disseminate this type of information, which would in turn help design programs aimed at groups that may slip through the cracks.

Given the lack of reliable indicators on service use, experts did point to several groups that are at-risk of being excluded from the formal justice system. Groups mentioned include the very poor and homeless, psychiatric patients and undocumented immigrants and refugees. They also pointed out some of the circumstances that make it difficult or unappealing for lower-income and disadvantaged groups to present their problems to the formal judicial system. In some cases access to legal aid and other support programs

varies, with poorer areas having limited services and supports. Legal Aid providers in the province of Ontario note that there is a large group of people – the “working poor” – who are ineligible for “free” legal aid under pre-set legal aid eligibility guidelines, but who are nevertheless also unable to pay for their own private legal assistance. In some cases these people choose to represent themselves, but some simply do not bring their cases before the courts. Language barriers, literacy and lack of trust may also impede access.

Although we do not have information on who is not being served, it is interesting and instructive to look at who is coming forward with complaints and concerns. In 2001-2002 the ombudsman of Ontario reported that of the 21,186 complaints brought to their office, 84% were made by caucasians, 9% by racial minorities, 4% by indigenous and 3% by unknown individuals. Of these cases, 31% of complainants were disabled, 16% were sole support parents, 8% were seniors (65+) and 3% were youth under 25. Forty eight percent reported having an income of \$30,000 or higher.<sup>21</sup>

Despite the reluctance on the part of some segments of our communities to come before our justice system, all respondents stated that there have been no cases of **extra-judicial incidents or of the population “taking justice into their own hands”** in Canada.

### **Support Services for those in Need**

The quality of free or low-cost **support services that assist the poor, disadvantaged or those subject to discrimination** to access justice varies between provinces and between services. The federal and provincial governments offer a number of services to the people involved with the justice system, including psychological supports, translation and interpretation, police protection of witnesses, as well as other support services. Psychological supports are offered for victims and those involved with the justice system, but the services available have been given mediocre review by advocates. In particular, youth involved with the law have a number of unaddressed needs and there is insufficient psychological support available for youth in distress as a consequence of their legal involvement. The availability of programs (e.g. re-entry, anger-management, counselling, self-esteem building) is patchwork and inadequate, and there are very long waiting periods for free legal representation. In the Province of Nova Scotia the child ombudsman's office is mandated to ensure the rights of youth in conflict with the law are respected but its funding is limited, and many citizens remain unaware of it.

Equal access to justice also implies the surpassing of barriers such as language. According to the Charter of Rights and Freedoms, English and French are Canada's official languages and either official language may be used in court proceedings. In the case that a person does not speak the language in which these proceedings are taking place, that person should have the right to translation services. This right is reinforced by the Criminal Code.<sup>22</sup> But experts note that outside the courts translation and interpretation services are improvised and patchwork, and could be improved. The governments of Canada and of the Provinces offer victim services as well as a police protection program for witnesses; these mechanisms were rated average by one specialist and low by another.

### **Changes in Criminal Law to Support Victims of Crime**

Since 2001 several reforms to the criminal laws have been made. Several pieces of legislation have been passed to amend the Criminal Code of Canada, including reforms that affect sentencing guidelines and criminal and court procedure. Although a number

of the changes made to criminal laws do not necessarily favour low-income plaintiffs, they do aim to protect vulnerable members of our society – namely children, victims of violence and domestic abuse. Among the most high profile reforms are:

- Bill C-36, which received Royal Assent on December 18, 2001 was formulated in response to the terrorist attacks of September 11, 2001. Some of the relevant changes introduced by Bill C-36 are the measures to strengthen investigative tools such as “preventive arrest” (under certain conditions even without a warrant), the ability to require individuals with relevant information for an ongoing investigation of a terrorist crime to appear before a judge to provide it, and to facilitate the use of electronic surveillance. The legislation was and remains controversial and is still the subject of much attention and analysis in the national media.
- In April 2000 the Youth Criminal Justice Act came into effect, governing criminal offences committed by those 18 and under, replacing the former Young Offenders Act. The new Act creates an updated framework, to create a more fair and effective youth justice system, and reduce the rate of incarceration of young people. It defines clear and coherent principals to guide decision-making in youth justice matters; provides more supports for youth outside of the courts for less severe crime, with more focus on rehabilitation and reintegration of young offenders; divides clearly between serious and violent and less serious offences. It is hoped that the focus on supporting and rehabilitating children, who may have themselves be victims of violence, abuse, poverty and neglect, rather than placing them in custody will better support youth in crisis and stop what could perhaps be the start of a cycle of crime. It is too early to assess impact.
- Bill C-15A, passed in June, 2002, contains amendments to the *Criminal Code* dealing with Child Pornography, as well as amendments related to criminal procedure. The amendment aims to protect children and victims of violence from sexual exploitation. Procedural reform provisions attempt to reduce potentially negative impact on victims and witnesses.
- Bill C-20 was presented to House of Commons on December 5, 2002 and is currently being debated by Parliament.<sup>23</sup> The Bill deals with Child Pornography Law and contains changes aimed at explicitly safeguarding children and other vulnerable people from sexual exploitation. The Bill would change court and criminal procedures to make it easier and less traumatic for child victims to access the justice system.
- There have also been initiatives to provide special support for victims of domestic violence (spousal violence, child abuse) since 2000. In the area of legislative reform for victims of domestic violence, a number of key *Criminal Code* amendments have been put in place to improve the criminal justice legal framework for addressing family violence:<sup>24</sup> These changes come after a number of important reforms that have taken place since 1993, including the creation of criminal harassment (commonly referred to as “stalking”) as a Criminal Code offence, with strengthened sentencing provisions. Additional changes also make court and police officials take into account victim safety, breach of a protective order and child or spousal abuse when making bail and sentencing decisions.

