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of Canada**  
to the House of Commons

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**Chapter 4**  
The Criminal Justice System:  
Significant Challenges

*The April 2002 Report of the Auditor General of Canada comprises eight chapters, a Foreword and Main Points.  
The main table of contents is found at the end of this publication.*

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Chapter

# 4

The Criminal Justice System:  
Significant Challenges



# Table of Contents

<b>Main Points</b>	<b>1</b>
<b>Introduction</b>	<b>3</b>
Federal and provincial responsibilities	3
Focus of the study	5
<b>Observations</b>	<b>5</b>
<b>Challenges to the criminal justice system</b>	<b>5</b>
Issues relating to significant groups	5
Maintaining fairness	8
Crime as a business	10
Ensuring lawful access	11
<b>Reshaping the criminal justice system</b>	<b>13</b>
Programs aimed at significant groups	13
Changes in federal corrections	15
Efforts to maintain fairness	16
Changing the boundaries of the system	17
Private security measures	19
Response to crime as a business	20
Effects of Supreme Court decisions	21
<b>Providing effective information</b>	<b>21</b>
Sharing of information by criminal justice agencies	21
Progress of the Integrated Justice Information initiative	22
Inconsistent information on the reliability of the Canadian Police Information Centre	24
Evidence-based criminal justice	25
Improving the national information infrastructure	26
<b>Conclusion</b>	<b>27</b>
<b>About the Study</b>	<b>30</b>





# The Criminal Justice System: Significant Challenges

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## Main Points

**4.1** Canada's criminal justice system faces major and complex challenges. It is trying to respond to crime committed by youths; make the justice system more responsive to Aboriginal peoples; address victims' needs; remedy wrongful convictions; prevent questionable plea-bargains; deal with organized crime; adjust to court decisions on police powers; provide police with lawful access to persons, property, and information; and ensure that criminal justice agencies share information effectively.

**4.2** Criminal justice agencies are responding to these challenges with initiatives that affect most of the system. They include community safety and crime prevention programs; renewed approaches to youth justice; diversion programs to keep offenders out of the formal justice system; restorative justice programs; specialized courts; strategies to deal with organized crime; and development of integrated justice information systems.

**4.3** The challenges and the responses have the potential to change the system significantly. Efforts have been made through numerous liaison and co-ordinating bodies to share information and co-ordinate their policies and program delivery.

**4.4** For the most part, however, each agency manages key challenges and initiatives separately. This reflects the complex and multijurisdictional nature of the system. The agencies are accountable to federal and provincial legislative bodies and often to different ministries of the same government; some are accountable to municipal governments. Courts, which play a key role in the system, are independent from government.

**4.5** The agencies and elected bodies may have different interests and priorities. As a result, it is difficult for the system to have an overall vision and common objectives and devise comprehensive strategies and co-ordinate their implementation. Further, federal initiatives are often developed and funded in response to pressing issues rather than on an integrated and sustained basis.

**4.6** According to federal government agencies, the system's capacity to maintain a high standard of public safety is under severe strain. We believe the interrelationship of the challenges and initiatives and their collective impact need to be assessed. Without that knowledge, it is difficult to ensure that the initiatives are working together effectively rather than at cross purposes. Carrying out such an assessment may be difficult because there are major gaps in information.

## Background

4.7 The formal criminal justice system is a complex network of independent but procedurally connected police, prosecutors, courts, correctional agencies, and parole boards. It costs governments at all levels at least \$10 billion a year. The federal government estimates that the cost of crime to Canadians may be as high as \$46 billion a year, when the impacts on victims and society are considered. Canadians responding to a 1999 survey by Statistics Canada said they had experienced about 8.3 million incidents that they believed were criminal. In 2000, police reported about 2.5 million *Criminal Code* crime incidents.

**Federal agencies have responded.** The Department of Justice Canada, Solicitor General Canada, Correctional Service Canada, and Statistics Canada have generally agreed with our observations. The specific views of each are presented in the responses at the end of the chapter.



## Introduction

**4.8** Canada's criminal justice system is highly complex: federal, provincial, territorial, and municipal agencies and organizations all play a part, but no agency or jurisdiction has control or ownership of the entire system. It is subject to continual public scrutiny and frequent controversy. Each apparent failure can shake public confidence in the system and lead to calls for change.

**4.9** Governments in Canada spend at least \$10 billion each year on the criminal justice system. The actual cost of crime—including the costs of private security, insurance, and impacts on victims—is much higher. How much higher is difficult to estimate reliably, but the federal government uses an estimate of about \$46 billion a year.

### Federal and provincial responsibilities

**4.10** The formal criminal justice system consists of the police, prosecutors, the courts, correctional services, and parole boards. Under Canada's Constitution, the provinces and the federal government share responsibility for the criminal justice system. Parliament is responsible for establishing criminal law and criminal procedure. Provinces have primary responsibility for enforcing the *Criminal Code*, prosecuting criminal charges, and administering trial courts. The Royal Canadian Mounted Police (RCMP) acts as a federal police force. Under contractual agreements, it also provides policing services to all provinces and territories except Quebec and Ontario, who have their own provincial police forces. Further, through various arrangements it provides services to certain municipalities, airports, and First Nations communities. Generally, larger municipalities have their own police forces.

**4.11** Both federal and provincial correctional authorities are responsible for administering sentences and rehabilitating offenders. Federal authorities administer sentences of two years or longer. Provinces are responsible for offenders sentenced to terms of less than two years and for most young offenders. The National Parole Board makes conditional release decisions for offenders held in federal and territorial institutions and in provincial facilities of seven provinces (Quebec, Ontario, and British Columbia have their own parole boards for offenders in their custody). Exhibit 4.1 summarizes the major federal responsibilities.

**4.12** Aside from the constitutional division of responsibility, each criminal justice agency has its own legislative mandate. Although independent, each agency must rely on the others to move offenders through the system properly. The criminal justice system is thus a group of independent but procedurally connected agencies.

**4.13** The federal government estimates that a total of \$10 billion is spent each year on the criminal justice system. In 1996–97 the federal share was about 25 percent or \$2.5 billion (Exhibit 4.2). About 120,000 people worked in the criminal justice system that year, including 54,300 police officers and 22,600 custodial personnel in adult correctional facilities.

4.14 A March 1999 federal government report indicated that of the charges laid in 1996–97, about 25 percent were laid by the RCMP. About 12 percent of cases were prosecuted by the Department of Justice Canada. Most criminal proceedings occur in provincially administered courts. About 50 percent of incarcerated offenders are held in federal correctional facilities. The National Parole Board makes about two thirds of parole decisions and almost all decisions on applications for pardons.

**Exhibit 4.1** The major federal responsibilities in the criminal justice system

<b>Lawmaking</b>	Parliament
<b>Policy</b>	Department of Justice, Solicitor General Canada, RCMP, Correctional Service Canada, and National Parole Board
<b>Crime prevention</b>	Department of Justice, Solicitor General Canada, RCMP, Correctional Service Canada, and National Parole Board
<b>Investigation</b>	RCMP as federal, provincial, and municipal police forces
<b>Prosecution</b>	Department of Justice
<b>Courts</b>	Supreme Court of Canada and other courts
<b>Legal aid</b>	Department of Justice
<b>Managing sentences</b>	Correctional Service Canada
<b>Conditional release decisions and pardons</b>	National Parole Board
<b>Rehabilitation and reintegration</b>	Correctional Service Canada and National Parole Board

**Exhibit 4.2** Estimated expenditures by governments on the criminal justice system, 1996–97

Area of spending	Total (\$ billion)	Federal (%)	Provincial/territorial (%)
Police	5.86	20	80
Courts	0.86	9	91
Prosecutions	0.26	17	83
Adult corrections	1.97	49	51
Youth corrections	0.51	29	71
Legal aid	0.50	17	83
<b>Total</b>	<b>9.96</b>	<b>25</b>	<b>75</b>

Source: Canadian Centre for Justice Statistics and the Department of Justice. Total and provincial and territorial legal aid expenditures may be underestimated.

