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SENTENCING IN ADULT PROVINCIAL COURTS

A Study of Nine Canadian Jurisdictions: 1993 & 1994

A. C. Birkenmayer and J.V. Roberts¹

Highlights

- Six relatively less serious offences accounted for half of the charges (impaired driving; failing to appear in court; simple assault; failing to comply with a judicial order; theft under \$1,000 and other federal statute offences). Impaired driving was the single most frequently occurring offence, accounting for 13% of all charges.
- Half of all sentencing decisions involved property crimes or motor vehicle offences. Crimes against the person accounted for only a minority (14%) of the charges.
- Offenders convicted of multiple charges received more severe sanctions. The incarceration rate for multiple charge cases was 53% compared to 26% for single charge cases.
- Most offenders were convicted of a single charge (79%), however one in five were sentenced for multiple charges.
- In one charge cases, crimes against the person, crimes involving property and drug offences all had similar incarceration rates (28%, 27% and 26% respectively) which were consistent with the overall incarceration rate of 26%.
- A fine was the most frequently imposed sanction in single charge cases (45% of cases). A term of probation was imposed as a sanction in 25% of cases and a period of imprisonment in 26% of cases. Other kinds of sanctions were imposed in 4% of the cases. Thus, for single charge cases, non-custodial sanctions were the most frequently imposed penalty.
- The more serious offences resulted in the imposition of more severe penalties. For example, the most serious form of assault (aggravated assault) resulted in incarceration for 79% of cases; the least serious form of assault (simple) had an incarceration rate of only 20%.
- The average prison sentence for cases with one charge was just under three months. The length of the prison sentences also varied with the severity of the offence. Thus, the average sentence for manslaughter was 62 months; for aggravated sexual assault was 38 months and for robbery was 22 months.
- For cases with one charge, the average term of probation imposed was 14 months and the average fine was \$430. The median value of restitution orders was \$325.
- Offenders frequently received multiple sanctions. On average, 1.6 dispositions were imposed per one charge case. Judges imposed additional sanctions in almost half the cases with sentences of imprisonment. Thus, four out of five offenders, who were convicted of crimes of violence and were sentenced to custody, received an additional penalty of a period of probation.

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INTRODUCTION

Sentencing is considered by many people to be the most important stage in the criminal justice process. It consists of the judicial determination of a legal sanction upon a person convicted of an offence. Determining the sentence is one of the most complex decisions facing a judge, who must consider several sentencing purposes such as deterrence, incapacitation and rehabilitation. As well, in order to arrive at a just sanction, the judge needs to weigh the effects of many aggravating and mitigating factors, such as the degree of harm inflicted, the number and nature of any previous convictions and the circumstances surrounding the commission of the offence. Unlike the judiciary in the United States, who must follow rigid sentencing guidelines and are constrained by mandatory minimum sentences, judges in Canada have a considerable degree of discretion. This is because there are no formal sentencing guidelines for Canadian judges, and the maximum penalties specified in the *Criminal Code* are very high, thereby allowing considerable room for variation in sentences.

Sentencing Reform in Canada

Some sentencing reforms have recently been introduced in Canada. After many years of study and consultation, the federal government proclaimed reform legislation affecting sentencing in September 1996. Bill C-41 contained a number of provisions designed to improve the nature of the sentencing process in Canada. One of these reforms is a statement of the purposes and principles of sentencing which aims to provide guidance to judges and promote more uniform sentencing patterns. As well, the sentencing reform Bill mandated harsher penalties for crimes motivated by hate or which involve a breach of trust. Finally, Bill C-41 also created a new disposition called a conditional sentence, and introduced a number of additional changes to the sentencing process.

Background

The sentencing process has frequently attracted widespread public criticism. The results of nation-wide opinion surveys reveal that most Canadians believe that sentences should be more severe especially for violent offenders. However, neither the general public nor criminal justice professionals have much awareness of sentencing patterns in Canada. One of the reasons for this is the absence of regularly published sentencing statistics. The 1987 report of the Canadian Sentencing Commission² decried the absence of aggregate sentencing statistics for Canada. In 1993, the Canadian Centre for Justice Statistics (CCJS) produced a report³ containing sentencing data from six jurisdictions in Canada. The current study is an expanded version of that study to include nine jurisdictions. Direct comparisons between this report and its predecessor are not possible because they include different jurisdictions from across the country.

This *Juristat* is a summary of the findings of the CCJS sentencing study which is to be published at a later date. The longer report contains further details about findings presented here, as well as additional analyses⁴.

The purpose of this document is to provide a picture of the most recent sentencing trends in Canadian adult provincial courts. Several issues can be explored using the aggregate statistics found in this data base. First, what percentage of all convictions result in a sentence of imprisonment? Many commissions of inquiry as well as the federal government have noted the need to develop more alternatives to imprisonment, in order to reduce Canada's reliance on incarceration as a sanction. Second, what kinds of sanctions are associated with various offences? Third, are sentences proportional in their severity to the seriousness of the crimes for which they are imposed? The principle of proportionality in the use of punishment lies at the heart of the

² Sentencing Reform - A Canadian Approach. *Report of the Canadian Sentencing Commission, 1987. Ottawa: Supply and Services Canada.*

³ Sentencing in Adult Criminal Provincial Courts - A Study of Six Canadian Jurisdictions: 1991 and 1993. *Turner, J. Statistics Canada, 1993.*

⁴ Sentencing in Adult Provincial Courts - A study of Nine Canadian Jurisdictions: 1993 and 1994. *Ottawa: Statistics Canada.*

sentencing system in Canada. The recently enacted sentencing reform Bill, declared that “A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender”⁵. Fourth, what kinds of offences attract non-custodial sanctions such as probation and fines? Finally, how do the sentences imposed in provincial courts relate to the maximum penalties contained in the *Criminal Code*?

This *Juristat* addresses these questions using sentences imposed in Adult Provincial Courts in nine Canadian jurisdictions. Data were extracted from the Adult Criminal Court Survey (ACCS) data base to create a special research file. These data represent cases resolved in provincial courts from selected court locations⁶ in Newfoundland and Labrador, Nova Scotia and Québec, and from all court locations in Prince Edward Island, Ontario, Saskatchewan, Alberta, the Yukon, and the Northwest Territories⁷. Only federal statute offences were included. This report deals with offences against the *Criminal Code* (CC), the *Narcotic Control Act* (NCA), the *Food and Drugs Act* (FDA) and a variety of ‘Other Federal Statutes’⁸. The data derive from the calendar years 1993 and 1994, except for statistics from Ontario which cover the fiscal years 1993-94 and 1994-95. Trends are presented in this *Juristat* for a number of specific offences, as well as general offence categories, such as crimes against the person or the administration of justice⁹.

The Adult Criminal Court Survey¹⁰ (ACCS) currently only compiles data from provincial¹¹ or lower courts. More severe offences are heard in Superior Courts of criminal jurisdiction and these offences would normally receive higher sentences. However, the vast majority of cases are disposed of in provincial courts¹².

Principal Sanctions Imposed in Canada

The principal sanctions that can be imposed in Canada in the period covered by the study include the following:

Imprisonment: This involves a term of custody served within a penal institution. Sentences of two years or longer are served in a federal penitentiary, while terms of less than two years in duration are served in provincial correctional facilities. Sentences of 90 days or less can be served intermittently, which usually means on week-ends.

⁵ Bill C-41, S. 718.1.

⁶ See Methodology section at end of the *Juristat* for details of jurisdictional coverage.

⁷ Ontario and Alberta are not participants in the ACCS but provided data for the present study.

⁸ Other Federal Statutes include, among others, the Unemployment Insurance Act, the Income Tax Act and the Fisheries Act.

