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Collecting Data on Aboriginal People in the Criminal Justice System: Methods and Challenges



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Collecting Data on Aboriginal People in the Criminal Justice System: Methods and Challenges

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Overview

This report presents the status of national data on Aboriginal people who come into contact with the criminal justice system as either alleged perpetrators or victims of crime, as well as the challenges in collecting and reporting these data.

Aboriginal people comprise 3% of Canada's population, yet make up about 20% of the population serving sentences in custody. Sound data on their interactions with all levels of the justice system are essential for providing empirical evidence of justice outcomes for Aboriginal people. As shown in this report, many studies, commissions of inquiry and public policy statements have referred to the need for this type of information in order to monitor trends and to inform policy, programming and evaluation.

Despite the recognized need for these data, several gaps in information exist. For example, according to information from a subset of police departments reporting incident-based data to Statistics Canada, there was no information on the Aboriginal or non-Aboriginal status for almost one-half of charged and chargeable suspects in 2003.

The report examines the current and potential collection of Aboriginal identity through various justice-related surveys at Statistics Canada. Data sources examined include police, adult and youth courts, adult and youth correctional services, transition homes and other services for victims of crime, as well as Statistics Canada's general population survey on victimization. The report describes the challenges the different justice sectors face in collecting and reporting the Aboriginal identity of alleged offenders and victims to Statistics Canada. The report provides insight into how these challenges can affect the quality of the information.

The report briefly describes efforts in other parts of the world, like Australia and New Zealand, to improve justice-related information on their indigenous populations. Some general steps are suggested to improve Canadian statistics on Aboriginal people in the criminal justice system.

Background

Aboriginal peoples' experiences with Canada's criminal justice system and the need for quality data in this area have been identified consistently across numerous reports, commissions and inquiries. Much of this attention has focused on the need to measure the representation of Aboriginal people in the criminal justice system and to improve the system's response to Aboriginal accused, offenders, victims and persons at risk. Initiated in many ways by the Royal Commission on the prosecution of Donald Marshall, Jr., the experiences and over-representation of Aboriginal people in the justice system as a public policy issue gained momentum in the 1980's. Still today, these issues and the lack of information to address them remain. Most recently, in October 2004, an Amnesty International report on discrimination and violence against Aboriginal women in Canada found that "the Federal government should ensure adequate funding for comprehensive national research on violence against Indigenous women" and that "protocols should be developed to ensure that police consistently record and appropriately use data on the ethnicity of the victims and perpetrators of violent crimes."¹ In her 2002 assessment of the criminal justice system, the Auditor General of Canada simply stated "there is not enough information on Aboriginal people in the criminal justice system" (Auditor General of Canada, 2002). More comprehensive data would contribute to information-based decision-making to develop, monitor and evaluate policy and programs for Aboriginal people.

Canada's National Justice Statistics Initiative is responsible for the collection and dissemination of reliable national data on the nature and extent of crime and on the administration of civil and criminal justice. This Initiative is a partnership among federal, provincial and territorial governments and Statistics Canada whereby all jurisdictions share authority and responsibility for developing and achieving common objectives for the collection, analysis and dissemination of justice statistics and information. The Canadian Centre for Justice Statistics at Statistics Canada is the focal point of this partnership. Through national statistical programs, the Canadian Centre for Justice Statistics collects justice information

1. For further detail, refer to Amnesty International. October 2004. "Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada." p. 35.

from the jurisdictions, including information on people who come into contact with the police and those who are processed through the court and correctional systems. The information collected is based largely on administrative data, meaning the data are extracted from records management systems that already exist within the jurisdictions.

Presently, there are five national statistical programs that have the capacity to collect administrative data on the Aboriginal identity of persons who come into contact with the criminal justice system: two police-level surveys and three corrections-level surveys. In addition, there are other surveys that have the potential to collect this type of information from criminal courts, shelters for abused women and their children, and victim service agencies. Finally, Statistics Canada's General Social Survey on Victimization, a general population survey conducted every five years, is a current source for information on victimization among Aboriginal people.