### Focus of the study

**4.15** The purpose of this chapter is to identify the key challenges facing the criminal justice system and how the system is responding to them. It also identifies areas that the Office will consider examining in the future. We focussed on the main federal agencies responsible for criminal justice: the Department of Justice, Solicitor General Canada, the RCMP, Correctional Service Canada, and the National Parole Board. About the Study at the end of this chapter provides further information.

## Observations

### Challenges to the criminal justice system

**4.16** The criminal justice system is trying to address simultaneously the needs of significant groups who come into contact with it. They include youths, Aboriginal peoples, women, the poor, ill and aging offenders, victims, and the wrongfully convicted. Each of these groups presents the system with unique difficulties; together, they represent a significant challenge. Further, for the most, each agency in the system manages key challenges and initiatives separately.

**4.17** The available information only partially describes the challenge. The data are not adequate to examine how the problems across the criminal justice system are related. For example, the government cannot readily determine how often the same individuals are counted and their needs addressed as members of more than one group—youths, Aboriginal people, women, and the poor.

### Issues relating to significant groups

**4.18** **Youths.** Youths aged 12 to 17 made up 8 percent of Canada's total population in 2000, according to Statistics Canada, but were involved in about 21 percent of the about 2.35 million *Criminal Code* incidents reported (excluding traffic and drug-related offences). About 33 percent more youths were charged with violent crime in 2000 than 10 years ago, an increase of 7 percent after four years of decline. Youth courts heard about 102,000 cases in 1999–2000, involving 60,000 youths.

**4.19** What the data mean and what should be done to address youth crime are subjects of considerable debate. The 1994 review of the *Young Offenders Act* by the Federal/Provincial/Territorial Task Force on Youth Justice found the following:

- a lack of public confidence in the system;
- a need to focus resources on serious youth crime while dealing with less serious crime in less formal ways;
- inconsistencies across jurisdictions; and
- a need for a program for Aboriginal young offenders.

**4.20** In 1997, the House of Commons Standing Committee on Justice and Legal Affairs concluded that public concerns about youth crime were misperceptions—that most youth crime is minor and temporary; only a minority of young offenders are involved in serious and persistent criminal acts.

**4.21** The Department of Justice concluded in February 2001 that the youth justice system under the *Young Offenders Act* was not working well. It noted the following:

- too many young people are charged, and often incarcerated, with questionable results;
- procedural protections for young people are not adequate and too many youths end up serving sentences in custody with adult offenders;
- the overarching principles of youth justice are often unclear and conflicting;
- there are disparities and unfairness in youth sentencing; and
- interventions are not appropriate to the seriousness of the offences and not meaningful enough to individual offenders and victims, nor do they adequately support rehabilitation and reintegration.

**4.22 Aboriginal peoples.** In 1996, the last year for which consistent data are available, about 2.8 percent of the Canadian population identified themselves as Aboriginal people. In April 2000 a report was prepared for the Department of Justice on the overrepresentation of Aboriginal peoples in the justice system. The report indicated that in 1996, 17 percent of inmates in adult provincial and territorial correctional facilities and in federal facilities identified themselves as Aboriginal people. About 50 percent of the 5,100 inmates of provincial adult institutions in the Prairie provinces were Aboriginal people.

**4.23** The relationship between Aboriginal peoples and the Canadian criminal justice system has been the subject of several public inquiries. According to the Department of Justice, these inquiries have found that the conventional justice system has not adequately met the needs of Aboriginal peoples. The inquiries have recommended that Aboriginal communities have the opportunity to assume greater responsibility for a number of justice programs and processes.

**4.24 Women offenders in federal institutions.** Addressing the problems of women who are serving federal sentences has become a priority. Women represent about four percent of the total population of federal offenders and their numbers are growing. In March 2001, Correctional Service Canada reported a total of 866 women offenders in prison and under supervision in the community. It estimated that by December 2004 the number would grow to about 1,075, about 450 of them in prison.

**4.25** Two major reports have been issued on women and the criminal justice system. Correctional Service Canada told us it was aware that the Prison for Women in Kingston had long been unable to meet the unique needs of women offenders. In 1989, the Commissioner of the Department created a task force to develop a plan to address the needs of women offenders. In September 1990, *Creating Choices: The Report of the Task Force on Federally*

*Sentenced Women* emphasized the unique needs of women offenders and stressed that fundamental changes were needed to assist women offenders in rebuilding their lives. In 1990, the federal government accepted the report's recommendations. In 1994 it issued a strategy for developing programs in the new regional facilities. It appointed a Deputy Commissioner for Women, and between 1995 and 1997 it opened new regional facilities for women offenders.

**4.26** In April 1996, Madam Justice Louise Arbour issued the report, *Commission of Inquiry Into Certain Events at the Prison for Women in Kingston*. The inquiry investigated and reported on the incidents that occurred in the Prison for Women, beginning on 22 April 1994. The inquiry was initiated after a male Institutional Emergency Response Team participated in the strip search of women offenders. The Arbour report contained 14 primary recommendations on women's corrections, covering staffing by gender, use of force, Aboriginal women, segregation, accountability, and grievances. Correctional Service Canada accepted most of the report's recommendations, which included the establishment of the Deputy Commissioner for Women and female emergency response teams.

**4.27** Total spending on women offenders has risen. Correctional Service Canada reports that the cost of maintaining a woman offender rose from about \$109,900 in 1997–98 to about \$115,000 in 1999–2000; at \$316, the daily cost of keeping a woman inmate in a penitentiary is much higher than the \$185 it costs to keep a male offender. Correctional Service Canada says the difference reflects the cost of providing the same level of services to a smaller number of women inmates.

**4.28 Ailing and aging offenders in federal institutions.** Certain kinds of illness may result directly or indirectly in arrest and incarceration—for example, substance addiction, fetal alcohol syndrome, and mental illness. Not enough information exists to determine how many people have come to the attention of the criminal justice system as a direct or indirect result of these problems. Nor is it known to what extent the criminal justice system is dealing with what are primarily public health and social problems. Increasingly, federal institutions have to treat offenders who have severe health problems. These critical problems are costly.

**4.29** Correctional Service Canada has made the following estimates:

- Eighteen percent of its male inmates had been hospitalized in a mental health facility at some time before their admission to federal prisons.
- Forty percent of offenders in its custody have problems of moderate or serious substance abuse.
- A potentially significant number of offenders suffer from fetal alcohol syndrome.
- In federal institutions about 217 offenders have HIV/AIDS, a rate at least 10 times higher than in the general Canadian population.
- About 24 percent of inmates and 14 percent of staff tested positive for tuberculosis.
- Nineteen percent of inmates are known to be infected with hepatitis C.

**4.30** The proportion of offenders in Correctional Service Canada facilities who are over 50 years old is growing rapidly; from 1993 to 1996, the number

of inmates older than 50 and serving sentences of three years or longer grew by about 10 percent. Of those offenders, about 24 percent had been convicted of homicide and about 38 percent of a sexual offence.

In May 1996, there were 1,379 offenders between 50 and 90. Correctional Service Canada indicates that older offenders have a high incidence of multiple and chronic health conditions such as heart disease, diabetes, and cancer. It says that geriatric inmates cost up to three times more than others to maintain.

### Maintaining fairness

**4.31 Legal aid.** According to the Department of Justice, legal aid programs were established to ensure equitable access to justice for economically disadvantaged individuals, particularly where there is a risk of imprisonment for an offence under the *Criminal Code*. Provinces and territories are responsible for establishing the programs; the federal government shares their funding. The organizational structure for legal aid and the eligibility requirements vary from province to province.

**4.32** Legal aid plans are funded from three main sources: federal, provincial, and territorial government contributions; contributions and cost recoveries from clients; and contributions from the legal profession. In 1990–91, about \$206 million was spent on legal aid in criminal matters, peaking in 1994–95 at \$275 million. In 1998–99 the expenditures fell to \$218 million. In 2001, the Department of Justice informed the government in connection with the current criminal law situation that there were 40 percent fewer applications for assistance approved in 1997–98 than in 1994–95.