⁹ Offences against the ‘administration of justice’ included offences such as escape custody, unlawfully at large and fail to appear.

¹⁰ For Details on the ACCS see: Adult Criminal Court Statistics - 1994. *Statistics Canada Catalogue No. 85-214-XPE*, 1996.

¹¹ For a detailed discussion of the jurisdiction of Provincial Courts in each province see: Profile of Courts in Canada 1995. *Statistics Canada Catalogue No. 85-511-XPE*.

¹² In Québec there are 67 Municipal Courts, including Montreal, Québec city and Laval, have jurisdiction over Criminal Code summary and hybrid-summary offences.

¹³ Some cases were excluded from the analyses reported in this *Juristat*: see Methodology section at end of report for further details.

Probation: A period of probation cannot be imposed as a separate sanction. It can only be imposed in conjunction with one of the following dispositions: a suspended sentence, a term of imprisonment not exceeding two years or an intermittent term of imprisonment. Thus the court may suspend the passing of sentence and direct that the accused serve the sentence in the community provided that he or she abide by conditions contained in a probation order. The maximum period of probation that can be imposed is three years. The conditions of probation can include abstaining from the consumption of alcohol or from owning or carrying a firearm, making restitution to a victim or performing a number of hours of service to the community.

Fines: When a fine is imposed as a sanction, the offender is directed to pay a certain amount to the provincial or federal government. According to the *Criminal Code* an offender may be fined in lieu of any other punishment, or, in addition to any other punishment, unless the offender has been convicted of an offence which carries a minimum term of imprisonment, or, which carries a maximum penalty of more than five years.

In addition to these sanctions, judges can use other sentencing options that include among others conditional and absolute discharges, community service orders, compensation orders, restitution orders, and driving prohibition orders.

Overview

Offenders may face multiple charges, and judges may impose multiple sanctions

Offenders may be convicted of more than a single offence. As well, judges often impose more than one sentence per offence upon an offender. Thus, offenders can face multiple charges, and may receive multiple sentences for a conviction for a single offence. The sentencing data base contained information on 551,682 individual cases¹³ involving 820,606 charges. These charges resulted in the imposition of 1,331,183 sanctions. This is an indication of the complexity of the sentencing process. Thus, there was an average of 1.5 charges per case, 1.6 sanctions imposed per charge and 2.4 sanctions imposed per case. Offenders sentenced for crimes involving property faced, on average, a slightly higher number of charges per case than offenders convicted of a crime against the person (Table 1).

Most cases involved only a single charge

The vast majority of cases (79%) involved only one charge (Table 1). For the remaining 21% of the cases there were convictions for two or more charges. Nine percent of cases involved three or more charges. It is impossible, in multiple charge cases, to know which component of the sentence is associated with which criminal charge. For example, an offender convicted of two crimes such as break and enter and assault may receive a nine month prison term as a punishment. In this case it is not clear which part of the sentence was accounted for by the break and enter and what portion was imposed for the assault. It is only for cases in which there is only one charge involving one only offence that there is a clear sanction for any one crime. Thus, in multiple charge cases, the influence of the multiple charges on any one sentencing component is not known. For this reason,

Table 1

The Number of Cases, Charges and Sanctions Nine Jurisdictions: 1993 & 1994

Offence Category	Cases 100%=	Charges	Sanctions	Percent of Cases with One Charge	Cases with Multiple Charges	
					Percent of cases	Charges per Case
Against Person	91,939	117,234	203,935	73	27	2.0
Property	151,771	247,159	418,909	72	28	3.3
Motor Vehicle	126,908	149,233	290,753	83	17	2.1
Morals	10,506	11,762	16,402	89	11	2.1
Administration Of Justice	82,997	165,755	233,264	83	17	6.9
Other Criminal Code	10,106	17,255	27,677	84	16	5.5
Drugs	33,888	44,470	63,623	85	15	3.1
Other Federal Statutes	43,567	67,812	76,694	90	10	6.4
Total	551,682	820,606	1,331,183	79	21	3.4

when discussing sentencing patterns, this *Juristat* will focus on cases in which an offender was sentenced for a single criminal charge.

The overwhelming majority of sentenced offenders were males

The gender of the offender was known for 529,283 of the 551,682 cases in the data base. The vast majority of offenders (86%) were males, reflecting the fact that the overwhelming majority of adults (84%) charged with a criminal offence are males.¹⁴ The average age for all offenders was 32.1 years, with no difference between the average age of males and females. The modal, or most frequent age category for both males and females was the 20 to 25 year range. A higher percentage of men than women were convicted of a crime against the 'Person' (18% vs. 11%). Conversely, a higher percentage of women were convicted of a crime against 'Property' (41% of women sentenced compared to 25% of men).

Crimes against the person represent a small minority of Provincial Court caseload

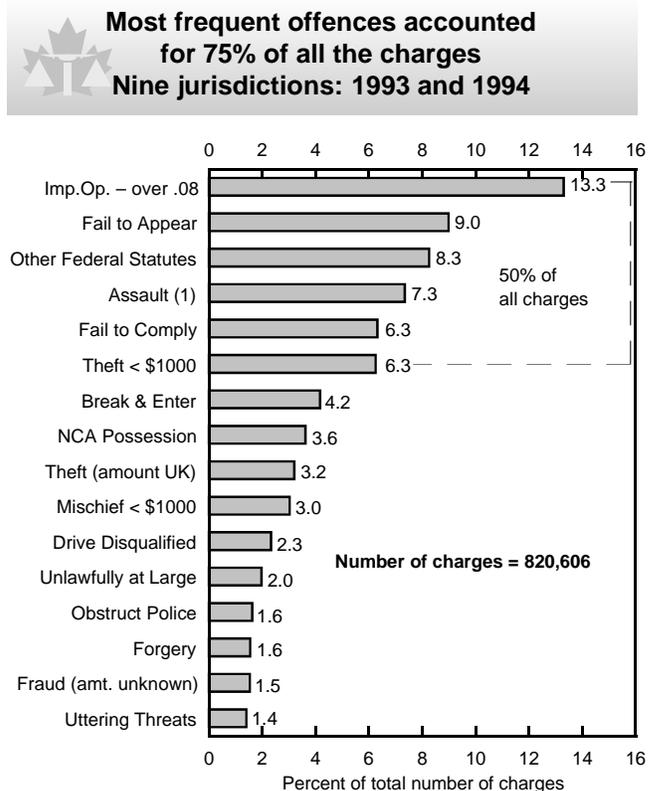
Table 2 presents the distribution of cases across various offence categories. Crimes against the 'Person' accounted for only a small minority (91,939 or 17%) of all cases sentenced. 'Property' offences accounted for 28% of all the cases and constituted the single largest offence category, containing 151,771 cases. 'Motor Vehicle' offences were the next largest category of offences, accounting for 23% of the cases. Offences against the 'Administration of Justice' accounted for an additional 15% of cases sentenced. The other offence categories accounted for the remaining 33% of cases (see Table 2).

A small number of crimes account for a large proportion of charges

As can be seen in Figure 1, a small number of relatively minor offences accounted for a large percentage of the charges

resulting in a conviction. Five specific offences (impaired driving; failing to appear in court; simple assault; failing to comply with a judicial order; and theft under \$1,000) in conjunction with the category violations of 'Other Federal Statutes' accounted for half of all charges. In fact the 16 specific offences, including the category 'Other Federal Statutes', listed in Figure 1, accounted for 75% of all the charges recorded. Impaired driving was the single most frequently occurring offence, accounting for 13% of all charges.