## Program Support for Victims of Violence and Domestic Abuse

Aside from these legal reforms, additional initiatives have been implemented to **protect victims of violence**, like the Policy Centre for Victims. In 1999, the Policy Centre for Victims was established to develop and coordinate federal initiatives to strengthen the role of victims in the criminal justice system and to improve the ability of the Department of Justice to develop laws that take into consideration the perspectives of the victims with collaboration of provincial/territorial governments.<sup>25</sup> In March 2000, the federal government announced CND\$25 million in funding over five years for this initiative.

In 2002, the government also pledged financial support for "Cybertip" ([www.cybertip.ca](http://www.cybertip.ca)), a website where people can report the online sexual exploitation of children. In addition, Canadian officials are also working with international officials (especially with G-8 countries) to create a collaborative strategy to protect children from sexual exploitation on the Internet – which due to the advances in technology information systems has become a transnational and borderless crime.

Provincial governments also make laws in areas of provincial jurisdiction including the provision of victims' services. To date, five provinces and one territory have proclaimed specific legislation on family violence:

- Saskatchewan: *Victims of Domestic Violence Act* (February 1, 1995)
- Manitoba: *Domestic Violence Stalking, Prevention, Protection and Compensation Act* (June 29, 1998)
- Prince Edward Island's *Victims of Family Violence Act* (December 16, 1996)
- Yukon Territory's *Family Violence Prevention Act* (December 11, 1997)
- Alberta: *Protection Against Family Violence Act* (June 1, 1999)
- Ontario: *Domestic Violence Protection Act* (December 18, 2000)

## The Treatment of Prisoners

In Canada Corrections officials have introduced initiatives to ensure **more humane and dignified treatment of** prisoners since 2000. According to Canada's Constitution, the federal and provincial governments share responsibility for correctional facilities, with the Correctional Service of Canada responsible for offenders serving sentences of 2 years or longer. Provincial authorities are responsible for offenders serving sentences less than two years, and for most young offenders. Prisoners in these systems are currently served by a variety of different programs, including programs for aboriginal inmates, chaplaincy programs, education and employment programs, ethno cultural programs, family violence programs, living skills programs, sexual offender, substance abuse, and violence prevention programs. There are also programs for victims and the families of offenders.

While experts commented that the treatment of prisoners in Canada remains "comparatively fairly good", there are still many problems in the system and conditions that require ongoing attention. Alcohol and drug abuse, violence and disproportionately high levels of HIV/ AIDS and hepatitis among prison inmates are among some of the issues that must be addressed by administrators of the prison system. According to the report of the Federal Correctional Investigator (2002-2003),<sup>26</sup> released in June 2003, aboriginal offenders, institutional violence, women offenders, inmate programs and conditional release continue to be major outstanding issues that require further support and attention within the correctional system.

## **SECTION II: INDEPENDENCE OF THE JUDICIAL BRANCH.**

In all countries, the “justice system” is comprised of a number of independent but interconnected bodies – all of which need to be working well for the system to function efficiently. In the previous section legal frameworks, policing, education and special programming were reviewed. The second section will cast an eye to the functioning of the courts in Canada, reviewing the measures and success of laws and regulations in place to foster an independent, balanced and impartial court system. Points of review will include transparency in judicial selection, job security for judicial authorities, appropriate codes of conduct and measures that ensure accountability to society.

### ***2.1 Transparency In The Selection Of Judicial Authorities.***

Fortunately the Canadian judicial system has been successful in selecting independent, well-qualified and professional judges; however, for some years there have been discussions about the need to make the selection process of Supreme Court justices more transparent. On August 2004, a first step was taken in that direction during the selection process for two new judges chosen to fill vacancies on the Supreme Court (see below). There have not been problems of judicial corruption, misconduct or public protest about judicial appointments. The way in which the Canadian federal appointment system works demonstrates that it is not necessarily only the formal legal structure that determines the success of independent appointment. Success also relies on the culture and ongoing commitment of the players involved to a fair and transparent process, based on the goal of maintaining a trustworthy and respected judiciary.

Canada has courts that serve at both the provincial and the federal level. The federal government appoints judges to the Federal, Supreme and Tax court, as well as provincial superior court and appellate judges. The federal government also sets and pays the salaries of these judges. The provincial governments are responsible for naming lower court judges in their provincial jurisdictions. Since the 1970s the process of appointing Supreme Court judges has also included the informal input of a Joint Committee comprised of the bar associations and other individuals who are not lawyers. In an attempt to make the process more transparent a new mechanism has been implemented. An ad hoc committee composed by nine Members of the Parliament scrutinized the selection of Justices for the Supreme Court and question the Justice Minister about the nominees in a televised session. The ad hoc committee will then write a report to the Prime Minister, however their comments will not be binding and the Prime Minister will make the final decision on selection of candidates.