**4.33** The Department of Justice has conducted several assessments of the legal aid program. In 1998 it was concerned that large numbers of applicants for legal aid had been rejected in some jurisdictions; in addition, it was possible that some who were eligible had not applied. In February 2001, the Department of Justice told the government the following:

- Standards for essential legal services vary across the country.
- Inadequate funding of legal aid can amplify the difficulties of those already disadvantaged.
- There is no systematic gathering of data on how well the needs of Aboriginal peoples, women, and children are being met.

**4.34** Further, a July 2001 Department of Justice evaluation of the program made the following conclusions:

- There is a clear and accepted rationale for legal aid programs.
- The Department has not developed clear policies and a coherent set of objectives for the program.
- Staff turnovers have limited the Department's capacity to work effectively with provincial and territorial partners.
- There is currently no empirical basis for assessing the adequacy of the Department's financial contribution to the costs of criminal and young offender legal aid. Data on the performance of the national system of criminal and young offender legal aid are currently not available except in the most rudimentary sense.

- Efforts to integrate legal aid issues into the broader policy development work of the Department have been sporadic at best.
- Provincial and territorial partners do not believe legal aid is adequately accessible to those who need the service. Recent cutbacks in service levels in many jurisdictions mean that only persons facing the most serious charges and whose financial circumstances are the most dire are likely to receive legal aid.

**4.35 Plea bargaining.** That plea bargaining occurs is widely acknowledged. The Federal Prosecution Service Desk Book of the Department of Justice indicates that several things can be negotiated: charges, procedure, sentences, and the facts of an offence for the purposes of a guilty plea. The book also contains guidelines on plea bargaining that are binding on federal prosecutors.

**4.36** Plea bargaining can have several consequences:

- It can allow prosecutors and the courts to handle more cases with the same or fewer staff, reserving court time for more serious cases.
- It can give the prosecution and defense counsel significant control over the trial process and the outcome.
- It can save the victim from having to testify.
- A less serious charge can go on the offender's record, an important consideration should charges be laid for other incidents in the future.
- It can reduce the number of inmates in jail and thus the costs of building prisons and incarcerating offenders.

**4.37** The practice of plea bargaining has been criticized. It has the potential to undermine the integrity of the criminal justice system, in part because disclosure of the basis for agreements and accountability for the decisions have been inadequate. There are no reliable data on how often plea bargaining occurs and with what outcomes.

**4.38 Wrongful convictions.** Several highly publicized cases of wrongful conviction in Canada have strained the credibility of the system and perceptions among the public that it is fair. These cases have resulted in the payment of compensation by governments. Three of the cases also led to commissions of inquiry. The inquiries consistently revealed major systemic problems, including questionable conduct by prosecutors and defence counsel, failure to disclose information, and flawed investigation by law enforcement agencies. The inquiries recommended considering an independent review body to investigate claims of wrongful conviction.

**4.39** Wrongful convictions are initially addressed and remedied through the courts. Once an individual has exhausted judicial avenues, he or she can apply to the Minister of Justice for further review. Each year, the Minister receives about 50 to 70 requests for a review. Until 1994, the Department of Justice reviewed the requests on an ad hoc basis. In 1995 a more formal review group was established. At January 2002, the Minister had reviewed 53 cases and in 41 of them declined remedial action; another 117 applications were at different stages of the process. Usually about a third of applications are screened out as not eligible for the Minister's review.

**4.40** The current review process has been criticized; some believe that the Minister of Justice, who is also the Attorney General of Canada, is in a conflict of interest when reviewing cases of wrongful conviction. Also criticized are the extensive delays, the lack of clear criteria for decisions, and the secrecy of the review process.

**4.41 Victims.** In 1983, a federal–provincial task force conducted the first study of justice for the victims of crime. It concluded that often the victim is “twice victimized: once by the offence and once more by the process.” A report in October 1998 by the Standing Committee on Justice and Human Rights, *Victims’ Rights—A Voice, Not a Veto*, called for a co-ordinated strategy at all levels of government to address the needs of victims. In its May 2000 report concerning the *Corrections and Conditional Release Act*, the Committee reiterated its 1998 recommendations for addressing victims’ needs.

### Crime as a business

**4.42** The criminal justice system is designed to deal largely with individual offenders—to bring them to justice, provide fair trials and sentences, and try to rehabilitate them and reintegrate them into society. “Crime as a business” refers to enterprises organized for the sole purpose of profiting from crime.

**4.43** Examples of organized crime include telemarketing fraud, counterfeiting, electronic fraud, the illegal drug trade, money laundering, and people smuggling, as well as environmental crimes such as illegal trafficking in endangered species and hazardous wastes. These activities may involve serious violent crimes.

**4.44** Getting caught by police and serving a long sentence may be accepted as a risk of doing business. Individuals convicted of organized crime activities may not fit prevailing assumptions about rehabilitation and reintegration.

**4.45** Organized crime benefits from the same factors that foster the legal economic activities of national and multinational corporations, for example,

- the growth of relatively unrestricted cross-border movement of goods, services, capital, information, and people; and
- the borderless world of high-speed communication technology.

These factors also foster the organization of crime groups internationally, which raises investigative costs.

**4.46 Impact.** A 1998 study by Solicitor General Canada estimated the impacts of organized crime in Canada as the following:

- The value of the Canadian illicit drug market is between \$7 billion and \$10 billion each year. The RCMP’s Estimates to Parliament for 2000–01 indicated that the annual street value of illicit drugs could be as high as \$18 billion.
- Economic crime, such as securities fraud and telemarketing scams, costs Canadians at least \$5 billion a year.
- Between \$5 billion and \$17 billion is laundered in Canada each year.
- Up to 16,000 people may be smuggled into Canada every year.



- The production and sale of counterfeit products such as clothing, software, and pharmaceuticals could cost Canadians over \$1 billion each year.
- Illegal smuggling of tobacco, alcohol, and jewellery could result in the loss of up to \$1.5 billion in government tax revenues.

**4.47** The study noted that organized crime undermines legitimate businesses by creating a competing economy that launders money and reduces the tax revenues collected. It also may directly affect consumers—for example, organized theft of vehicles increases the cost of automobile insurance. In correctional facilities, criminal gangs may threaten staff and inmates.

**4.48** Estimates of the extent and impact of organized crime are based on limited and questionable information, often reiterated from report to report. Systematic, quantitative information is hard to obtain. Police agencies are concerned that releasing information could compromise their investigations. Criminal organizations operate in secrecy and obscurity; obtaining information on their activities is time-consuming, expensive, and dangerous.

**4.49** Preliminary data indicate that there are 64 large-scale organized crime groups in Canada. Most have national and international links that are used to exchange goods, services, expertise, skills, personnel, and facilities. Most use legitimate businesses to launder money. About half are involved in the corruption of politics, the media, public administration, judicial authorities, or the economy.

**4.50** Investigations into organized crime are frequently on an international in scale. While economic activities increasingly eclipse national borders, policing is confined to national jurisdictions and often to jurisdictions within national borders, such as provinces and states. Criminals can easily engage in activities that cross borders, while police must seek co-operation to work across borders. Dealing with organized crime requires close international partnerships and exchange of information and intelligence. However, evidence gathered in foreign jurisdictions and convictions in foreign courts cannot always be used in Canadian courts, and extradition may be hampered by different national policies on sentencing, particularly on capital punishment.

**4.51** It is increasingly difficult and costly to investigate and prosecute organized crime. Large-scale criminal groups are more diverse; to infiltrate them, police now need a lot more knowledge of different cultures and languages. Smaller-scale groups are based on family or long-term relationships and cannot be infiltrated. Organized crime groups insulate themselves and use the newest technology, such as encryption, to conceal their activities. Investigations and trials are lengthy.