Figure 1



¹⁴ Canadian Crime Statistics 1995. Statistics Canada Catalogue No. 85-205-XPE. 1996

Table 2

Offence Category	Total Cases 100% =	Percent of Cases	One Charge		Two Charges		Three Charges		Four Charges		Five + Charges	
			N	%	N	%	N	%	N	%	N	%
			Against Person	91,939	17	67,242	73	15,363	17	4,623	5	1,978
Property	151,771	28	109,916	72	22,381	15	7,645	5	4,071	3	7,758	5
Motor Vehicle	126,908	23	105,855	83	15,667	12	3,252	3	1,111	1	1,023	1
Morals	10,506	2	9,381	89	741	7	209	2	94	1	81	1
Administration Of Justice	82,997	15	68,897	83	9,287	11	2,291	3	935	1	1,587	2
Other Criminal Code	10,106	2	8,529	84	963	10	273	3	146	1	195	2
Drugs	33,888	6	28,915	85	3,350	10	803	2	355	1	465	1
Other Federal Statutes	43,567	8	39,114	90	2,144	5	540	1	248	1	1,521	3
Total	551,682	100	437,849	79	69,896	13	19,636	4	8,938	2	15,363	3

Sentencing Patterns

Multiple charge cases resulted in more severe punishments

Some offenders were convicted and sentenced for more than a single offence. Predictably, the number of charges in the case had a clear impact on the severity of the sentences imposed. (The reason for this is that the severity of the sentence for any one charge will be influenced by all the charges of which the offender has been convicted.) Thus, the probability that the offender will be imprisoned increased for multiple charge cases compared to single charge cases (Figure 2). Twenty-six percent of single charge cases received a term of imprisonment, compared to 47% of cases with two charges and 69% of cases convicted of five or more charges. Similarly, the use of fines decreased from single charge cases to multiple charge cases. Thus, fines were imposed in 45% of single charge cases but only 25% of dual charge cases and 10% of cases facing five charges or more. The amount of punishment also varied as a direct function of the number of charges. The average prison sentence length was 140% longer in multiple compared to single charge cases. The average probation term was 26% longer in multiple charge cases, and the average fine 110% greater in multiple charge cases.

As noted above, the existence of several charges obscures the relationship between each offence and the resulting sentence(s). For this reason, the remainder of this *Juristat* will focus on 79% of the cases which involve a single charge.

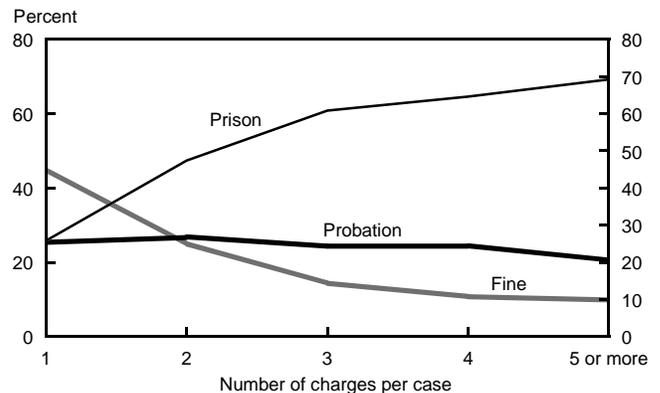
Single Charge Cases

In many cases a single conviction resulted in more than one sanction

Since judges can impose more than a single sentence, Table 3 presents a breakdown of all sanctions imposed in single charge cases. On average, 1.6 sanctions were imposed per charge. Offenders convicted of 'Motor Vehicle' offences were most likely

Figure 2

Severity of punishments increased with the number of charges Nine jurisdictions: 1993 and 1994



to receive multiple sanctions, an average of 2 per case. An average of 1.8 sanctions were imposed on offenders convicted of crimes against the 'Person', and 1.7 on persons sentenced for crimes involving 'Property'. Offenders convicted of offences against 'Other Federal Statutes' had the lowest average number of sanctions (1.1).

A fine was the most frequently-imposed sanction in single charge cases

In keeping with previous studies on sentencing patterns in Canada, a monetary fine was the most frequently imposed sanction. As seen in Table 3, a fine was imposed in 54% of all convictions. A period of probation, was imposed in just over one-third (34%) of charges. Approximately one quarter (26%) of the charges resulted in a term of imprisonment. Other sanctions (such as driving prohibitions, conditional and absolute discharges) were imposed in almost half the charges.

Table 3



Cases with One Charge: All Sanctions Imposed per Case Nine Jurisdictions: 1993 & 1994

Offence Category	Number of Cases 100%=	All Sanctions Imposed per Case										Total Imposed	Average Sanctions Per Case
		prison		probation		fine		restitution		other			
		N	%	N	%	N	%	N	%	N	%		
Against Person	67,242	18,547	28	45,802	68	19,230	29	1,425	2	34,283	51.0	119,287	1.8
Property	109,916	29,338	27	53,382	49	43,345	39	14,264	13	46,192	42.0	186,521	1.7
Motor Vehicle	105,855	21,038	20	18,437	17	85,134	80	280	--	86,605	81.8	211,494	2.0
Morals	9,381	1,211	13	2,669	28	4,445	47	..	--	4,468	47.6	12,838	1.4
Administration Of Justice	68,897	32,627	47	15,974	23	26,071	38	1,042	2	19,166	27.8	94,880	1.4
Other Criminal Code	8,529	1,526	18	3,147	37	4,547	53	..	--	3,356	39.3	12,813	1.5
Drugs	28,915	7,525	26	6,756	23	16,631	58	..	--	8,519	29.5	39,573	1.4
Other Federal Statutes	39,114	1,388	4	1,256	3	35,580	91	119	--	3,967	10.1	42,310	1.1
Total	437,849	113,200	26	147,423	34	234,983	54	17,554	4	206,556	47.2	719,716	1.6

The use of incarceration can be examined by means of the incarceration rate, or the average length of custody imposed. Offences against the 'Administration of Justice' received the highest incarceration rate (47%). These offences included obstructing justice, failing to appear in court, failing to comply with a judicial order and being unlawfully at large. Although almost half the offenders in this category were sent to prison, they were imprisoned for relatively brief periods in comparison to offenders imprisoned for crimes against the person. Crimes against the 'Person', crimes involving 'Property' and 'Drug' crimes had comparable incarceration rates (28%, 27% and 26% respectively — see Table 3).

Another way of examining sentencing patterns is to present the breakdown of the most severe sentence imposed. The three principal sanctions in this data base were ordered from most to least severe sanction (imprisonment, probation, fines). Using this categorization of the sentencing data revealed that a fine is still the most frequently-imposed sanction, accounting for 45% of cases (see Table 4). Imprisonment was the most severe sanction imposed in 26% of cases followed by probation (as a condition of a suspended sentence) in 25% of cases.

Table 4



Cases with One Charge: Most Severe Sanctions Imposed Nine Jurisdictions: 1993 & 1994

Offence Category	Number of Cases 100% =	Most Severe Sanction Imposed									
		prison		probation		fine		restitution		other	
		N	%	N	%	N	%	N	%	N	%
Against Person	67,242	18,547	28	35,542	53	10,684	16	12	--	2,457	3.7
Property	109,916	29,338	27	43,684	40	30,856	28	111	--	5,927	5.4
Motor Vehicle	105,855	21,038	20	10,116	10	74,500	70	1	--	200	0.2
Morals	9,381	1,211	13	2,399	26	3,842	41	..	--	1,929	20.6
Administration Of Justice	68,897	32,627	47	10,670	15	22,873	33	5	--	2,722	4.0
Other Criminal Code	8,529	1,526	18	2,718	32	3,745	44	..	--	540	6.3
Drugs	28,915	7,525	26	4,830	17	14,612	51	..	--	1,948	6.7
Other Federal Statutes	39,114	1,388	4	1,074	3	35,062	90	..	--	1,590	4.1
Total	437,849	113,200	26	111,033	25	196,174	45	129	--	17,313	4.0

Table 5 contains a complete list of the most severe disposition imposed for all the offences and offence categories examined in this data base. It is important to point out that an analysis based on the most serious sanction masks the use of less serious punishments imposed for the same offence. For example, many offenders sentenced to imprisonment were also ordered to serve a term of probation (see section below).