This process was used for the first time on August 25, 2004. Some argue that this mechanism enables on one hand more transparency, while on the other it prevents the politicization of the selection process. However, members of the ad hoc committee have cast doubts about the real impact of this reform. Some of them have argued that the nominees, and not the Justice Minister, should attend the hearing in person to be questioned, and also stress that they do not have real power to veto the nominees. Although the ad hoc committee will likely support the selection of the two candidates, it requires further reforms to the selection mechanism.<sup>27</sup>

To be considered for the Supreme Court individuals must be a lawyer or superior court judge with good standing for 10 years.<sup>28</sup> Details about the candidates for Supreme Court postings are made public and published in the national press. The Minister of Justice does theoretically have the ability to disregard or reject candidates submitted by the

committees, but in practice this has never happened. Provincial governments have the responsibility of naming provincial court judges in their jurisdiction. Each province has developed its own selection procedure.

## ***2.2 Job Security For Judicial Authorities.***

In Canada federal and provincial judges hold tenure until the age of 75 (70 in some provinces), contingent upon good behaviour. Since 2000 no judge has been removed or suspended due to political pressures or other arbitrary influences in reaction to their previous judicial decisions.

## ***2.3 Appropriate Codes Of Conduct.***

In Canada there is no legally binding code of ethics (in the criminal code or the constitution), but since 1971 the Canadian Judicial Council (CJC) has been responsible for dealing with the conduct and ethics of the 1,029 superior court judges. The CJC consists of 39 members, is chaired by the Chief Justice of Canada and includes the chief justices and associate chief justices, chief judges and associate chief judges, and in the case of the three northern territories, the senior judges, of all courts whose members are appointed by the federal government. The Council is accorded this role by the Judges Act, which governs judges and sets out a process to assess alleged misconduct by judges, as well as the grounds for their removal. It is the Council's responsibility to determine whether the judge has acted inappropriately and if found guilty, "to incapacitate or disable the judge from the due execution of the office."<sup>29</sup> The Council has a handbook for judges, entitled *Ethical Principles for Judges* that they use to guide their work. The CJC makes an independent assessment, and can make a recommendation to the Minister of Justice that the judge be removed. The Minister must then go to the Parliament, who would instruct the Governor General to remove the judge from office.

Since 2000 Canada has faced no cases of judicial corruption, however investigations into the ethical conduct of judges have taken place. During 1999 and 2000 a total of 319 cases of alleged misconduct by superior court judges were presented to the Canadian Judicial Council: 169 cases in 1999 and 150 in 2000. The Council reports that the largest proportion of the complaints was found to have little foundation. Of the 150 cases presented in 2000, three files were referred to further review by a panel comprised of up to five judges. Outside counsel was asked to undertake further investigation in two cases.<sup>30</sup>

## **Complaints Mechanisms**

If individuals feel that they have been mistreated or witnessed judicial misconduct there are additional mechanisms that the public can use to lodge a complaint, including provincial ombudsmen and the Canadian Human Rights Commission (CHRC). The CHRC is responsible for the Canadian Human Rights Act and all the human codes that exist in the provinces in order to ensure equality of opportunity and freedom from discrimination by a federal jurisdiction based on race, gender, marital status, physical disabilities, sexual orientation, national or ethnic origin, pardoned criminal conviction or religion.<sup>31</sup> The national office of the CHRC is located in Ottawa, but there are 6 regional offices that receive complaints (Alberta and the Northwest Territories, Atlantic, British Columbia and Yukon, Ontario and Quebec).<sup>32</sup>

## ***2.4 Accountability To Society.***

In general the availability of information on various aspects of the justice system in Canada is considered high to average. Information on judicial budgets, remuneration of judges, judicial proceedings, cases and decisions, users of the judicial system, accusations of torture and police abuse, and information on detainees and defendants awaiting sentencing is available via various sources. Information on personal assets of judges is not considered to be relevant information and is protected by the Privacy Act. Respondents listed the media, NGOs and various government departments (web sites, publications, newsletters and conferences) as the source of this information. It was also noted that if "accusations of torture and policy abuse" was interpreted to include complaints against the police, then the availability of this information would be "low" since most police complaints or cases of abuse are considered private and confidential, unless it is a very high-profile case that attracts media attention.

It is also interesting to note that in Canada currently there is a public debate about the role of the Supreme Court in setting law and determining the direction and parameters of social relations. At issue is the fact that several important cases that are currently before the courts (legalization of marijuana, same-sex marriage) are issues of extreme political and social importance. Some judicial critics argue that these types of decisions should be made in Parliament by elected officials who are accountable to the public via elections, not by appointed members of the court. Members of the court, who seldom offer public comment, have signalled their view that they are merely interpreting current legislation in light of the Charter of Rights and Freedoms.