### Ensuring lawful access

**4.52** Dealing effectively with crime, including terrorism, may require police and other agencies to intercept communications and to search and seize data. To do this, agencies need a legislative and judicial framework to provide for “lawful access.” Lawful access is an essential tool in the prevention,

investigation, and prosecution of serious offences and the investigation of security threats to Canada. Agencies are empowered to conduct lawful access activities only within legislated limits and with judicial approval. The lawful interception of communications and the search and seizure of data enable them to detect and investigate criminal activities, particularly those involving illegal drugs, money laundering, smuggling, child pornography, and terrorism.

**4.53** To maintain the ability to lawfully intercept and seize information, the government directed in March 1999 that a strategic framework for lawful access be established to do the following:

- develop technological solutions to maintain lawful access;
- reinforce co-operation between government and industry to develop solutions; and
- conduct a comprehensive review of legislation and technological options to support lawful access.

In May 2000, the Treasury Board allocated \$180 million for these purposes between 2000–01 and 2004–05.

**4.54** Keeping a strategy and capability up-to-date is difficult. The deregulation of the telecommunications industries, the proliferation of service providers, and advancing technologies are limiting the capability of law enforcement and national security agencies to collect information. Their information and intelligence-gathering activities cannot adequately keep pace with these changes or counter the exploitation of new technologies by criminals and terrorists.

**4.55** Communication networks are globally interconnected, presenting complex technical and legal challenges for lawful access. Satellite technology allows for mobile communication world-wide. A telecommunication switch can be located in one country but handle the routing activity for several countries. This creates jurisdictional problems and a need for international co-operation. The move to high-speed, high-bandwidth digital communications means that agencies have to contend with higher volumes of communication and more complex signals. The challenges are heightened by affordable, easy-to-use, and hard-to-break encryption and will increase further when voice and data communications no longer use traditional switching equipment.

**4.56** According to government agencies these new technologies are being used to shield criminal activity and terrorism. Criminals and terrorists are using cutting-edge technologies, such as those developed to maximize the speed and security of internet communications. As a result, the capability of law enforcement and national security agencies to gain lawful access is being rendered increasingly ineffective. There is further concern that the agencies' capabilities may not be able to match the state-of-the-art equipment and software used by criminals and terrorists. The agencies conclude that maintaining a capability in the face of such technologies will remain a challenge into the foreseeable future.

## Reshaping the criminal justice system

**4.57** Governments are reshaping the criminal justice system to respond to the many challenges. They are changing their present programs for youth, Aboriginal peoples, and women. They are funding crime prevention and community safety programs, restorative justice initiatives, diversion programs, and victims' programs. They are developing new kinds of courts. Private security is becoming a major business. There is not enough information to determine how these many changes interrelate and how they affect the system as a whole.

### Programs aimed at significant groups

**4.58 Youth justice renewal.** Approaches to youth justice are revised continually in response to real and perceived shortcomings. In May 1998 the Minister of Justice released *A Strategy for the Renewal of Youth Justice*, intended to yield the following benefits:

- over time, fewer young people committing crimes;
- more use of non-judicial measures and fewer youths processed through the formal justice system;
- more use of community-based sentences and fewer youths in custody; and
- measures to target the most violent young offenders.

**4.59** To establish the legal basis for key elements of the strategy, the government tabled the *Youth Criminal Justice Act*. The legislation focusses on rehabilitation and emphasizes the use of alternative measures outside the court process. At this writing, the federal government has agreed to delay proclamation of the legislation until April 2003.

**4.60** The governments of Ontario and Quebec opposed the legislation; other provinces and territories supported its general direction.

**4.61** The federal government spends significant amounts on youth justice. In early 1999, spending of about \$486 million over six years was recommended. The Treasury Board approved spending of \$76.3 million between 1999 and 2005 to help provinces and Aboriginal communities implement the new legislation.

**4.62** Federal–provincial cost-sharing agreements on youth justice include other funding, about \$144 million in 1998–99, for example. With the May 1998 announcement of the Youth Justice Renewal Initiative, the government increased funding to about \$161 million for 1999–2000 and about \$178.8 million for 2000–01. Currently, the federal government has arrangements with all of the provinces and territories except Quebec and Ontario.

**4.63** While the proponents of the legislation believe that it will lead to major improvements, others have raised the following concerns:

- The new legislation represents a political response to public perceptions that are based on isolated incidents, and more to problems arising from inadequate resourcing of programs than to problems of policy.
- Better understanding and constructive involvement by citizens are needed more than new legislation.

- Historically, youth justice has set the pace for the progressive development of the criminal justice system as a whole, whereas the new approach seems to be adopting the more punitive policies and practices of the adult system.

**4.64 Approaches to justice for Aboriginal peoples.** As youth justice is changing, other changes are slowly increasing Aboriginal peoples' responsibility for delivering Aboriginal justice.

**4.65** The federal government has a number of Aboriginal justice initiatives, including the following:

- Legislation has authorized Correctional Service Canada to enter agreements with Aboriginal communities to provide correctional services, and to transfer offenders to the care and custody of an Aboriginal community with their consent and the community's.
- Aboriginal spirituality and Elders have been given official recognition.
- An Aboriginal Justice Initiative was allocated \$22.4 million from 1991 to 1996.
- An Aboriginal Justice Strategy spent about \$29 million from 1996–97 to 2000–01 and was allocated about \$6.4 million in 2001–02.
- The RCMP holds community justice forums.
- An Aboriginal Community Corrections Initiative was allocated about \$2 million from 1996–97 to 2000–01.
- The First Nations Policing Program spent about \$285 million between 1992–93 and 2000–01.
- The Native Courtworkers Program, a federal–provincial–territorial cost shared initiative, has spent a total of about \$250 million since 1973–74, including a federal contribution of about \$82 million.
- The National Parole Board uses Native Elders at Board hearings to help ensure that Aboriginal cultures are respected.

**4.66** Together, the goals of these programs include empowering Aboriginal communities to take more responsibility for administering justice; reducing crime and incarceration; and developing community-based restorative justice programs and capacities for post-sentencing supervision.

**4.67** The government also has several broader initiatives that will ultimately establish the overall framework for the governance of justice for Aboriginal peoples. The 1995 federal government approach to inherent rights and the negotiation of self-government covers the administration and enforcement of Aboriginal laws, including the establishment of Aboriginal courts or tribunals, the establishment of offences normally created by local and regional governments, and policing.

**4.68** In response to the Royal Commission on Aboriginal Peoples, in 1998 the government published *Gathering Strength: Canada's Aboriginal Action Plan*. The plan indicated that the government would continue to discuss Aboriginal justice issues. This included, for example, developing Aboriginal capacity to manage community-based justice, developing alternatives to the formal justice system, providing effective police services that are accountable to the community, and carrying out crime prevention programs.

**4.69** The government has also established the position of federal interlocutor, with authority to negotiate with Métis south of the 60th parallel and with non-status Indians.

**4.70 Women as victims.** Justice programs for women are also changing in significant ways. In 1991 the government created the Canadian Panel on Violence Against Women. The Panel recommended a policy of “zero tolerance” for violence against women.

**4.71** The *Criminal Code* has been amended to protect women more effectively. For example:

- Provisions added in 1993 address criminal harassment and stalking.
- A 1995 amendment precludes the use of extreme intoxication as a defense in crimes of violence.
- A 1996 amendment restricts access to medical, counselling, therapeutic, and other personal records of complainants in sexual offence prosecutions.

**4.72** The government has also spent significant amounts of money on various initiatives to counter the abuse of women, children, and the elderly—about \$176 million from 1988 to 1996.

### Changes in federal corrections

**4.73** Changes in federal corrections to address the needs of women have been discussed previously. To deal with drug abuse, Correctional Service Canada has focussed on reducing the supply of drugs and alcohol in institutions and reducing the demand through program and health interventions. It reinstated random urinalysis at all institutions in November 1992, and in 1994 it adopted a formal drug strategy. The strategy focusses on deterrence, treatment, and safe reintegration into the community. In addition to urinalysis, Correctional Service Canada uses ion scan technology, drug detection dogs and intelligence gathering.