Use of incarceration

Incarceration Rates were Higher for More Serious Offences

Incarceration rates varied from 89% for sexual assault (levels II and III combined) to less than 1% for gaming and betting. There were 18 offences that had an incarceration rate of at least 50% for single charge cases. These are presented in Figure 3. This list is consistent with similar analyses reported in an earlier report of sentencing practices published in 1993. Thus, there would appear to be consistency in sentencing trends from one period to another.

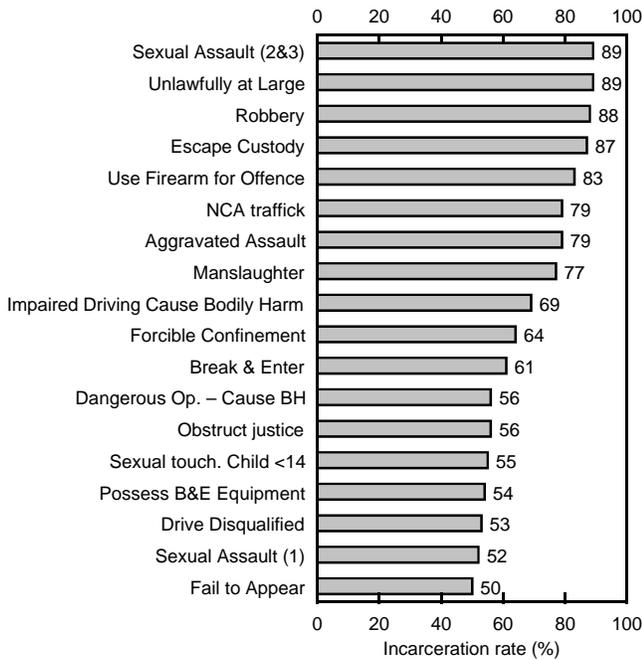
Table 5

Cases with One Charge: Most Severe Sanctions Imposed by Adult Provincial Courts Nine Jurisdictions: 1993 & 1994

Offence Category	Number of Cases 100% =	Most Severe Sanction Imposed									
		prison		probation		fine		restitution		other	
		N	%	N	%	N	%	N	%	N	%
Manslaughter	103	79	77	4	4	18	17	...	--	2	1.9
Robbery	1,483	1,304	88	128	9	41	3	1	0.1	9	0.6
Sexual Assault (2&3)	57	51	89	4	7	2	4	...	--	...	--
Sexual Assault (1)	2,163	1,134	52	892	41	116	5	...	--	21	1.0
Assault (aggravated)	408	323	79	75	18	9	2	...	--	1	0.2
Assault (with weapon)	5,725	2,777	49	2,430	42	455	8	1	--	62	1.1
Assault (simple)	41,799	8,435	20	24,640	59	7,028	17	7	--	1,689	4.0
Assault Police	2,034	813	40	590	29	583	29	...	--	48	2.4
Forcible Confinement	58	37	64	18	31	1	2	...	--	2	3.4
Sexual touching child under 14	748	413	55	327	44	6	1	...	--	2	0.3
Uttering Threats	4,425	1,194	27	2,895	65	264	6	1	0.0	71	1.6
Harassing/Indecent Phonecall	955	120	13	702	74	105	11	...	--	28	2.9
Other Against Person	1,629	672	41	728	45	195	12	1	0.1	33	2.0
Use Firearm for Offence	18	15	83	2	11	1	6	...	--	...	--
Careless Use of Firearm	2,827	573	20	1,311	46	805	28	1	--	137	4.8
Possession of Firearm	2,292	528	23	710	31	837	37	...	--	217	9.5
Other Weapon Offences	518	79	15	86	17	218	42	...	--	135	26.1
Break & Enter	9,363	5,693	61	3,303	35	311	3	15	0.2	41	0.4
Possess B&E Equipment	309	167	54	116	38	20	6	...	--	6	1.9
Possess Stolen Goods>\$1000	3,210	1,482	46	1,327	41	358	11	...	--	43	1.3
Possess Stolen Goods<\$1000	4,443	1,363	31	1,147	26	1,794	40	...	--	139	3.1
Possess Stolen Goods (unknown)	4,924	1,910	39	1,760	36	1,119	23	3	0.1	132	2.7
Theft > \$1000	3,702	1,697	46	1,720	46	234	6	3	0.1	48	1.3
Theft < \$1000	37,056	7,353	20	11,559	31	14,782	40	5	--	3,357	9.1
Theft (amt. unknown)	12,225	1,897	16	4,571	37	5,112	42	7	0.1	638	5.2
Credit Card Theft/Forgery	1,562	445	28	734	47	321	21	1	0.1	61	3.9
Forgery	1,890	647	34	991	52	225	12	2	0.1	25	1.3
Personation	1,134	274	24	547	48	299	26	...	--	14	1.2
Fraud > \$1000	3,203	1,211	38	1,797	56	156	5	3	0.1	36	1.1
Fraud < \$1000	3,404	886	26	1,636	48	716	21	...	--	166	4.9
Fraud (amt. unknown)	2,813	651	23	1,451	52	557	20	10	0.4	144	5.1
False Pretenses	2,591	707	27	1,177	45	540	21	5	0.2	162	6.3
Mischief > \$1000	2,292	426	19	1,433	63	308	13	10	0.4	115	5.0
Mischief < \$1000	12,495	1,665	13	6,880	55	3,232	26	46	0.4	672	5.4
Other Property Offences	3,300	864	26	1,535	47	772	23	1	0.0	128	3.9
Imp.driving Cause Bodily Harm	354	243	69	52	15	59	17	...	--	...	--
Impaired Driving - over .08	87,337	14,118	16	9,032	10	64,077	73	...	--	110	0.1
Imp.driving Refuse Sample	4,336	739	17	194	4	3,395	78	...	--	8	0.2
Dangerous Op. - Cause BH	123	69	56	27	22	27	22	...	--	...	--
Dangerous Operation	2,655	600	23	324	12	1,715	65	...	--	16	0.6
Fail To Remain	1,676	296	18	211	13	1,151	69	...	--	18	1.1
Drive Disqualified	9,271	4,957	53	263	3	4,030	43	...	--	21	0.2
Other Motor Vehicle Offences	103	16	16	13	13	46	45	1	1.0	27	26.2
Procuring	67	31	46	28	42	7	10	...	--	1	1.5
Keep Bawdy House	449	7	2	153	34	208	46	...	--	81	18.0
Soliciting	6,185	854	14	1,100	18	2,897	47	...	--	1,334	21.6
Indecent Acts/Exposure	2,033	300	15	889	44	428	21	...	--	416	20.5
Gaming and Betting	552	5	1	187	34	279	51	...	--	81	14.7
Other Morals	95	14	15	42	44	23	24	...	--	16	16.8
Obstruct justice	675	377	56	159	24	122	18	...	--	17	2.5
Give False Information	2,225	368	17	815	37	979	44	...	--	63	2.8
Obstruct Police	6,088	1,282	21	1,184	19	3,352	55	1	--	269	4.4
Escape Custody	1,111	971	87	45	4	91	8	...	--	4	0.4
Unlawfully at Large	4,361	3,882	89	122	3	318	7	...	--	39	0.9
Fail to Appear	31,676	15,946	50	3,526	11	11,264	36	...	--	940	3.0
Fail to Comply	20,278	9,097	45	4,457	22	6,424	32	2	--	298	1.5
Breach of Recognisance	1,385	92	7	136	10	84	6	1	0.1	1,072	77.4
Other Admin. of justice	1,098	612	56	226	21	239	22	1	0.1	20	1.8
Cause disturbance	4,889	523	11	1,471	30	2,523	52	...	--	372	7.6
All Other Criminal Code Offences	3,640	1,003	28	1,247	34	1,222	34	...	--	168	4.6
NCA traffick	4,013	3,187	79	426	11	377	9	...	--	23	0.6
NCA Possession	23,160	3,455	15	4,077	18	13,719	59	...	--	1,909	8.2
NCA Other	1,193	692	58	236	20	259	22	...	--	6	0.5
FDA	549	191	35	91	17	257	47	...	--	10	1.8
Other Federal Statutes	39,114	1,388	4	1,074	3	35,062	90	...	--	1,590	4.1
Total	437,849	113,200	26	111,033	25	196,174	45	129	--	17,313	4.0