### **Public Access to Judicial Information**

In general Canada keeps very good statistical information on the justice system, that is easily accessible by the public. Corrections Canada, the Department of Justice, the Law Commission of Canada, the Canadian Judicial Council and other related departments make publications, studies and annual reports on various aspects of the judicial system available to the public, which provide up-to-date information at no cost. The Canadian Centre for Justice Statistics (a branch of Statistics Canada) has comprehensive data on the justice system and crime in Canada. Much of this information is not free, but can be purchased from the Centre.

The Internet is also used extensively to publicize and circulate this information to the general public. The quality of information about the judicial system available on the Internet is considered very good. However, there were concerns that while the Internet does provide a large amount of information the content is not presented or written in a manner that is comprehensible or accessible to young people.

### **Institutional structures facilitating the diversification of the judiciary**

The Supreme Court of Canada is a national, bilingual and a bi-judicial institution. It is representative of the Canadian regions and it is bi-judicial because the province of Quebec uses the Civil Law system unlike the rest of Canada, where the Common Law is used. The Supreme Court of Canada is made up of 9 judges, 3 of which according to statutory requirements have to come from Quebec.<sup>33</sup> Although the statute does not stipulate how to distribute the remaining 6 places in the Supreme Court, it is customary that

3 be from Ontario, 2 from the Western Provinces and 1 from the Atlantic Provinces. However, criticism has been made recently because the Northern Territories are not represented.

If the nomination of the two new Justices is approved, the composition of the current court will be 5 men, 4 women. All of the judges are white, with no black, indigenous or individuals of other visible minorities represented. Since 2000 there have been three Supreme Court judges appointed to the bench, one of whom was a woman, the Right Honourable Beverly McLachlin, who was also appointed Chief Justice of Canada – the first woman to hold the post.<sup>34</sup>

The provincial superior courts have been taking steps to be more representative and diverse. There is an increase in the numbers of woman judges: in 1994 Rose Boyko, a T'Sekani woman from British Columbia, became the first Aboriginal woman appointed by the federal government to a superior court, when she was appointed to the Ontario High Court<sup>35</sup> and the first black woman was appointed in a Canadian provincial court 3 years ago. The provincial courts have also seen some movement in the area of racial diversity, with the addition of Italian and Jewish judges. However, challenges to demographics and representativity remain, not just with race and gender, but also with different politics, philosophies, economic profiles and sexual preference.

## **CONCLUSIONS:**

In Canada the systems we rely on to maintain well-functioning fair and efficient delivery of justice – at all stages of the judicial process – are in line with requirements of a democratic state. Nevertheless, the system faces many challenges and there are members of society who are not adequately served by the current structures.

In the area of Access to Justice:

- There are public education programs that teach Canadians about their rights and duties, especially in a criminal context. However there is a need to make Canadians more) "rights literate" by providing a better understanding of the Charter of Rights and Freedoms and the rights and responsibilities that it confers. At the same time there is also a need to provide more information and education about the existence, mandate and functioning of the many regulatory bodies that structure our daily lives.
- Canada does have legal aid, several ombudsmen, and public defenders that are fairly well run. Funding cuts and increasing responsibilities has affected the number of clients served has been decreasing, as well as a decline in public awareness about existence, function and access to these services.
- We do face problems around the provision of sufficient and appropriate services and certain groups are not well served: refugees, psychiatric patients, non-English/French speakers, working poor. There is a need to better identify and support these at-risk groups.
- In Canada we generally have competent, independent and well-trained legal officials, including police, judges and lawyers. Our courts, police services and the bar associations are most often run efficiently and fairly. However there have been isolate incidents of abuse and racism which must be acknowledged and followed-up.

Human rights, cultural and sensitivity training must be more structured and broadly available – it must become a requirement for all those holding positions of power.

- There have been changes in criminal laws/criminal procedure to protect vulnerable groups (children, victims of crime and domestic violence).

Regarding Independence of the Judiciary, the study found that:

- Fortunately the Canadian judicial system has been successful in selecting and appointing independent, well-qualified and professional judges. Since 2000 there have been no cases of judicial corruption and no judge has been removed or suspended due to political pressures or other arbitrary influences, in reaction to their previous judicial decisions.
- In Canada Supreme Court judges are appointed by the federal government, have tenure until 75 years of age, contingent upon good behaviour.
- No legal codes of conduct exist in Canada, but the Canadian Judicial Council is responsible for dealing with conduct and ethics of superior court judges. There have been no cases of judicial corruption in Canada.
- Judicial accountability to society is high, and there are several reliable sources of information about both the procedural aspects of the courts, as well as cases and judgments.
- Canada's Supreme Court is made up of 9 judges; if the selection of the two judges is accepted there will be 4 women in the Supreme Court. All Justices of the Supreme Court are white, and speak English and French.
- At the provincial level there is move to make judges more representative. There has been an increasing in the number of # of women judges and minorities are slowly being appointed to the bench.

## **PROPOSALS**

Despite the recognition of indigenous alternative justice mechanisms and the AJS, there is more to be done for Canadian First Nations in the areas of prevention, the administration of justice and rehabilitation. It is hoped that provincial and federal governments will to continue to place more emphasis and effort on this issue.