**4.74** A 1995 survey of inmates, however, indicated that about 68 percent believed either that the testing had had no effect or that drug use had increased. About 28 percent thought that inmates had simply switched to less detectable drugs such as heroin and cocaine, which clear the body in 48 to 72 hours; softer drugs take up to 21 days to clear the body of a chronic user.

**4.75** Correctional Service Canada believes that random urinalysis has proved effective at reducing drug use among inmates of federal penitentiaries. It says that five years ago, 37 percent of inmates were testing positive; the current rate is about 12 percent. Correctional Service Canada has started to implement its National Methadone Maintenance Treatment Program, which could cost between \$7,000 and \$12,000 a year for each offender treated.

**4.76 Other illness.** Correctional Service Canada has introduced several measures to combat the spread of infectious diseases in federal penitentiaries, including the following:

- condoms, lubricants, and bleach kits for cleaning needles are made available to all inmates in federal institutions; and

- all federal inmates are offered voluntary testing for HIV on admission and throughout their sentence.

There is no needle exchange program for inmates.

**4.77** Correctional Service Canada operates four regional psychiatric centres to address mental health issues. It expects to develop plans in fiscal year 2001–02 for dealing with the health problems of its older offenders.

#### Efforts to maintain fairness

**4.78 New courts.** New courts are being established for mentally ill offenders and users of illicit drugs. There are also new courts that address the needs of Aboriginal peoples. In May 1998, a mental health court was established in Toronto to hear in a single courtroom all cases where accused are mentally disturbed. In January 1999 a new drug treatment court opened, with federal funding of about \$1.6 million over four years. A similar court was established in Vancouver in December 2001. In October 2001, the Gladue (Aboriginal Persons) Court was established in Toronto; similar courts have been established in Saskatchewan and Alberta.

**4.79 Legal aid.** The federal government allocated \$82 million for criminal legal aid in each of 2001–02 and 2002–03. In February 2001, it authorized another \$20 million for each of those years to fund its share of existing federal–provincial agreements on criminal legal aid; however, the extent of the need is not known.

**4.80** In April 2001, the Department of Justice initiated a two-year, \$8 million project. The funds will be used to conduct national research on unmet needs and related issues, develop pilot projects to review service delivery, and conduct a policy review of federal objectives. They will also be used for federal, provincial, and territorial negotiations on research, policy, and funding issues.

**4.81 Wrongful convictions.** In 1998, the Department of Justice released a consultation paper to seek advice on enhancing the government's ability to deal with miscarriages of justice. In March 2001, the Department reintroduced legislation intended to improve the review of convictions. The proposed legislation, before the Senate at this writing, would do the following:

- state the conditions under which a conviction is eligible for review;
- identify the criteria for granting a remedy;
- set out the review process in regulations;
- give the Minister of Justice powers to review summary convictions;
- give the Minister powers to compel witnesses to provide information and produce documents; and
- require the Minister to report annually to Parliament on the review of convictions.

**4.82** The legislation stops short of establishing a body similar to the United Kingdom's Criminal Cases Review Commission. The Commission's purpose is to review cases where a miscarriage of justice is suspected and to refer to a court of appeal any convictions where there is a real possibility that the original conviction, verdict, finding, or sentence would not be upheld.

**4.83** In the United States, major projects in public interest law have obtained retrials for certain offenders. In Canada there is a small, similar effort.

### Changing the boundaries of the system

**4.84** The government is undertaking new initiatives such as community safety and crime prevention programs, restorative justice, and diversion programs. Solicitor General Canada told us that the point of these programs is to keep offenders out of the criminal justice system where appropriate, reduce caseloads and numbers of incarcerated offenders, and ultimately reduce the crime rate. The Department of Justice told us that these are long-term approaches to deep-rooted causes of crime.

**4.85 Community safety and crime prevention.** The government began fairly recently to fund crime prevention programs because of concerns about the effectiveness of the criminal justice system. In 1993, the House of Commons Standing Committee on Justice and the Solicitor General issued *Crime Prevention in Canada: Towards a National Strategy*. The Committee concluded that the traditional “police, courts and corrections” approach to crime is not effective at reducing future risks and promoting community safety, for the following reasons:

- It fails to cope with the amount of crime. An unknown number of crimes go undetected and many known crimes go unreported.
- It fails to identify many criminal offenders and bring them to justice.
- It fails to rehabilitate most offenders. Even if correctional programs were to rehabilitate all offenders sentenced to prison, the impact on crime would be only marginal because the prison population does not include all offenders.
- It fails to address the underlying factors associated with crime.

**4.86** The report concluded that a “collective response to crime must shift to crime prevention efforts that reduce opportunities for crime and focus increasingly on at-risk young people and on the underlying social and economic factors associated with crime and criminality.”

**4.87** The government has allocated about \$384 million for the 10-year period ending with 2004–05 to carry out its National Strategy on Community Safety and Crime Prevention. About 70 percent of that amount is for grants and contributions to the Safer Communities Initiative, which includes the Business Action Program on Crime Prevention, the Crime Prevention Investment Fund, the Crime Prevention Partnership Program, and the Community Mobilization Program. At the same time, other federal criminal justice agencies have incorporated crime prevention into their activities.

**4.88 Restorative justice.** Like crime prevention activities, restorative justice initiatives have increased in response to dissatisfaction with traditional approaches to criminal justice. The move to restorative justice has been embedded in legislation and endorsed by the courts, the highest levels of government, and international organizations such as the United Nations.

**4.89** Restorative justice focusses on repairing the harm that offenders have done to their victims and the community. Victims and other members of the community are included in the justice process as active participants. Advocates of this approach believe that it helps to make the justice system more humane, reinforce accountability of offenders, and rebuild communities that may have been weakened by crime and other social ills.

**4.90** Restorative justice approaches are being used at various points in the criminal justice process. Federal criminal justice agencies have established restorative justice programs:

- The RCMP uses community justice forums, usually as an alternative to charging an offender.
- The Federal Prosecution Service has played a key role in introducing restorative justice concepts in the North, such as sentencing circles.
- Correctional Service Canada has a number of restorative justice programs including victim–offender mediation in serious crimes, prison-based restorative justice, and circles of support and accountability.
- The Aboriginal Justice Strategy encourages community-based programs to use restorative justice concepts, such as sentencing circles.

**4.91** While many believe that restorative justice can yield significant benefits, reservations expressed by others include the following:

- The adoption of restorative justice approaches is creating a parallel, community-based stream of justice in Canada.
- There is a risk that restorative justice measures funded or overseen by criminal justice agencies could actually draw more offenders into the criminal justice system, because they deal with relatively minor incidents that used to be handled outside the system.
- Offenders and victims may feel pressured to participate in a program.
- There are few standards and benchmarks for restorative justice programs.
- The effectiveness of restorative justice approaches is uncertain because offenders and victims choose to become involved in the process.

**4.92** The Department of Justice told us that when it has provided funding to a restorative justice program, it has always ensured that the conditions attached to participation remove any pressure on victims that would tend to victimize them again. However, the Department noted that it is not a participant in the program and has no way of knowing exactly what transpires during discussions between program officials and victims.

**4.93** There is not enough information available on the extent and effectiveness of restorative justice measures. For example, there is a need for research to determine whether restorative justice approaches reduce recidivism more effectively than traditional approaches.

**4.94** **Victims.** Governments continue to take measures to address victims' concerns. The *Criminal Code* has been amended, for example, to do the following:



- ensure that victims are informed about opportunities to prepare victim impact statements and to read them aloud in court if they choose;
- require police and judges to consider the safety of victims in all bail decisions; and
- make it easier for victims and witnesses to participate in trials by protecting young victims and witnesses from cross-examination by defendants who represent themselves in court.