Figure 3

**Cases with one charge:
Prison as the most severe sanction,
offences with at least 50% incarceration rate
Nine jurisdictions: 1993 and 1994**



The offences in Figure 3 include the most serious crimes in the *Criminal Code*, several of which carry a maximum penalty of life imprisonment. Thus, the most severe offences had high incarceration rates.

When making comparisons between incarceration rates for different offences, the reader should be aware that an important variable affecting sentencing patterns is not captured in this data base. After the seriousness of the offence of conviction, an offender's criminal record is the next most important determinant of sentence severity. Some of the findings in Figure 3 may be explained by the influence of the offender's criminal record. For example, possession of burglary instruments had a higher incarceration rate (54%) than some crimes of violence such as assault with a weapon (49%) or sexual assault (1) (52%). This result may seem paradoxical, and may be interpreted as a violation of the principle of proportionality, since crimes against the person are considered to be more serious than crimes involving property. However, if offenders convicted of possessing burglary instruments generally have longer criminal records than offenders convicted of crimes of violence, this would explain why the former category of offender was punished more severely than the latter. Research suggests that this is, in fact, the case. Property offenders have significantly more involved criminal histories than violent offenders, and this may well have an impact on the sentences they receive.¹⁵

¹⁵ G. Campbell, (1993) *An Examination of Recidivism in Relation to Offence Histories and Offender Profiles*. Ottawa: Statistics Canada.

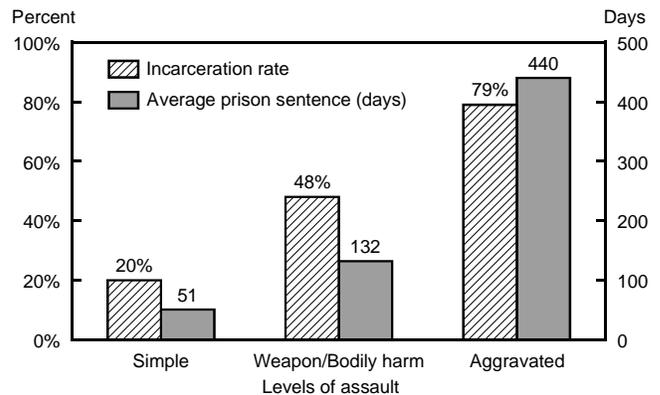
It is important also to note that the opinion of many people that all crimes against the person are inherently more serious than all other forms of criminality, reflects a stereotypical view of criminal behaviour. Some crimes against the 'Person' can be less serious than crimes against the 'Administration of Justice', and some 'Property' crimes result in very large monetary losses. Accordingly, the seriousness of these categories of offences overlap somewhat and it is not possible to state that *all* crimes of violence are more serious than *all* crimes of another category.

Proportionality in Sentencing: The more serious forms of assault result in higher incarceration rates

Consistent with the principle of proportionality in sentencing, the incarceration rate was related to the seriousness of the charge. This can be demonstrated by examining the offences in the *Criminal Code* that have a tiered structure of seriousness. For example, the *Criminal Code* defines three levels of assault. The most serious is aggravated assault which in the current study had an incarceration rate of 79% (Figure 4). The next most serious level of assault is assault with a weapon or causing bodily harm, which had an incarceration rate of 48%. The least serious (and also the most frequent) form of assault is simple assault which had an incarceration rate of 20%. Thus, the seriousness of the offence was a clear factor in determining the incarceration rate. The same phenomenon can be observed for sexual assault: the most serious levels had an incarceration rate of 89% while the least serious level of sexual assault had an incarceration rate of 52%.

Figure 4

**The sentence imposed increased in severity as the level of assault increased in seriousness
Nine jurisdictions: 1993 and 1994**



The seriousness of the offence also had an impact on the average length of prison sentence imposed. As shown in Figure 4, the average sentence for aggravated assault was 440 days, which was more than three times the average prison sentence for assault with a weapon (132 days) and almost nine times the average sentence for simple assault (51 days). These findings are also consistent with the principle of proportionality in sentencing, which, as noted earlier, requires that the more severe penalties be imposed upon offenders convicted of the more serious crimes.

The Average Prison Sentence was 85 Days

The average length of incarceration is another way of exploring the severity of sentences imposed. Table 6 provides incarceration rates and average sentence lengths (in months) for a list of offences which had average lengths of incarceration of six months or more. Manslaughter had the longest average, just over five years. This table reveals that offences that have the highest incarceration rates do not necessarily have the longest average terms of imprisonment. Thus, although aggravated assault, aggravated sexual assault, robbery and trafficking (contrary to the *Narcotic Control Act*) all had higher incarceration rates than manslaughter, the latter offence resulted by far in the longest average prison terms. These trends reflect differences in the nature of the offences. A number of cases of manslaughter do not result in the incarceration of the offender because the incident may have involved a high degree of mitigation. On the other hand, the extreme seriousness of the crime means that those offenders for whom incarceration is appropriate are imprisoned for longer periods. Table 7 provides a complete list of the average terms of imprisonment for all the offences and offence categories included in the data base.

Almost half the offenders sentenced to prison faced additional sanctions as well

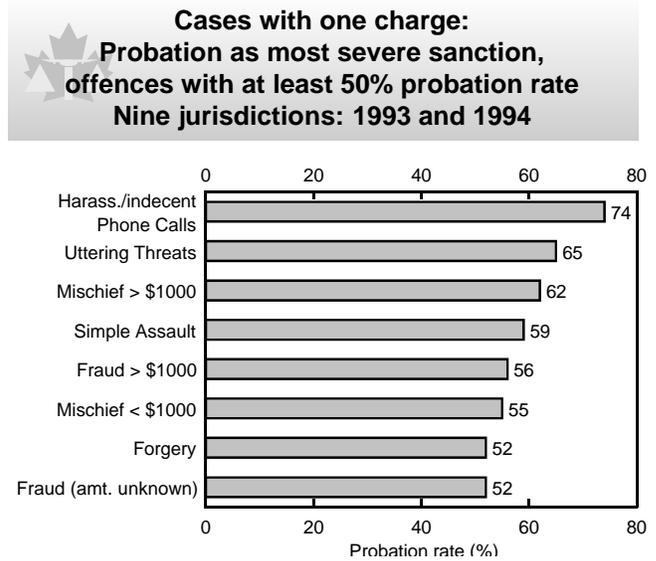
In 46% of single charge cases resulting in a conviction, judges imposed other penalties in addition to a term of imprisonment. In four out of five cases involving a crime against the 'Person', the additional sentence was a period of probation to follow the period of custody. The average probation term imposed was 16 months. Table 8 provides a breakdown of the additional sanctions imposed on offenders sentenced to prison. Almost three-quarters (74%) of the offenders incarcerated for 'Motor Vehicle' offences also received some 'other' sanction such as a driving prohibition.