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- *Canadian Justice Council*: <http://www.cjc.ccm.gc.ca/>
- *Canadian Human Rights Commission*: <http://www.chrc-ccdp.ca/>

- Correctional Services Canada: <http://www.csc-scc.gc.ca/>
- Department of Justice Canada: <http://canada.justice.gc.ca/>
- Ombudsman Manitoba: <http://www.ombudman.mb.ca/>
- Ombudsman Ontario: <http://www.ombudsman.on.ca/>
- Supreme Court of Canada: <http://www.scc-csc.gc.ca/>

## ENDNOTES

<sup>1</sup> [http://canada.justice.gc.ca/en/ps/pb/legal\\_ed.html](http://canada.justice.gc.ca/en/ps/pb/legal_ed.html).

<sup>2</sup> See appendix for links to provincial organizations providing legal information services.

<sup>3</sup> <http://www.cleo.on.ca/english/about.htm>; <http://www.plea.org/aboutplea/aboutplea.htm>.

<sup>4</sup> PRA, *A Study on Legal Aid and Official Languages in Canada*. Report prepared for the Canadian Department of Justice, May 2002. Available at: <http://canada.justice.gc.ca/en/ps/rs/rep/LARS03-1.RTF> (accessed on January 15, 2004).

<sup>5</sup> Vicki Schmolka. The Right to Publicly-Funded Legal Representation in Canada. Making the Case. In Canadian Bar Association, *Legal Aid: Making the Case*. Press release. Available at <http://www.cba.org/CBA/EPllgram/Oct2003/default.asp> (accessed on January 15, 2003).

<sup>6</sup> Canadian Bar Association. *Legal Aid – Making the Case*.

<sup>7</sup> <http://www.law.ualberta.ca/centres/loi/eng/resources.html>

<sup>8</sup> [http://www.ombudsman.on.ca/pdf/2001\\_02\\_annualreport\\_eng.pdf](http://www.ombudsman.on.ca/pdf/2001_02_annualreport_eng.pdf) pg25; for 2002

<http://www.ombudsman.on.ca/pdf/OmbudsmanEngAR.pdf> pg 42.

<sup>9</sup> [http://www.ombudsman.bc.ca/publications/reports/Report\\_2003/Ombuds%20Annual%20Report%202002.pdf](http://www.ombudsman.bc.ca/publications/reports/Report_2003/Ombuds%20Annual%20Report%202002.pdf)

<sup>10</sup> Manitoba: <http://www.ombudsman.mb.ca/news/mar17-03.htm> (2001);

<http://www.ombudsman.mb.ca/pdf/Ombudsman%202000%20Annual%20Report.pdf> (2000).

<sup>11</sup> Legal Aid in Canada: Resource and Caseload Statistics 2001/002, pg 65.

<sup>12</sup> Sara Johnson, "Custodial Remand in Canada, 1986/87 to 2000/01". Juristat, Vol 23. no. 7, Canadian Centre for Justice Statistics, pg 11.

<sup>13</sup> Ibid, pg 8.

<sup>14</sup> Ibid, pg 12.

<sup>15</sup> Correctional Services Canada. Aboriginal Initiative Branch. *Facts and Figures*. Last Updated on May 23, 2003.

Available at: [http://www.csc-scc.gc.ca/text/prgrm/correctional/abissues/know/7\\_e.shtml](http://www.csc-scc.gc.ca/text/prgrm/correctional/abissues/know/7_e.shtml) (Accessed on January 15, 2004).

<sup>16</sup> Correctional Service Canada. Response to the 29<sup>th</sup> Annual Report of the Correctional Investigator: Aboriginal Offenders, Ottawa, Canada: Correctional Service Canada, 2001-2002. 2001-2002.

<sup>17</sup> Department of Justice. *Canada's Court System*. Available at: <http://canada.justice.gc.ca/en/dept/pub/trib/page3.html#sentencing> (Consulted on January 15, 2003).

<sup>18</sup> <http://canada.justice.ca/en/ajn/strat/html>; <http://canada.justice.ca/en/dept/pub/achieve200.html#ach46>.

<sup>19</sup> Ana Maria Tremonti. *The Current*. CBC Radio. January 8, 2004. <http://www.cbc.ca/thecurrent/2004/200401/20040108.html>;

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<sup>20</sup> DeNeen Brown. Left for Dead in a Saskatchewan Winter. *The Washington Post*. November 22, 2003, p. A01.

<sup>21</sup> [http://www.ombudsman.on.ca/pdf/2001\\_02\\_annualreport\\_eng.pdf](http://www.ombudsman.on.ca/pdf/2001_02_annualreport_eng.pdf), pg 31.

<sup>22</sup> PRA. *A Study on Legal Aid and Official Languages in Canada*. Opus cit, pg. 1.

<sup>23</sup> Interesting to note that while providing increased protection to children, critics have pointed out some freedom of expression problems with the bill regarding artists need to prove "public good". Alberta: *Protection Against Family Violence Act* (June 1, 1999).

<sup>24</sup> <http://canada.justice.gc.ca/en/ps/fm/legis.html>

<sup>25</sup> <http://canada.justice.gc.ca/en/ps/voc/index.html> (accessed on January 15, 2004).