**4.95** In May 2000, the Subcommittee of the Standing Committee on Justice and Human Rights recommended that a victim receive more information on the offender's conduct and movement within the system and be allowed to participate in decision-making. The government agreed to act on the recommendations if consultations with crime victims and providers of victim services indicated that the proposed changes would help.

**4.96** In response to the Committee's 1998 report, *Victims' Rights—A Voice, Not a Veto*, the Treasury Board in June 2000 approved \$25 million over five years for the Department of Justice to develop a crime victims initiative and establish a policy centre for victims. In April 2001, Correctional Service Canada established a Victims Unit to provide organizational leadership. As of July 2001, victims of crime have an opportunity to present a prepared statement at National Parole Board hearings. The RCMP has established a Crime Prevention and Victims Services Branch.

**4.97** The expansion of the victim's role is intended to balance the rights of victims and offenders. It has also raised the concern that the principles that guide sentencing, conditional release, and parole decisions could be compromised.

**4.98** In July 2001, Solicitor General Canada reported the results of consultations with crime victims and providers of services to victims. The consultations indicated that victims' perceptions have not changed much since 1983. Victims still feel that offenders have more rights than victims; they want a larger voice in the justice process; they want respect; and they continue to live in fear.

### Private security measures

**4.99** While the government is reshaping the criminal justice system and changing its boundaries, private sector security firms increasingly assume police functions.

**4.100** Statistics Canada indicates that in 1996 there were about 59,000 police officers in Canada and about 82,000 private security personnel (about 12,200 private investigators and 69,800 guards). Between 1991 and 1996, the number of private investigators increased from about 8,200 to 12,200, or 49 percent, some of them probably part-time employees.

**4.101** Spending on private security is nearing the amount spent on police. Based on 1995 average annual incomes, salaries of police officers totalled about \$3.2 billion and those of private security personnel around \$2.2 billion. Taxpayers bear the cost of police services. Businesses pay for private security but pass the cost on to consumers.

**4.102** Police and private security perform similar but not interchangeable functions. Police are responsible for enforcing the *Criminal Code* and other statutes. Private security includes private investigators and security guards who protect property and people, conduct investigations to locate missing persons, obtain information for civil and criminal litigation, and investigate unlawful acts by employees and patrons of businesses. Private security guards control access to buildings, patrol assigned areas, and enforce business security policies. In many cases they have taken over one of the most important and highly visible activities of the police, the local foot patrol.

**4.103** The mandates of police and private security are very different. Police are part of government and are responsible to it. They are expected to act in the public interest and are given special powers. Private security personnel are hired by companies or individuals to act on their behalf and in their private interests. The growing use of private security may reflect a perceived or actual lack of police capacity to deal with crime in the workplace and with street-level property crime.

**4.104** There are concerns that the large increase in private security could lead to the following:

- less accountability to the public and fewer requirements to respect civil rights;
- better protection for those who can afford it;
- an increase in private discretionary justice that is unscrutinized by the courts or other public organizations; and
- accountability to employers whose focus is the return on their investment.

**4.105** There has been no comprehensive government examination of that relationship or of how the efforts of both could be defined for better protection of the public interest.

#### **Response to crime as a business**

**4.106** To deal with organized crime, in May 2001 the government authorized spending of about \$515.5 million from 2001–02 to 2005–06, about \$317 million of it for the RCMP. Legislation passed since 1996 has, for example, authorized a witness protection program, made participation in criminal organizations an indictable offence, established methods to detect money laundering, allowed police to conduct covert operations against money laundering, and made extradition easier. The legislation has also targeted individuals involved in criminal organizations, improved protection for criminal justice officials and their families, and provided police officers with protection from criminal liability for certain illegal acts committed in the line of duty.

**4.107** The government is in the early stages of implementing its strategy against organized crime. Its success will be difficult to gauge without reliable information. To allow the government to have a better understanding of the scope of organized crime and its impact, work is under way to examine the issue of data collection, the impact of organized crime, and the effectiveness of anti-organized crime measures.

### Effects of Supreme Court decisions

**4.108** Decisions by the Supreme Court of Canada are intended to protect the rights of Canadians as established in the Canadian Constitution, particularly in the *Canadian Charter of Rights and Freedoms*. However, the Court's decisions may also affect the criminal justice system and the efforts against organized crime. The proper authority to act may have to be legislated. For example:

- In November 1991, the Court substantially increased the scope of the evidence that the prosecution is required to disclose.
- In May 1997, the Court ruled that police officers required a warrant to enter a private dwelling for an arrest. The government amended the *Criminal Code* to include this requirement unless “exigent circumstances” make a warrant impracticable.
- In April 1999, the Court ruled that police have no special immunity from prosecution if they engage in illegal activity, such as “reverse sting” operations that involve drug trafficking. In early 2002, legislation came into force to provide for immunity under certain conditions.

**4.109** Reports prepared by the Department of Justice, Solicitor General Canada, and the RCMP state that the Supreme Court decisions have had a major impact on criminal justice agencies. Their assessments are based for the most part on operational experience with certain cases. The agencies have not comprehensively assessed the impact of the Court's decisions on their operations. However, as part of a policy response the Department of Justice did review the broader impacts of two of these decisions, through consultations with affected parties.

### Providing effective information

#### Sharing of information by criminal justice agencies

**4.110** Federal government assessments indicate a fragmentation of criminal justice information due to differences in jurisdictional mandates, funding levels, and security concerns as well as a history of agency independence.

**4.111** The information systems of each criminal justice agency focus on tracking events that relate to its own activities. However, the overall effectiveness of the criminal justice system and the results it generates depend heavily on the exchange of appropriate information among the agencies at each stage in the system. Recent reviews have underlined a lack of the capacity and perhaps the understanding needed to share and use information effectively and at the right time.

**4.112** Criminal justice agencies use computer-based information systems. Fiscal restraint, especially in recent years, has often meant that upgrades to older federal government information systems were deferred. These deferrals occurred at a time when the criminal justice system was becoming more complex and harder to administer effectively and efficiently. Gaps in the sharing of information have led to difficulties in some highly visible and sensitive cases.

**4.113** In 1997, the government announced a commitment to “integrate information systems of all partners in the criminal justice system.” Solicitor General Canada is the lead department in this integration of justice information. Departmental reports to Parliament by some federal criminal justice agencies call the Integrated Justice Information (IJI) initiative a priority. Initially, the plan covered the five-year period from 1999 to 2004, but delay in funding extended the period to 2005.

**4.114** The IJI initiative is addressing difficult and complex problems of this kind. Initial government assessments highlighted the situation across agencies and jurisdictions:

- There is no comprehensive, centralized index of crimes and offenders to identify all the information that needs to be connected and exchanged among various agencies.
- There is no common set of data standards to help correlate and compile criminal histories.
- The inability to file documents electronically within and among justice agencies means that the same data must be entered several times in multiple, incompatible systems across jurisdictions, causing delays and increasing the risk of errors with potentially tragic results.

**4.115** In early 1999, government approved the creation of a Canada Public Safety Information Network (CPSIN) as a basis for a modern Canada-wide network of information, linking criminal justice agencies for public safety. This is an important element of the IJI initiative. The government recommended spending of about \$240 million over four to five years, starting in 1999.

#### **Progress of the Integrated Justice Information initiative**

**4.116** Agencies are trying to overcome systemic, cultural, and technological barriers to sharing information. An array of legislation, regulations, policies and practices govern the exchange of information and particularly the privacy and security of information. For example, there are 6 federal statutes that deal with information management, 11 police acts, and 10 provincial acts on freedom of information and protection of privacy.

**4.117** A September 2000 report by Solicitor General Canada indicated that confusion exists within and among agencies about what information they need to share and why. The report indicated that the agencies have different mandates and information needs, and fiscal constraints have forced each to focus on what clearly belongs within its own mandate.