Use of probation

For 25% of cases with one charge, probation was the most severe sanction imposed on the offender. Over half of the single charge cases involving offences against the 'Person' received a term of probation as the most severe sanction (see Table 4). In comparison, only 40% of the cases with 'Property' offences received a probation term. These two categories of offences combined accounted for over 70% of the cases with probation as the most severe sanction. The higher probation rate for offences against the 'Person' was due to the high probation rate for simple assault which makes up over two-thirds of the crimes against the 'Person' category and had a probation rate of 59%.

Probation was the most severe sanction imposed for the less serious offences. There were eight offences for which the most severe sanction was a term of probation for at least 50% of cases. These include: harassment; uttering threats; mischief over \$1,000; assault (level I); fraud over \$1,000; mischief under \$1,000; forgery; fraud (amount of money unknown) (see Figure 5).

Figure 5



Average term of probation was 14 months

For single charge cases, the average length of probation orders¹⁶ was 14 months. The average terms of probation for the offences listed in Figure 5 varied from 11 months for mischief under \$1,000 to 21 months for Fraud over \$1,000.

As with the use of incarceration, the severity of probation terms was directly proportional to the seriousness of the crime committed. The longest average terms of probation were reserved for the most serious crimes. For example, the average term of probation imposed for manslaughter was 32 months, and the average term of probation for sexual touching a child under 14 years of age was two years. The duration of the probation order increased with the seriousness of the offence within a particular offence category. Thus, the average probation term for aggravated assault was 20 months whereas the average term for simple assault was 14 months.

There were 29,569 restitution orders listed in the data base. In most instances, restitution was associated with a probation term. There were 23,033 cases for which detailed monetary information was available¹⁷. The median¹⁸ restitution order was \$325. There was considerable variation in the magnitude of restitution orders, which ranged from \$1.00 to \$15,400,376.00. Fully 87% of the restitution orders were associated with 'property' offences. Mischief under \$1,000. was the single offence with the largest number of restitution orders. Almost one third (31%) of mischief under \$1,000. cases included restitution as one of the sanctions.

¹⁶ The maximum length of a probation order specified by the Criminal Code is three years.

¹⁷ There were no restitution values listed for Québec.

¹⁸ The median is the sentence which divides the distribution in half: 50% of sentences are above the median and 50% below.

Table 6

Cases with One Charge: Prison as Most Severe Sanction Offences with at least Six Month Average Sentence Nine Jurisdictions: 1993 & 1994

Offence Category	Number of Cases	Cases with Prison Sentence	Incarceration Rate %	Average Sentence (Months)
Manslaughter	103	79	76.7	61.6
Sexual Assault (2&3)	57	51	89.5	37.6
Robbery	1,483	1,304	87.9	21.5
Assault (3)	408	323	79.2	14.7
Procuring	67	31	46.3	13.9
Sexual Assault (1)	2,163	1,134	52.4	10.4
Forcible Confinement	58	37	63.8	10.3
Use Firearm for Offence	18	15	83.3	9.7
Sexual touch. Child <14	748	413	55.2	7.7
Break & Enter	9,363	5,693	60.8	7.0
Narcotic Control Act - traffick	4,013	3,187	79.4	6.7

Table 8

Cases with One Charge: Prison as the Most Severe Sanction in Case Sanctions Imposed in Association with Prison Sentences Nine Jurisdictions 1993 & 1994

Offence Category	Number of Cases 100% =	Sanctions Associated with Prison Terms									
		Prison only		probation		fine		restitution		other	
		N	%	N	%	N	%	N	%	N	%
Against Person	18,547	7,203	39	10,260	55	171	0.9	262	1.4	2,852	15
Property	29,338	18,478	63	9,698	33	262	0.9	2,046	7.0	1,656	6
Motor Vehicle	21,038	3,042	14	8,321	40	1,274	6.1	64	0.3	15,561	74
Morals	1,211	927	77	270	22	8	0.7	0	0.0	22	2
Administration of Justice	32,627	24,661	76	5,304	16	318	1.0	160	0.5	3,033	9
Other Criminal Code	1,526	1,024	67	429	28	17	1.1	25	1.6	106	7
Drug	7,525	5,183	69	1,926	26	137	1.8	36	0.5	565	8
Other Federal Statutes	1,388	1,111	80	182	13	55	4.0	19	1.4	60	4
Total	113,200	61,629	54	36,390	32	2,242	2.0	2,612	2.3	23,855	21

Use of Fines

The average fine was \$430 in single charge cases

As noted earlier a fine was the most frequent sanction imposed for single charge cases. A fine was the most severe sanction imposed in almost half (45%) of the single charge cases. The average fine amount was \$430. The offence category 'Other Federal Statutes', which includes a diverse collection of regulatory crimes, had the highest percentage (90%) of cases in which a fine was the most severe sanction. For these regulatory offences a fine is the normal sanction. Almost half (47%) of the fines imposed in single charge cases were for 'Motor Vehicle' offences. In fact, 70% of single charge cases of 'Motor Vehicle' offences received a fine as the most severe sanction. Offences against the 'Person' resulted in the smallest proportion of cases (5%) in which a fine was the most severe sanction.

Nine specific offences received a fine as the most severe sanction in over 50% of cases. These included: refusing to provide a breath sample; impaired operation of a vehicle; failing to remain at the scene of an accident; dangerous operation of a

vehicle; possession of a narcotic contrary to the *Narcotic Control Act*; obstructing police; causing a disturbance; illegal gaming and betting (see Figure 6).

Maximum Penalties are a poor guide to sentencing patterns or the relative seriousness of crimes

There have been several calls for a review of the current maximum penalty structure. As the federal government report on Sentencing has noted¹⁹, most of Canada's maximum penalties derive from the last century. This creates at least two problems which undermine the utility of the maximum penalty structure as a guide for judges. First, the current maxima are very high, and second they fail to reflect contemporary perceptions of the seriousness of the crimes for which they can be imposed. Both problems can be illustrated by the sentencing data base. It must be noted that cases heard in Provincial Courts tend to be relatively less serious in nature²⁰. The more serious crimes would be disposed of in higher level criminal courts.

¹⁹ Canada. (1984). Sentencing. Ottawa: Government of Canada.

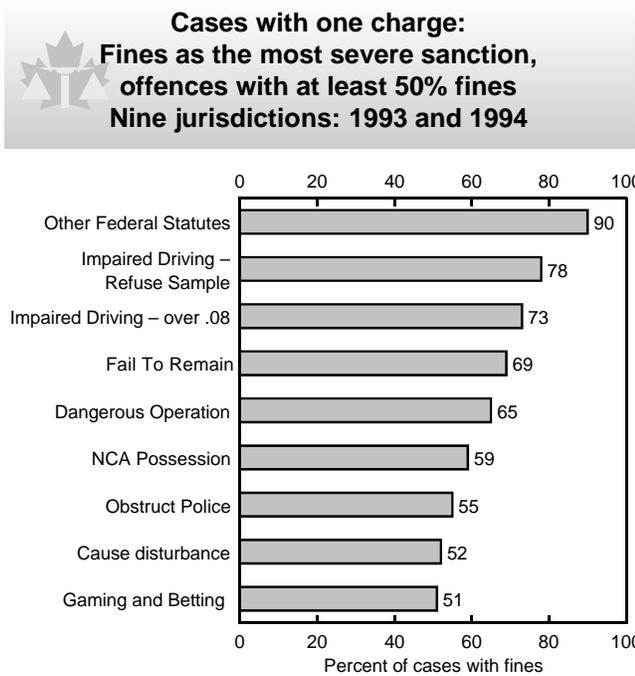
²⁰ See Methodology section of this report for a more detailed discussion.