<sup>26</sup> Canada, The Correctional Investigator. *Annual Report of the Correctional Investigator 2002-2003* (June 30, 2003). Ottawa: The Government of Canada.

<sup>27</sup> Kim Lunman and Brian Laghi, Charron, Abella named to top court, *The Globe and Mail*, August 25, 2004; Lunman and Laghi, Commons panel to accept judges, *The Globe and Mail*, August 26, 2004; John Ibbitson, Raising the bar is tough to do, *The Globe and Mail*, August 25, 2004.

<sup>28</sup> <http://qsilver.queensu.ca/law/fyrp/judicial.htm>

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<sup>29</sup> Canadian Justice Council. *Opus cit*, pg. 9 – from Judges Act

<sup>30</sup> Canadian Justice Council. [http://www.cjc-ccm.gc.ca/english/annual\\_reports/2000-2001\\_E.pdf](http://www.cjc-ccm.gc.ca/english/annual_reports/2000-2001_E.pdf)

<sup>31</sup> [http://www.chrc-ccdp.ca/AboutCHRC\\_AproposCCDP/about.asp#The%20Mandate%20of%20the%20Canadian%20Human%20Rights%20Commission](http://www.chrc-ccdp.ca/AboutCHRC_AproposCCDP/about.asp#The%20Mandate%20of%20the%20Canadian%20Human%20Rights%20Commission).

<sup>32</sup> See appendix.

<sup>33</sup> Information was provided by biographies of the judges on the Supreme Court web site. <http://www.scc-csc.gc.ca>.

<sup>34</sup> <http://www.scc-csc.gc.ca>.

<sup>35</sup> [http://www.lawsite.ca/WLSC/Collage\\_w.htm](http://www.lawsite.ca/WLSC/Collage_w.htm).

## Appendix

The purpose of this appendix is to direct the reader to additional sources of information on the Canadian Judicial System, as well as to the institutions and organizations that provide some of the services described in this report. Although the information presented here is not exhaustive, we believe it constitutes a starting point for those interested in learning more.

### Official Web sites

- **Department of Justice Canada:** <http://canada.justice.gc.ca/>
- **Aboriginal Justice Strategies:** <http://canada.justice.gc.ca/en/ps/ajln>
- **Access to information Commissioner:** <http://www.infocom.gc.ca/>
- **Canadian Centre for Justice Statistics:** <http://www.statcan.ca/english/freepub/85F0033MIE/free.htm>
- **Canadian Human Rights Commission:** <http://www.chrc-ccdp.ca/>
- **Canadian Justice Council:** <http://www.cjc.ccm.gc.ca/>
- **Commissioner of Official Languages:** <http://www.ocol-clo.gc.ca/>
- **Correctional Services Canada:** <http://www.csc-scc.gc.ca/>
- **Federal Correctional Investigator:** <http://oci-bec.gc.ca>
- **Law Commission of Canada:** <http://www.lcc.gc.ca/>
- **Ombudsman Manitoba:** <http://www.ombudsman.mb.ca/>
- **Ombudsman Ontario:** <http://www.ombudsman.on.ca/>
- **Privacy Commissioner:** <http://www.privcom.gc.ca>

### Canadian Courts

#### *Federal Courts:*

- **Supreme Court of Canada:** <http://www.scc-csc.gc.ca/>
- **Federal Court of Canada:** <http://www.fct-cf.gc.ca>
- **Tax Court of Canada:** <http://www.tcc-cci.gc.ca>
- **Court Martial Appeal Court:** <http://www.cmac-cacm.ca>

#### *Provincial Courts in Canada:*

- **Alberta:** [www.albertacourts.ab.ca](http://www.albertacourts.ab.ca)

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- **British Columbia:** [www.courts.gov.bc.ca](http://www.courts.gov.bc.ca)
  - **Manitoba:** [www.manitobacourts.mb.ca](http://www.manitobacourts.mb.ca)
  - **New Brunswick:** [www.gov.nb.ca](http://www.gov.nb.ca)
  - **Newfoundland:** [www.gov.nf.ca/just/lawcourt/lcourt.htm](http://www.gov.nf.ca/just/lawcourt/lcourt.htm)
  - **Northwest Territories:** [www.gov.nt.ca](http://www.gov.nt.ca)
  - **Nova Scotia:** [www.gov.ns.ca](http://www.gov.ns.ca)
  - **Nunavut:** [www.gov.nu.ca/gnmain.htm](http://www.gov.nu.ca/gnmain.htm)
  - **Ontario:** [www.ontariocourts.on.ca](http://www.ontariocourts.on.ca)
  - **Prince Edward Island:** [www.gov.pe.ca/courts/](http://www.gov.pe.ca/courts/)
  - **Quebec:** [www.justice.gouv.qc.ca/francais/tribunau.htm](http://www.justice.gouv.qc.ca/francais/tribunau.htm)
  - **Saskatchewan:** [www.sasklawcourts.ca/](http://www.sasklawcourts.ca/)
  - **Yukon:** [www.courts.gov.bc.ca/CA/ca-yuk.htm](http://www.courts.gov.bc.ca/CA/ca-yuk.htm)