**4.118** Solicitor General Canada’s March 2001 risk review of the IJI initiative and the Integrated Justice Information Secretariat found the following:

- complexity of co-ordination;
- lack of operational decision-making authority by the Secretariat over component projects and limited leverage to ensure that they support the IJI initiative;
- slow progress in developing a detailed justice policy framework for such issues as information sharing, privacy, and security; and

- lack of the detailed understanding and quantification of benefits to the community as a whole and to each stakeholder organization that are needed to engage commitment, secure resources, and influence priorities.

**4.119** An October 2001 assessment of the status of the CPSIN's 21 elements found that nine elements were completed or on track, six needed monitoring, and five were at risk; one project for fingerprinting had not yet been resourced. Among elements at risk were the governance framework, the offender tracking identifier, and the integrated police information reporting system.

**4.120** The IJI initiative is about halfway through its five-year term. Recently, nine federal agencies formally agreed to a charter confirming their commitment to the CPSIN and to sharing information. In the view of the IJI Secretariat, the charter "articulates an unprecedented agreement of nine diverse and independent partners on a very complex and intricate initiative."

**4.121** Other jurisdictions have not yet been asked to sign the charter. The IJI Secretariat told us that while provinces and territories have been involved in discussions from the onset of the initiative, the first phase of development was focussed deliberately on federal capabilities. The involvement of the provinces and others is still in the preliminary stages. Two provinces are developing their own systems. The IJI Secretariat told us that this was a positive development, and it intends "to leverage the efforts of all governments by providing leadership and required national components to meet the common information-sharing needs."

**4.122** The charter signed by federal agencies identified issues and risks that they agreed to manage:

- There is an absence of formal, interdepartmental management structures for such a complex initiative; agencies agreed that new ways of doing business need to be supported if the initiative is to be implemented.
- Commitment to the initiative may not be reflected throughout the agencies; each agency agreed to ensure that the initiative is a priority.
- Departments and agencies may ignore national criminal justice information policies, standards, and guidelines; agencies agreed to promote voluntary adherence.
- Multiple new partners may generate conflicting or excessive new requirements; agencies agreed that the growth of the initiative will need to be planned to maximize benefits.

**4.123** The March 2001 risk assessment noted that the IJI Secretariat should develop a comprehensive understanding of both the cost to implement the vision and the desired benefits. However, the June 2001 progress report does not include any cost information; the IJI Secretariat does not track all federal costs. The Secretariat has indicated that because its partners in other jurisdictions are independent and have their own budgets, it has no information on the costs they may incur.

**4.124** While the IJI Secretariat is monitoring the progress of specific tasks, it has not yet assessed whether information sharing and protection of public safety have improved. It told us an assessment would be premature because “the technology and framework must be implemented before electronic information sharing can actually occur and expected results and benefits become evident.”

**4.125** The IJI Secretariat told us, “Overall, the initiative, while complex, is not at substantial risk.” It points, for example, to the progress being made on the National Index of Criminal Justice Information, the data standards, and various pilot projects at different locations.

#### **Inconsistent information on the reliability of the Canadian Police Information Centre**

**4.126** The RCMP’s Canadian Police Information Centre (CPIC) is the national system for a wide array of information that police and other law enforcement officials depend on to do their work. The information includes criminal histories; fingerprint data; and records of missing persons, stolen vehicles, and offenders on conditional release. A core objective of the CPSIN project is to replace the CPIC system with a national index of criminal justice information. The index would provide national access to essential information on crimes and offenders. In March 1999, the government approved funding of \$114.7 million for this index over four years, starting in 1999–2000.

**4.127** Approval for the funding was based on representations in early 1999 that the difficulties plaguing the CPIC had especially serious implications for public safety. According to those representations, the system was frail, overburdened, and in urgent need of renewal: in less than a year, breakdowns totalling hundreds of hours had affected various regions. The longest outage was 18 hours, affecting two provinces. The RCMP has estimated that during each eight-hour breakdown, over 100,000 police checks could not be made. The representations emphasized that because of these system failures, police did not have access to critical information about individuals or information on outstanding warrants, conditions of release, and restrictions such as firearms prohibitions and restraining orders. As a result, they were unable to identify crime suspects, assist voluntary agencies in screening out pedophiles from jobs involving contact with children, and perform other essential functions to protect the public. The representations concluded that the cost of failing to address the problems—inadequate information sharing, old technology, and fragmentation of systems—would be high; inaction would risk both community safety and the effective administration of justice.

**4.128** This information was based in part on a 1999 RCMP study of the CPIC’s availability to users. The study found that the CPIC was unavailable to users more than 10 percent of the time, or 880 hours each year, regionally or nationally. Depending on how long the system was down, up to 20,000 law enforcement officers could not access the network in the performance of their duties and the outages prevented three million queries across Canada, putting officers and the public at risk. The study also reported that the outages cost an estimated \$13 million in lost time. In addition, the central

computer mainframe was down for a total of about 75 hours, affecting around 20,000 officers and almost one million queries and costing an estimated \$5 million in lost time.

**4.129** In February 2002, the RCMP informed us that its information was incorrect. Officials told us that the CPIC actually was unavailable only three percent of the time on a national basis and, on a regional basis, only two percent of the time. According to the RCMP, its study had erroneously assumed that outages at specific locations meant outages across the system, for all users, when in fact the majority of these incidents did not have a system-wide impact. The RCMP concluded that its 1999 analysis therefore “provides a total misrepresentation of system availability statistics as the majority of these outages had a local and not a system-wide impact.”

**4.130** This new information was provided to us too late to examine. However, the RCMP advised us that we had rightly pointed out the inconsistencies in its data on the CPIC’s availability and that it would evaluate the implications and act accordingly to clarify the situation.

#### Evidence-based criminal justice

**4.131** Building and maintaining an effective criminal justice system requires reliable national information on the nature of crime, on crime trends, and on what actions work. We are concerned that the existing data are not adequate to this task and can be misinterpreted if not used with caution. Moreover, we are concerned that the national capability to collect and analyze data on the criminal justice system is inadequate.

**4.132** While at least \$10 billion is spent each year on the criminal justice system, the government allocates only about \$5 million a year to Statistics Canada’s Canadian Centre for Justice Statistics (CCJS) for the collection of core national data on the system. The CCJS organizes and carries out the work of a federal–provincial–territorial partnership known as the National Justice Statistics Initiative. That initiative is led by the deputy ministers responsible for justice in Canada and the Chief Statistician of Canada. Its objectives are to provide information for decision making, improve the quality of information, and facilitate information sharing. Representatives of the partners in the initiative decide the CCJS priorities.

**4.133** The CCJS produces most of its information from data provided by different administrative record systems of participating federal, provincial, territorial and municipal criminal justice agencies. It uses the data to create national information databases, where possible, on crime trends and criminal justice agency activities. In addition, Statistics Canada conducts national surveys to gather information on the fear and perceptions of crime and estimates of self-reported experiences of criminal victimization. Like Statistics Canada itself, the CCJS has no mandate to analyze policy. Most policy analyses are conducted by criminal justice agencies for their own purposes.

**4.134** The criminal justice data that are available have major gaps, such as the following:

- There is not enough information on Aboriginal people in the criminal justice system.
- Not enough information is available on restorative justice programs, diversion programs, and victims' programs.
- Not enough information is available on the extent to which Canadians perceive that they have been victims of criminal behaviour.
- Information on organized crime is scarce, including data on the proportion of crime that is committed by criminal organizations.
- The RCMP provides aggregate but not detailed statistics on crime data; full and detailed coverage is expected in 2007.
- There are no data available on crimes investigated by private security personnel without the involvement of public police agencies.
- Military police and some First Nations police do not yet report crime statistics.
- New Brunswick, Manitoba, and British Columbia do not report data on adult court activities; nor do about 140 municipal courts in Quebec.

In addition, the Department of Justice told us that the absence of superior court data from most jurisdictions represents a major gap in the picture we have of how the justice system is functioning.