The need for data

Aboriginal peoples occupy a distinct social, cultural and political status within Canada as bearers of constitutionally protected Aboriginal and Treaty rights. For Aboriginal people, the collection of identifying information responds to several important principles. Without sound data on Aboriginal people's involvement in the justice system, governments cannot be accountable to Aboriginal communities or to the public for justice outcomes for Aboriginal people. These data are essential for responding to issues of transparency, accessibility, fairness and equity in the justice system, and are particularly relevant for Aboriginal people given their high level of over-representation in this system. Further, Aboriginal Identity data across the justice system are needed to effectively monitor and evaluate policy, programming and performance, and to design interventions both inside and outside of the justice system that foster better outcomes in the lives of Aboriginal people.

More specifically, a number of inquiries and public policy statements have documented the experiences of Aboriginal people with Canada's criminal justice system and have referred to the need for accurate data (Appendix A). Experiences faced by Aboriginal people with respect to the criminal justice system were presented most recently in two reports from Saskatchewan: the *Report of the Commission on First Nations and Métis People and Justice Reform* (June 2004) and the *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* (October 2004). While recommendations stemming from various commissions and inquiries are based, among other evidence, on the testimony of Aboriginal people, it should be noted that no consultations on the specific question of data collection activities under the National Justice Statistics Initiative have been undertaken with Aboriginal groups.

In addition to the data needs documented in various high-level reports, in 2001, the Canadian Centre for Justice Statistics informally consulted with federal, provincial and territorial ministries in the National Justice Statistics Initiative to identify their information needs in terms of data on Aboriginal people. In summary, those consulted voiced a need for data that would:

- Enable analysis of Aboriginal representation across the various sectors of the justice system (e.g. police, courts, and alternative justice programs) and not just the corrections sector;
- Provide detailed information reflecting social conditions, such as demographics, employment, occupation, income, education, health and other factors that may have impacts on social cohesion and the justice system;
- Take into account diversity issues within Aboriginal groups, including the consideration of regional differences;
- Allow for comparisons between Aboriginal and non-Aboriginal populations, as well as between various Aboriginal groups; and
- Facilitate informed policy and program development concerning Aboriginal people.

More recently in the fall of 2004, as part of the renewal of its four-year strategic plan, the National Justice Statistics Initiative began a series of consultations with a variety of federal, provincial and territorial departments regarding their data needs. Consultations to date have identified information on Aboriginal people as a priority.

Measuring Aboriginal Identity

One aspect of ensuring quality data on Aboriginal people is a comprehensive definition which is consistent across surveys. At Statistics Canada, the benchmark for defining the Aboriginal population for the majority of surveys is the Census of Population. The Census and the post-censal Aboriginal Peoples Survey ask the following series of questions in order to identify Aboriginal peoples:

- a question on the ethnic/cultural origins of the person's ancestors;
- a question on Aboriginal Identity that asks whether or not the person self-identifies with an Aboriginal group (i.e. North American Indian, Métis, or Inuit (Eskimo));
- a question that asks whether or not the person is a Registered (or Treaty) Indian according to the *Indian Act*; and
- a question that asks if the person is a member of an Indian Band or First Nation.

Among the majority of Statistics Canada surveys, the most commonly-used concept to measure the Aboriginal population is "Aboriginal Identity". The concept of Aboriginal Identity refers to those persons who reported identifying with at least one Aboriginal group (i.e., North American Indian, Métis, or Inuit). Also included are individuals who did not report an Aboriginal identity, but did report themselves as a Registered or Treaty Indian, and/or Band or First Nation membership. Prior to the 1996 Census, Aboriginal persons were determined using only the ethnic origin (ancestry) question (Siggner, 2003; Statistics Canada, 2001).