Table 7

Cases with One Charge: Prison as the Most Severe Sanction in Case Median and Average Prison Sentences Nine Jurisdictions: 1993 & 1994

Offence Category	N. of Charges	Prison Sentences (in Days)		
		Median	Average	Longest Sentence
Manslaughter	79	1,825	1,847	5,110
Robbery	1,304	480	646	3,650
Sexual Assault (2&3)	51	720	1,129	4,745
Sexual Assault (1)	1,134	120	312	3,285
Assault (aggravated)	323	300	440	2,920
Assault (with weapon)	2,777	90	132	2,190
Assault (simple)	8,435	30	51	2,190
Assault Police	813	30	54	730
Forcible Confinement	37	180	308	1,825
Sexual touching child under 14	413	120	230	1,825
Uttering Threats	1,194	30	72	2,190
Harassing/Indecent Phonecall	120	30	52	180
Other Against Person	672	90	258	2,190
Use Firearm for Offence	15	365	291	365
Careless Use of Firearm	573	60	93	1,460
Possession of Firearm	528	30	79	1,095
Other Weapon Offences	79	90	177	1,460
Break & Enter	5,693	120	210	2,190
Possess B&E Equipment	167	60	115	913
Possess Stolen Goods>\$1000	1,482	90	127	2,190
Possess Stolen Goods<\$1000	1,363	30	61	900
Possess Stolen Goods (unknown)	1,910	60	85	1,770
Theft > \$1000	1,697	90	140	1,740
Theft < \$1000	7,353	30	49	2,555
Theft (amt. unknown)	1,897	30	82	2,555
Credit Card Theft/Forgery	445	45	71	913
Forgery	647	60	90	1,095
Personation	274	30	66	1,095
Fraud > \$1000	1,211	90	142	2,555
Fraud < \$1000	886	30	73	913
Fraud (amt. unknown)	651	30	74	1,460
False Pretenses	707	30	83	900
Mischief > \$1000	426	30	49	390
Mischief < \$1000	1,665	30	44	1,825
Other Property Offences	864	60	116	2,920
Imp.driving Cause Bodily Harm	243	90	123	913
Impaired Driving - over .08	14,118	21	46	5,110
Imp.driving Refuse Sample	739	21	45	1,095
Dangerous Op. - Cause BH	69	90	146	730
Dangerous Operation	600	60	96	1,640
Fail To Remain	296	30	54	729
Drive Disqualified	4,957	30	53	900
Other Motor Vehicle Offences	16	540	627	2,190
Procuring	31	365	418	1,095
Keep Bawdy House	7	21	44	120
Soliciting	854	14	27	540
Indecent Acts/Exposure	300	30	45	360
Gaming and Betting	5	14	19	30
Other Morals	14	180	355	1,825
Obstruct justice	377	30	76	730
Give False Information	368	30	44	365
Obstruct Police	1,282	30	34	365
Escape Custody	971	60	76	2,190
Unlawfully at Large	3,882	30	39	1,095
Fail to Appear	15,946	30	32	2,700
Fail to Comply	9,097	30	42	1,500
Breach of Recognisance	92	21	28	240
Other Admin. of justice	612	30	116	1,825
Cause disturbance	523	30	36	365
All Other Criminal Code Offences	1,003	60	183	3,650
NCA traffick	3,187	120	202	4,380
NCA Possession	3,455	30	41	5,110
NCA Other	692	270	385	5,110
FDA	191	30	101	1,170
Other Federal Statutes	1,388	30	42	900
Total	113,200	30	85	5,110

Figure 6



Thus, there would be a certain ceiling effect evident in the sanctions imposed in Provincial Courts. However, the vast majority of cases are heard in Provincial Courts.

The crime of break and enter (private dwelling) illustrates the first problem. Although the maximum penalty for this offence is life imprisonment, this theoretical maximum bears no relation to current sentencing practice. Almost a quarter of offenders convicted of break and enter received a non-custodial sanction, and of those who were imprisoned, the median term of custody was under six months. No sentence for break and enter exceeded five years in duration over the period studied in this report. Fully 95% of prison sentences for break and enter were under two years. Other offences show the same pattern: trafficking in contravention of the *Narcotic Control Act* also carries a maximum penalty of life imprisonment, yet the median custodial sentence was under six months.

The other problem can be illustrated by comparing sentencing patterns for different offences. Sexual assault carries a maximum penalty of ten years, yet it is punished more severely than break and enter (of a private dwelling), a life imprisonment offence. Clearly, the maximum penalty structure provides little guidance to judges who sentence offenders convicted of these two crimes. Judges are following contemporary perceptions of crime seriousness and not the hierarchy of maximum penalties found in the *Criminal Code*. The existing maximum penalties appear to be of little use to judges, other criminal justice professionals or the public in terms of providing a guide to the relative seriousness of different crimes. They may well create the expectation that sentences are too lenient, since sentencing practices at the trial court level bear little relation to the severity of the maximum penalties proscribed by the *Criminal Code*. In fact, appellate courts establish acceptable sentences through their decisions.

Considerable sentencing variation exists between jurisdictions and within provinces

As with previous studies of sentencing patterns, a significant degree of variation emerged between provinces. The degree of inter-jurisdictional disparity varied according to the offence. Table 9 provides incarceration rates and average prison sentences for 11 high frequency offences. For some offences such as theft under \$1,000, the incarceration rate varied from 4% (in Newfoundland) to 27% in the Yukon. Other offences generated a greater degree of inter-jurisdictional variation. Thus, incarceration rates for break and enter varied between 33% in the Yukon to 78% in Prince Edward Island. (For variation in sentencing trends in different court locations within the same province, the reader is directed to the full report upon which this *Juristat* is based.²¹)

In the absence of case-specific information — such as the value of property stolen, the amount of harm inflicted or the extent of the offenders' criminal histories — it is not possible to identify the factors accounting for this variation in sentencing patterns. No specific jurisdiction had higher incarceration rates for all crimes examined. Except for Newfoundland and Labrador, each jurisdiction had the highest incarceration rate or the longest average prison sentence for at least one offence.

Methodology

Data Limitations

Several limitations on the data base should be borne in mind. First, the study lacks data from Superior Courts. The data for this study were compiled from the Adult Criminal Court Survey (ACCS) conducted by the Canadian Centre for Justice Statistics (CCJS). The ACCS²² currently compiles data only from provincial²³ or lower courts. The cases heard in Superior Courts²⁴ of criminal jurisdiction represent a relatively small proportion of the total number of criminal cases, but tend to be the more serious cases. The consequence of this limited coverage is that some of the more serious cases (which would result in the more severe sanctions) are not included in the present study. Previous research has demonstrated that sentence lengths for cases resolved in Superior Courts are significantly longer than those imposed at the Provincial Court level. Similarly, information on cases that were appealed to a higher court was not available to the study. Research has shown that appeals by the Crown, which result in harsher sentences than were imposed at the trial court level, are more likely than appeals on behalf of the accused. Thus, any changes to the sentence or disposition were not available. For both these reasons, the portrait of sentencing trends which emerges from this study underestimates somewhat the true severity of sentencing patterns in Canada.

²¹ Sentencing in Adult Provincial Courts - A study of Nine Canadian Jurisdictions: 1993 and 1994. Ottawa: Statistics Canada.

²² For Details on the ACCS see: Adult Criminal Court Statistics - 1994. Statistics Canada Catalogue No. 85-214-XPE. 1996.

²³ For a detailed discussion of the jurisdiction of Provincial Courts in each province see: Profile of Courts in Canada 1995. Statistics Canada Catalogue No. 85-511-XPE.