**4.135** Data on individuals as they pass from one criminal justice agency to another are also insufficient.

#### **Improving the national information infrastructure**

**4.136** The CCJS has developed a network of advisory committees, and it consults with various stakeholders to identify national information requirements. We interviewed representatives of governments, non-government organizations, and academia to ask how the CCJS could be improved.

**4.137** Government representatives in the CCJS partnership told us that they find the CCJS responsive and the information it provides useful. But they added that there are many needs that are not met, mostly because of a lack of funds and partly because of gaps in the data. Those outside government told us that the CCJS is not as responsive as it could be because it is linked so closely to the priorities and interests of its government partners.

**4.138** Most of the CCJS budget is already committed to existing projects and not much is left to fund new projects. The most recent planning exercise, for 2002–03, found that the CCJS budget of \$5 million had only an estimated \$150,000 available for additional needed projects.

**4.139** This means that no funds are available to collect data that would support detailed analyses of criminal justice issues across the system and over time, for example, such issues as restorative justice and repeat offenders and issues related to such groups as young offenders and Aboriginal peoples. The CCJS estimates that it and its partners would need substantially more funding to achieve significant improvements in national criminal justice information.



## Conclusion

**4.140** Criminal justice agencies in Canada have a history of operating independently. This reflects the Constitution's division of responsibility between federal and provincial governments and the separate legislative mandates of each agency. Their independence makes it difficult for the agencies to develop a shared vision and objectives for the criminal justice system as a whole and a co-ordinated, effective response to system-wide challenges.

**4.141** The criminal justice system is trying to respond simultaneously to diverse and significant issues affecting specific groups such as youths, women, and Aboriginal peoples. It is attempting new solutions, some of them controversial. For example, the federal government's new youth justice strategy is opposed by Quebec and Ontario. Several of the intended solutions such as crime prevention programs, diversion programs, and restorative justice initiatives are designed to reduce offenders' involvement in the formal system of criminal justice.

**4.142** Private security firms play a growing role in preventing and responding to criminal activity. The relationship, however, between their activities and those of police is unclear.

**4.143** The business of organized crime is lucrative and a major threat to the well-being of Canadians. Criminal justice agencies are developing a comprehensive strategy against organized crime, but they are doing it without all the necessary information on its nature and pervasiveness. Moreover, government agencies operate in an environment of continually emerging technologies and court decisions that both help and hinder their efforts and operations.

**4.144** There is a clear need for criminal justice agencies to improve their sharing of information on crime, offenders, and victims. The Integrated Justice Information initiative addresses the need for information sharing on crime and offenders. It is about halfway to its scheduled completion in 2005. This is a complex and difficult initiative that requires the sustained commitment of many agencies to be successful. We believe that as soon as is practical, the government needs to conduct an assessment of whether expected improvements in information sharing are occurring.

**4.145** We believe there is a need to comprehensively assess the overall impact of the many changes being made to the criminal justice system. However, we doubt that such an assessment is possible with the national data and analytical capacity currently available. As a first step, the government needs to identify, assess, and make the needed improvements in the national capacity.

**Department of Justice Canada's response.** The Auditor General's stated purpose for this study was to "identify key challenges facing the criminal

justice system and how the system is responding to them.” Conducting such a system-wide study is, without doubt, an ambitious undertaking. The study correctly points out that Canada’s criminal justice system is complex and multijurisdictional, and the challenges it faces are similarly complex.

The study makes a number of valid points about some of the ongoing challenges faced by certain groups in the criminal justice system, and touches on some of the complex issues associated with the system’s response to addressing those challenges. It also fairly points to some of the shortcomings in the availability of information about Canada’s criminal justice system. The Department agrees that there is room to build upon our existing relationships with criminal justice partners to enhance our national data collection and analysis capacities. Existing mechanisms include the National Justice Statistics Initiative and the Justice Information Council, chaired by the Deputy Minister of Justice, which collectively represents over 20 federal, provincial, and territorial criminal justice agencies. The Department is also one of numerous participants in supporting the Integrated Justice Information initiative.

Overall, many of the challenges raised by the Auditor General are viewed with similar significance by the Department. Last year, the Department launched a five-year Strategic Plan that responds to these issues by defining three strategic directions and related activities that will serve to focus the work of the Department in the coming years. These include serving Canadians and ensuring that the work of the Department is relevant and meets their needs; working more strategically to identify emerging issues; building on our research, analysis, and information-sharing capacity and improved intergovernmental relations; and capitalizing on our many strengths, including our presence as a department in every region of Canada.

**Solicitor General Canada’s response.** Solicitor General Canada acknowledges that the complexity of the criminal justice system, with its many partners at all levels of government, makes it a significant challenge to deal with issues of effectiveness across jurisdictions and agencies. Success for such complex systems requires, in part, that everyone involved learn from best practices available and proceed in a consultative manner to address effectiveness issues in manageable segments. The Department is committed to working with its partners both within and outside of the federal government to maintain a high level of public safety in Canada.

With respect to the management and use of operational information in the criminal justice system, the Department is showing both leadership and significant commitment in working with its criminal justice partners to ensure that the master plan for the establishment of a Canada Public Safety Information Network is implemented. In addition, the Department agrees to assess, as soon as feasible, the impact of the Integrated Justice Information (IJI) initiative on improving the sharing of information by Canadian criminal justice agencies.

**Correctional Service Canada’s response.** Correctional Service Canada concurs with the overall theme of the chapter regarding the need to improve

the national information infrastructure, and we are working with all of our partners in the criminal justice system to improve the sharing of information on offenders. Special emphasis is being placed on improving the flow of information on newly sentenced offenders.

The Correctional Service is also taking measures to address the other topics in the chapter that relate to the Service.

**Statistics Canada's response.** Statistics Canada concurs with the conclusions regarding the need to identify, assess, and make improvements to national data and analytical capacity in the area of criminal justice. Statistics Canada and its jurisdictional partners in the National Justice Statistics Initiative generate a broad range of high-quality data and information with the current resources available. However, there still remain data and analytical gaps that cannot be addressed with the existing federal, provincial, and territorial funding.

## About the Study

### Objective

The purpose of this chapter is to identify the key challenges facing the criminal justice system and how the system is responding to them. It also identifies areas that the Office will consider examining in the future.

### Scope and approach

The criminal justice system comprises numerous agencies in at least four levels of government, as well as a variety of non-government organizations. They include the federal and provincial departments of justice and the many police agencies, courts, correctional facilities, parole boards, and community service groups.

Consistent with our mandate, the study focussed on the main federal agencies responsible for criminal justice issues and statistics. These are the Department of Justice Canada, Solicitor General Canada, the Royal Canadian Mounted Police, Correctional Service Canada, the National Parole Board, and the Canadian Centre for Justice Statistics, a division of Statistics Canada. And, where appropriate, we used information obtained from provincial and municipal agencies, foreign governments, and non-government organizations.

We researched the key criminal justice issues and examined and analyzed a breadth of information on crime, offenders, and victims. We also reviewed key system-wide initiatives taken by governments and other organizations. The study took into account the roles of federal agencies and those at other levels of government.

We studied general issues that touch most people who come into contact with the criminal justice system. However, there are issues specific to certain significant groups of offenders and victims, including youth, Aboriginal peoples, women, and sick and aging offenders. We therefore looked at how the system responds to these issues while meeting more general challenges.

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# Report of the Auditor General of Canada to the House of Commons—April 2002

## Main Table of Contents

	Foreword and Main Points
<b>Chapter 1</b>	Placing the Public's Money Beyond Parliament's Reach
<b>Chapter 2</b>	Canada Customs and Revenue Agency—Tax Administration: Write-Offs and Forgiveness
<b>Chapter 3</b>	Information Technology Security
<b>Chapter 4</b>	The Criminal Justice System: Significant Challenges
<b>Chapter 5</b>	National Defence—Recruitment and Retention of Military Personnel
<b>Chapter 6</b>	A Model for Rating Departmental Performance Reports
<b>Chapter 7</b>	Strategies to Implement Modern Comptrollership
<b>Chapter 8</b>	Other Audit Observations