Across all the national justice-sector surveys, Aboriginal Identity is the desired information and the measures of Aboriginal Identity are consistent with the first two dimensions of the definition from the Census. Aboriginal groups as defined by the Census (i.e., North American Indian, Métis, or Inuit), and information on registered status according to the *Indian Act*, are included in the measurement of Aboriginal Identity in all justice-sector surveys.² This consistency in definition is a first-step to data quality. For the purpose of justice surveys, self-identification by the accused and victim is the preferred method of identification because it eliminates any mis-identification by justice personnel. However, self-identification, while functional and constructive for population surveys, is not always feasible in administrative surveys, particularly in relation to the criminal justice system.

An overview of challenges in collecting the Aboriginal identity of people in the criminal justice system

Data on individual alleged offenders and victims in the criminal justice system are collected from the administrative records of the police, courts and correctional services. Therefore, there is reliance upon the administrative source to collect and report the data and to do so comprehensively and in a manner consistent with national standards. However, the administrative source may not collect or report the data at all, may collect inaccurate data or may collect information incompatible with Statistics Canada survey definitions.

The administrative source may not collect or report any information on the Aboriginal Identity of the offender or victim for a variety of reasons, such as: the collection or reporting would contravene internal policy; the information is not required for the justice agency's own business purposes, or; justice personnel find it impractical or insensitive to ask individuals to self-identify.

With perhaps the exception of the corrections intake process for those entering custody, there are presently no standards or guidelines to ensure that people in contact with the justice system self-identify as Aboriginal or non-Aboriginal. Therefore, some justice personnel, particularly those in the policing sector, may report a person's Aboriginal Identity based on their own visual assessment, a method which is subject to error and lacks support by national Aboriginal groups. In addition, the classification of a person's Aboriginal Identity may also be based on information collected from a wider social context, such as from contacts with the individual's family and other members of the community.

2. The third dimension of the Census definition of Aboriginal Identity, that is, if an individual is a member of an Indian Band or First Nation, is not included in justice surveys.

While the use of self-identification is viewed as the preferred method of identification, it is not without its cautions as counts of Aboriginal people can be influenced by changes in ethnic affiliation, meaning changes in peoples' sense of belonging and identification with their ancestry (Guimond, 2003). Individuals may also choose to misidentify themselves, particularly in the context of criminal justice.

Because the information contained in administrative records reflects the business needs of the agency collecting the information, the data are often organized and categorized according to the agency's specifications and not according to Statistics Canada national data requirements. As such, the source data may need to be converted or "mapped" to Statistics Canada requirements. Depending on the way the source data are organized and the accuracy of the mapping process, this conversion could also affect the quality of the data reported to Statistics Canada. Furthermore, if the original identification of an individual is incorrect in the source data, this identification error will be carried forward in the data that are reported to Statistics Canada.

Sources of data on Aboriginal People in Canada

There are several current and potential sources for data on Aboriginal people who come into contact with the criminal justice system.

Police-reported data

The Uniform Crime Reporting Survey and the Homicide Survey

Both the Incident-based Uniform Crime Reporting Survey and the Homicide Survey collect detailed information on incidents that come to the attention of police, including characteristics of the accused persons and the victims. Among these characteristics is Aboriginal Identity.

The Incident-based Uniform Crime Reporting Survey began in 1989 and collects detailed information on all offences. While not all police services in Canada are reporting to the Incident-based survey, the number continues to grow and by the end of 2003, the police services reporting to the Incident-based Uniform Crime Reporting Survey represented 61% of the national volume of founded incidents reported to police. Other than a few regional forces in southern Ontario, the only major police force not currently reporting to the Incident-based Survey is the Royal Canadian Mounted Police.³ It is expected that the Royal Canadian Mounted Police will have all detachments converted to the Incident-based survey by the end of 2005. Once all detachments have converted and have submitted data to Statistics Canada for a full reporting year, it is anticipated that incident-based data will represent more than 90% of the national volume of substantiated crimes against the *Criminal Code*.