²⁴ CCJS is in the process of developing a survey to cover cases heard in Superior Courts of criminal jurisdiction.

Table 9

Cases with One Charge: By Jurisdiction Incarceration Rates and Average Prison Sentences Nine Jurisdictions: 1993 & 1994

Offence Category	Percent of Cases With a Prison Sentence									Total
	Nfld.	P.E.I.	N.S.	Qc.	Ont.	Sask.	Alta.	Yukon	N.W.T.	
Assault (2)	50	43	32	19	59	32	45	61	77	49
Assault (1)	10	39	8	5	25	11	16	23	26	20
Break & Enter	55	78	46	33	72	47	56	33	37	61
Possess Stolen Goods (UK)	18	16	16	12	43	29	25	43	18	39
Theft < \$1,000	4	9	7	20	26	9	11	27	24	20
Mischief < \$1,000	14	16	4	9	19	7	6	8	11	13
Impaired driving - over .08	20	75	4	8	23	12	12	29	20	16
Drive Disqualified	42	14	16	36	78	20	41	65	30	53
Fail to Appear	51	38	22	24	62	22	16	47	37	50
Fail to Comply	50	63	31	28	62	25	28	57	21	45
NCA Possession	5	3	3	9	20	6	5	6	2	15
Total for all offences	19	42	10	15	34	17	19	31	25	26

Offence Category	Average Prison Sentence (days)									Total
	Nfld.	P.E.I.	N.S.	Qc.	Ont.	Sask.	Alta.	Yukon	N.W.T.	
Assault (2)	61	167	147	164	115	195	161	119	200	132
Assault (1)	56	20	59	83	46	97	66	66	78	51
Break & Enter	92	270	337	275	190	245	236	70	171	210
Possess Stolen Goods (UK)	44	11	73	114	83	123	111	53	45	85
Theft < \$1,000	14	36	41	63	46	78	66	27	52	47
Mischief < \$1,000	38	17	33	67	38	66	55	38	54	44
Impaired driving - over .08	47	10	44	55	45	34	54	61	45	46
Drive Disqualified	53	85	29	51	47	79	67	30	30	53
Fail to Appear	22	17	39	32	32	37	33	23	26	32
Fail to Comply	27	32	37	53	39	49	40	29	36	42
NCA Possession	29	9	37	48	39	42	55	25	14	41
Total for all offences	48	33	101	71	54	85	80	54	84	60

Note: Only includes offences in which each jurisdictions had at least ten cases

Finally, this study lacks detailed information on important case characteristics such as the extent of the criminal record of the offenders, or the presence of other important mitigating or aggravating factors. Without this information, it is not possible to explain variation in individual sentencing patterns. However, the sentencing data base provides good aggregate data on a large number of sentencing decisions. The purpose of the study is to statistically describe the range of sentences imposed for various offences, not the aspects that may make each particular case unique.

Coverage

For purposes of this *Juristat*, the data base was edited to exclude the following cases: 3,909 cases where the accused was a company; 58 cases where the prison sentence length was either 'life' or a term exceeding 14 years. (In these cases the sentence length was given a fixed code which did not reflect the sentence length); 18,660 prison sentences which had a length of one day. These sentences reflected a sentence of "time served" or an addition of time for fail to appear or fail to comply.

The ACCS currently collects data from courts in seven provinces and territories. They are:

- A. Newfoundland and Labrador - 2 courts in St. John's and Clarendville (with an estimated coverage of 45% of federal statute cases);
- B. Prince Edward Island - all 5 courts;
- C. Nova Scotia - 13 courts (excludes Halifax City Court with an estimated 15% of federal statute cases);
- D. Québec - all 41 provincial courts (excludes 140 Municipal Courts, 67 of these Municipal Courts, including Montreal, Québec city and Laval, have jurisdiction over *Criminal Code* summary and hybrid-summary offences);
- E. Saskatchewan - all 16 courts centres;
- F. Yukon - all 16 courts; and
- G. The Northwest Territories - all 43 courts.

In addition, Alberta provided data from all 99 courts and Ontario provided data from all 67 courts to CCJS specifically for this study. These data were converted by CCJS to conform to ACCS data specifications and file structures. The number of cases in each jurisdiction is presented in Table 10.

Table 10



The Number of Cases by Jurisdiction

	Nfld.	P.E.I.	N.S.	Qc.	Ont.	Sask.	Alta.	Ykn.	N.W.T.	Total
Number of Cases	3,019	2,560	21,462	119,530	274,954	39,748	87,472	1,830	1,107	551,682
Percent of all Cases	0.55	0.46	3.89	21.67	49.84	7.20	15.86	0.33	0.20	100

The data used in the current study include all cases with a sentencing date during the calendar years of 1993 and 1994. The one exception is Ontario whose data cover the fiscal years 1993-94 and 1994-95. Thus, the analyses reported in this study dealt with full or partial data from nine provinces and territories.

Units of Count

Throughout the report several units of count and sorting criteria were used. They were as follows:

Charge - The charge was the basic unit of count used in the study. One record was created for each charge which contained the details of all the sanctions imposed on that charge.

Most Severe Sanction (MSS) - The sanctions were ranked using the following order of severity: incarceration, probation, fine, restitution and other. 'Other' sanctions include absolute discharge, suspended sentence, license suspension, forfeiture, restraining order *etc.* Cases were classified against the offence that received the most severe sanctions. If several different offences in the case received the same sanction then the sentence quantum was used. That is to say that if several offences in the case received a prison term, the longest prison term determined the classification of the case.

Most Serious Offence (MSO) - In this study the MSS was used to determine the MSO in the case.

Case - A case is the aggregate of all the charges resulting in a conviction with the same sentencing date for an accused. The case was classified against the charge that received the most severe sanction. The sole exception was Ontario, where one case was based on one information.

Provincial/Territorial Court Jurisdiction

The ACCS data base contains information on criminal matters that are heard in provincial or territorial criminal courts. All criminal matters are commenced in these courts but some more serious cases are then transferred to a higher level court. There are several factors that determine which offences are within the jurisdiction of provincial or territorial courts. One of the most important factors is the classification of the offence (summary, indictable or hybrid). All offences punishable on summary conviction are heard and disposed of in provincial courts. The maximum punishment for a summary conviction offence is a fine of \$2000., or a term of imprisonment of six months or both. Most indictable offences can be tried either in provincial/territorial courts or in higher level courts. The punishments, reflecting the more serious nature of the offence, are more severe (for example maximum terms of imprisonment of 2, 5, 10, 14 years or life). An indictable offence tried in a provincial/territorial court is subject to the penalties specified for the offence under the *Criminal Code*.

The third group of offences, namely *hybrid, mixed or dual procedure*, are deemed to be indictable unless the Crown counsel chooses to proceed by way of summary conviction procedures. For example, 'Property' offences that have a monetary value ceiling, such as theft under \$1000.²⁵, and that are under the limit are deemed to be *hybrid* offences. Thus the Crown, when prosecuting these offences, may choose to proceed by way of summary procedure. For most indictable offences²⁶, the accused has the right to elect the mode of the trial. The accused may elect to be tried in provincial/territorial court, in a higher level court by judge alone or in a higher level court by judge and jury. Thus, many indictable offences may be settled in provincial/territorial courts at the request of the accused. Sentencing information is available in the ACCS data base only on those cases that are tried, convicted and sentenced in provincial/territorial courts.

²⁵ After February 1995 the financial limit was increased to \$5000.

²⁶ The most serious offences such as murder, treason and piracy are the exclusive jurisdiction of the superior court of criminal jurisdiction.

Canadian Centre for Justice Statistics

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