## Relevant Legislation

### *Federal Level:*

- **Canadian Constitution:** <http://laws.justice.gc.ca/en/const>
- **Canadian Charter of Rights and Freedoms:** <http://laws.justice.gc.ca/en/charter>
- **Bill C-15A:** [http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/government/C-15A/C-15A\\_3/C-15A\\_cover-E.html](http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/government/C-15A/C-15A_3/C-15A_cover-E.html)
- **Bill C-36:** <http://canada.justice.gc.ca/en/terrorism>
- **Criminal Code:** <http://laws.justice.gc.ca/en/C-46/>
- **Judges Act:** <http://www.laws.justice.gc.ca/english/J-1/>
- **Privacy Act:** <http://laws.justice.gc.ca/en/P-21/>
- **Youth Criminal Justice Act:** <http://canada.justice.gc.ca/en/dept/pub/ycja/youth.html>

### *Provincial Level:*

- **Saskatchewan: *Victims of Domestic Violence Act*:** <http://www.saskjustice.gov.sk.ca/legislation/victdomviolact.shtml>
- **Manitoba: *Domestic Violence Stalking, Prevention, Protection and Compensation Act*:** <http://www.canlii.org/mb/sta/ccsm/20030910/c.c.s.m.c.d93/>
- **Prince Edward Island's *Victims of Family Violence Act*:** [http://www.gov.pe.ca/laws/statutes/pdf/v-03\\_2.pdf](http://www.gov.pe.ca/laws/statutes/pdf/v-03_2.pdf)
- **Yukon Territory's *Family Violence Prevention Act*:** <http://www.gov.yk.ca/legislation/acts/favipr.pdf>
- **Alberta: *Protection Against Family Violence Act*:** <http://www.canlii.org/ab/sta/csa/20030917/r.s.a.2000c.p-27/>
- **Ontario: *Domestic Violence Protection Act*:** [http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/00d33\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/00d33_e.htm)

## Public Legal Education

### *Federal Government:*

- **Department of Justice/Legal Education:** [http://canada.justice.gc.ca/en/ps/legal\\_ed.html](http://canada.justice.gc.ca/en/ps/legal_ed.html)

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**Provincial and Territorial Governments:**

- **Public Legal Education Network of Alberta:** <http://plena.org>.
- **The People's Law School (British Columbia):** <http://www.publiclegaled.bc.ca/home/index.htm>.
- **Community Legal Education Association (Manitoba), Inc.:** <http://www.acnet.org/white/clea/>
- **Public Legal Information, Association of Newfoundland:** <http://www.publiclegalinfo.com>
- **Public Legal Education and Information Service of New Brunswick:** <http://www.legal-info-legale.nb.ca>.
- **Legal Information Society of Nova Scotia:** <http://www.legalinfo.org/>
- **Public Legal Education and Information in Nunavut:** <http://www.plein.ca/>
- **Community Legal Information Ontario:** <http://www.cleo.on.ca/english/index.htm>
- **Educaloi (Quebec):** [http://www.educaloi.qc.ca/EDU\\_Portail/00\\_Accueil/](http://www.educaloi.qc.ca/EDU_Portail/00_Accueil/)
- **Public Legal Education Association of Saskatchewan:** <http://www.plea.org/>

**Public Legal Aid Services**

**Provincial Legal Aid Providers:**

- **Legal Aid Society of Alberta:** <http://www.legalaid.ab.ca/>
- **Legal Services Society of British Columbia:** [http://www.lss.bc.ca/offices/reg\\_centres.asp](http://www.lss.bc.ca/offices/reg_centres.asp)
- **Legal Aid Manitoba:** <http://www.legalaid.mb.ca/>
- **Legal Aid New Brunswick:** [http://www.sjfn.nb.ca/community\\_hall/L/lega6030.html](http://www.sjfn.nb.ca/community_hall/L/lega6030.html)
- **The Legal Aid Commission (Newfoundland):** <http://www.gov.nf.ca/just/Other/otherx/legalaid.htm>
- **Northwest Territories Legal Services Board:** <http://www.justice.gov.nt.ca/publicservices/legalaid.htm>. Tel. 1-867-873-3130
- **Nova Scotia Legal Aid Commission:** <http://www.gov.ns.ca/govt/foi/legal.htm>
- **Legal Aid Ontario:** <http://www.legalaid.on.ca/>
- **Prince Edward Island Legal Aid:** <http://www.gov.pe.ca/government/index.php3>
- **Commission des services juridiques – Legal Aid (Quebec):** <http://www.csj.qc.ca/>
- **The Saskatchewan Legal Aid Commission:** [http://www.saskjustice.gov.sk.ca/legal\\_aid/default.shtml](http://www.saskjustice.gov.sk.ca/legal_aid/default.shtml)
- **Yukon Legal Services Society:** <http://www.legalaid.yk.net/>

**Legal Clinics and Other Organizations that Provide Legal Aid Services:**

- **Aboriginal Legal Services of Toronto:** <http://www.aboriginallegal.ca/>
- **African-Canadian Legal Clinic:** <http://www.aclc.net>
- **British Columbia Public Interest Advocacy Centre:** <http://www.bcpiac.com>
- **Keewaytinok Native Legal Services (Northwest Ontario):** <http://www.lantz.ca/keewaytinok/>
- **The Law Centre (British Columbia):** <http://www.thelawcentre.ca/>
- **Women's Legal Education and Action:** <http://www.leaf.ca>
- **Women's Network Office (Prince Edward Island):** <http://www.wnpei.org/index.html>