Presently, the Incident-based Uniform Crime Reporting survey contains a data variable called "Aboriginal Indicator" which asks police to report whether or not the individual involved in the incident is Aboriginal. This can be reported for all accused persons and for victims of violent violations (the Incident-based survey does not collect victim records for non-violent offences). Response choices for this variable are: Aboriginal, Non-Aboriginal and Unknown, which includes police refusal to collect.⁴ The definition of "Aboriginal" in the survey scoring guide for officers is consistent with the Census definition of Aboriginal Identity.⁵

The Homicide Survey has been the primary mechanism for the collection of national statistics on homicide in Canada since 1961. Information on the types and circumstances of homicide offences, as well as the characteristics of victims and accused involved, is provided by all police services.

3. Police services that have not switched to the Incident-based Survey report aggregate crime statistics to the Canadian Centre for Justice Statistics.

4. These response categories reflect the older version of the Incident-based Uniform Crime Reporting Survey to which only a few police services continue to report. Under the most recent version of the Incident-based Uniform Crime Reporting Survey, the response categories are: Aboriginal, non-Aboriginal, Police Refusal, Accused/Victim Refusal and Unknown. In order to provide a more comprehensive view of all police services, the data in this report are presented according to the categories of the older version of the survey.

5. See footnote 2.

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Since 1997, the response categories on the Homicide Survey have been consistent with Census categories and definitions.⁶ The response categories for the Aboriginal identity of chargeable suspects on the Homicide Survey are: Not collected/released by police force; Non-aboriginal origin; North American Indian; Métis; Inuit (Eskimo); Not provided by the chargeable suspect, and; Unknown. Except for “Not provided by the chargeable suspect,” response categories for the victim are the same.

The Homicide Survey and Incident-based Uniform Crime Reporting Survey can potentially respond to many of the data needs pertaining to Aboriginal people outlined earlier. Both data bases are rich data sources of information for several reasons:

- The Incident-based Uniform Crime Reporting Survey provides information on all persons in contact with the criminal justice system in relation to criminal offences, whereas data from other areas of the criminal justice system speak only to a subset of persons who proceed to the courts and corrections sectors of the criminal justice system.
- The two surveys provide information on victims of violent crimes.
- The two surveys capture detailed information such as presence and use of weapons, location of the incident, age and sex of the accused and the victim, and relationship of the accused to the victim.
- Records from the Incident-based Uniform Crime Reporting Survey can be linked to court records in order to analyze a broader scope of criminal justice and social policy issues. The potential exists to link police-reported and courts data to corrections records.
- Individual records from the Incident-based Survey can be geo-coded in order to provide crime analysis at lower geographic levels. These geo-coded data can then be combined with socio-demographic data at the same geographic level to allow for more informed analyses of crime rates and patterns. This type of analysis has already been undertaken by the Canadian Centre for Justice Statistics and work in this area continues.

Quality of police-reported data on Aboriginal identity

The obstacles police face in collecting information on Aboriginal identity, as well as concerns about the legal authority to collect it, have negatively impacted the quality of this information in police-reported crime statistics, particularly those from the Incident-based Uniform Crime Reporting Survey. In fact, the Police Information and Statistics (POLIS) Committee of the Canadian Association of the Chiefs of Police (CACP), whose mandate is to ensure the reporting of quality data to Statistics Canada through the Uniform Crime Reporting Survey, recommended in the Fall of 2001 that the data variables collecting Aboriginal Identity be removed from the Incident-based Uniform Crime Reporting Survey citing a number of concerns including data quality and possible conflicts with privacy legislation.

Discussions with this committee have revealed that police often use visual identification to gather descriptive information about an individual and that completion of information on Aboriginal identity is often left to the officer's discretion. While self-identification by the individual would produce the most reliable information, members of the POLIS Committee have indicated that front-line officers are reluctant to ask any questions of the accused or victim about their Aboriginal identity. Not only can this be awkward for officers, but such questions can further aggravate an already charged situation and prove insensitive for victims. As such, many attending officers decline to report the information or make a determination based on either their own visual assessment or the context of the incident, a method which can impact data quality because of the risk of misidentification.

Because homicide investigations tend to be lengthy and detailed, and given the small number of homicides each year, the issues above do not have the same negative impact on the coverage and quality of data from the Homicide Survey. However, there exists a perception among police that privacy laws prohibit police from sharing, for national statistical purposes, data which they are already collecting for other legitimate purposes, such as investigation. This perception has, in turn, affected the coverage of data from both the Incident-based Uniform Crime Reporting Survey and the Homicide Survey.

6. See footnote 2.

Collection and reporting

Tables 1 and 2 demonstrate the inconsistency in the reporting of data on the Aboriginal identity of accused persons and victims through the Incident-based Uniform Crime Reporting Survey. Overall, the reporting of Aboriginal Identity as 'unknown' is quite high: 48% for accused and 44% for victims. Trend data indicate that rates of 'unknown' have been consistently high. To provide some insight into reporting activity in each province and variations across police services, Tables 3a and 3b present data from a selection of services. It is evident that some of these police services, as a result of policy, systematically do not report these data by classifying the Aboriginal identity of accused persons and victims as 'Unknown' (which includes police refusal to report).

Table 1
Aboriginal Identity of accused, by type of police service, 2003¹

Type of police service ²	Identity			
	Total	Unknown ³	Aboriginal	Non-Aboriginal
	% of accused			
Municipal and regional police services	100	42	4	54
Ontario Provincial Police	100	96	2	2
Royal Newfoundland Constabulary	100	99	1	0
Sûreté du Québec	100	1	3	96
Total	100	48	6	47

Note: Due to rounding, percentages may not add up to 100%.

0 true zero or a value rounded to zero

1. Data are not nationally representative. Based on data from 122 police departments representing 61% of the national volume of crime in 2003.

2. The Royal Canadian Mounted Police are not included in this table as they are in the process of converting to the Incident-based UCR Survey.

3. Includes refusal by the police service to report these data.

Data source: Statistics Canada, Canadian Centre for Justice Statistics, 2003, Incident-based Uniform Crime Reporting Survey.

Table source: Statistics Canada, 2005, Collecting Data on Aboriginal People in the Criminal Justice System : Methods and Challenges, Catalogue no. 85-564-XWE2005001.

Table 2
Aboriginal Identity of victims¹, by type of police service, 2003²

Type of police service ³	Identity			
	Total	Unknown ⁴	Aboriginal	Non-Aboriginal
	% of victims			
Municipal and regional police services	100	42	2	56
Ontario Provincial Police	100	95	1	4
Royal Newfoundland Constabulary	100	100	0	0
Sûreté du Québec	100	1	3	97
Total	100	44	2	54

Note: Due to rounding, percentages may not add up to 100%.

0 true zero or a value rounded to zero

1. The collection of victim characteristics, such as Aboriginal Identity, is restricted to victims of violent offences only.

2. Data are not nationally representative. Based on data from 122 police departments representing 61% of the national volume of crime in 2003.

3. The Royal Canadian Mounted Police are not included in this table as they are in the process of converting to the Incident-based UCR Survey.

4. Includes refusal by the police service to report these data.

Data source: Statistics Canada, Canadian Centre for Justice Statistics, 2003, Incident-based Uniform Crime Reporting Survey.

Table source: Statistics Canada, 2005, Collecting Data on Aboriginal People in the Criminal Justice System : Methods and Challenges, Catalogue no. 85-564-XWE2005001.

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Table 3a

Aboriginal Identity of accused and victim for selected Incident-based UCR respondents,¹ 2003

Police service	Identity of accused			
	Total	Unknown ²	Aboriginal	Non-Aboriginal
	% of accused			
St. John's (Royal Newfoundland Constabulary)	100	99	1	0
Halifax	100	38	0	62
Fredericton	100	29	7	64
Miramichi	100	0	18	82
Montréal	100	4	1	95
Sûreté du Québec	100	1	3	96
Ottawa	100	26	3	71
Thunder Bay	100	100	0	0
Kingston	100	20	2	79
Toronto	100	100	0	0
Ontario Provincial Police	100	96	2	2
Winnipeg	100	25	31	44
Moose Jaw	100	34	11	56
Prince Albert	100	28	57	15
Regina	100	57	27	16
Saskatoon	100	23	48	29
Calgary	100	12	9	78
Edmonton	100	100	0	0
Lethbridge	100	29	27	44
Vancouver	100	2	16	82

Note: Due to rounding, percentages may not add up to 100%.