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## **Canadian Government and National Victim Service Organizations**

### *Federal Government Victim Services:*

#### **Departmental Programs and Initiatives Victims of Crime**

Department of Justice Canada  
[voc-vac@justice.gc.ca](mailto:voc-vac@justice.gc.ca)

### *National Victim Service Organizations:*

#### **Canadian Resource Centre for Victims of Crime**

Canadian Police Association  
Telephone: (613) 233-7614  
Toll Free: 1-877-232-2610  
<http://www.crcvc.ca/>

#### **Victims of Violence**

Centre for Missing Children  
Telephone: (613) 233-0052  
[www.victimsofviolence.on.ca](http://www.victimsofviolence.on.ca)

## **Canadian Justice Council**

### *National Office for Federal Complaints:*

150 Metcalfe Street, 15th Floor,  
Ottawa, Ontario K1A 0W8,  
fax (613) 998-8889

### *Provincial Office for Provincial Complaints:*

#### **In Alberta:**

Chairperson, Alberta Judicial Council  
Chief Judge, Provincial Court of Alberta  
Law Courts, 6th Floor, Sir Winston Churchill Square  
Edmonton, Alberta T5J 0R2  
Tel: (780) 427-6330  
Fax: (780) 427-2077

#### **In British Columbia:**

Chief Judge, Provincial Court of British Columbia  
501 - 700 West Georgia Street P.O. Box 10287  
Vancouver, British Columbia V7Y 1E8  
Tel: (604) 660-2864  
Fax: (604) 660-1108

#### **In Manitoba:**

Manitoba Judicial Council

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Chief Judge, Provincial Court of Manitoba  
5th Floor, 408 York Avenue  
Winnipeg, Manitoba R3C 0P9  
Tel: (204) 945-8652  
Fax: (204) 948-3259

**In New Brunswick:**

New Brunswick Judicial Council  
Chief Justice of New Brunswick  
The Justice Building  
P.O. Box 6000  
Fredericton, New Brunswick E3B 5H1  
Tel: (506) 453-2776  
Fax: (506) 444-4392

**In Newfoundland and Labrador:**

Judicial Council of the Provincial Court of Newfoundland and Labrador  
Chief Justice of the Supreme Court of Newfoundland and Labrador, Trial Division  
287 Duckworth Street  
St. John's, Newfoundland A1C 5M3  
Tel: (709) 729-5043

**In Nova Scotia:**

Chief Judge  
Provincial Court of Nova Scotia  
5250 Spring Garden Road  
Halifax, Nova Scotia Tel: (902) 424-8750  
B3J 1E7 Fax: (902) 424-0603

**In Ontario:**

Ontario Judicial Council  
P.O. Box 914, Adelaide Street Postal Station  
31 Adelaide Street East  
Toronto, Ontario M5C 2K3  
Tel: (416) 327-5672 or 1-800-806-5186  
Fax: (416) 327-2339

**In Québec:**

Le Secrétaire du Conseil  
Conseil de la Magistrature du Québec Pièce 608  
300, boul. Jean Lesage  
Québec (Québec) G1K 8K6  
Tel: (418) 644-2196  
Fax: (418) 528-1581

**In Saskatchewan:**

Saskatchewan Judicial Council  
Chief Justice of Saskatchewan  
Court House  
2425 Victoria Avenue  
Regina, Saskatchewan Tel: (306) 787-5415  
S4P 3E4 Fax: (306) 787-0505

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## Canadian Human Rights Commission :

### *Regional Offices:*

#### **Alberta and Northwest Territories**

308 - 10010 106 Street  
Edmonton, Alberta T5J 3L8  
Telephone: (780) 495-4040  
Toll Free: 1-800-999-6899  
Fax: (780) 495-4044

#### **Atlantic**

504 - 5475 Spring Garden Road  
Halifax, Nova Scotia, B3J 3T2  
Telephone: (902) 426-8380  
Toll Free: 1-800-999-6899  
Fax: (902) 426-2685

#### **British Columbia and Yukon**

301 - 1095 West Pender Street,  
Vancouver, British Columbia V6E 2M6  
Telephone: (604) 666-2251  
Toll Free: 1-800-999-6899  
Fax: (604) 666-2386

#### **Ontario**

South Tower  
1002-175 Bloor Street East  
Toronto, Ontario M4W 3R8  
Telephone: (416) 973-5527  
Toll Free: 1-800-999-6899  
Fax: (416) 973-6184

#### **Prairies and Nunavut** (Manitoba, Saskatchewan, Northwestern Ontario and Nunavut)

750 - 175 Hargrave Street  
Winnipeg, Manitoba R3C 3R8  
Telephone: (204) 983-2189  
Toll Free: 1-800-999-6899  
Fax: (204) 983-6132

#### **Quebec**

470 -1253 McGill College Avenue  
Montréal, Quebec H3B 2Y5  
Telephone: (514) 283-5218