0 true zero or a value rounded to zero

1. The Royal Canadian Mounted Police are not included in this table as they are in the process of converting to the Incident-based UCR Survey. Except for St. John's, Sûreté du Québec and Ontario Provincial Police, all other police services are municipal or regional forces. This is not an exhaustive list of police services responding to the Incident-based UCR Survey, but were selected to provide a view of incident-based data in each jurisdiction with forces reporting to the survey.

2. Includes refusal by the police service to report these data.

Data source: Statistics Canada, Canadian Centre for Justice Statistics, 2003, Incident-based Uniform Crime Reporting Survey.

Table source: Statistics Canada, 2005, Collecting Data on Aboriginal People in the Criminal Justice System : Methods and Challenges, Catalogue no. 85-564-XWE2005001.

Tables 4 and 5 illustrate that, among police services, the overall reporting of Aboriginal Identity as 'Unknown' to the Homicide Survey is very small for both the accused and the victim (3%, respectively). These tables also illustrate the impact of the decision by certain police services to not report Aboriginal identity data to the Homicide Survey.

Among services that report data, the methods for determining Aboriginal identity vary across and within police departments. While no formal audit of the quality of data from individual police services has been conducted, in 2004, the Canadian Centre for Justice Statistics consulted with police departments presented in Table 3 regarding their policies and practices for collecting Aboriginal Identity. The Centre found that just Fredericton, Sûreté du Québec, Moose Jaw, Prince Alberta and Calgary police services required officers to complete this information for the accused person and that only Sûreté du Québec, Prince Alberta and Calgary also deemed the field on Aboriginal Identity mandatory for the victims. These policies are internal to the police services and can still result in relatively high levels of 'unknown'. However, mandatory reporting of this information, which points to the importance seen in collecting these data, is the first step toward achieving consistent information and improving coverage of the Aboriginal Identity variable in police-reported data.

Legal authority

The policing community in general has raised concern that the collection and reporting of Aboriginal Identity to Statistics Canada may contravene federal, provincial or territorial privacy legislation. This concern is one of various reasons behind some police services' systematic non-reporting of Aboriginal Identity to Statistics Canada and, in fact, was one of the main concerns that led the Royal Canadian Mounted Police to stop reporting these data to the Homicide Survey in 2001 (Tables 4 and 5). As with other police services, the Royal Canadian Mounted Police had also decided to not report the identity of Aboriginal people through the Incident-based Uniform Reporting Survey. Given that the Royal Canadian

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Table 3b

Aboriginal Identity of victim for selected Incident-based UCR respondents,¹ 2003

Police service	Identity of victim			
	Total	Unknown ²	Aboriginal	Non-Aboriginal
			% of victims	
St. John's (Royal Newfoundland Constabulary)	100	100	0	0
Halifax	100	16	0	84
Fredericton	100	1	10	89
Miramichi	100	1	6	93
Montréal	100	10	0	90
Sûreté du Québec	100	1	3	97
Ottawa	100	13	2	85
Thunder Bay	100	100	0	0
Kingston	100	46	0	54
Toronto	100	100	0	0
Ontario Provincial Police	100	95	1	4
Winnipeg	100	95	2	3
Moose Jaw	100	7	11	82
Prince Albert	100	11	50	39
Regina	100	69	15	16
Saskatoon	100	66	19	15
Calgary	100	3	6	91
Edmonton	100	100	0	0
Lethbridge	100	81	7	12
Vancouver	100	2	9	88

Note: Due to rounding, percentages may not add up to 100%.

0 true zero or a value rounded to zero

- The Royal Canadian Mounted Police are not included in this table as they are in the process of converting to the Incident-based UCR Survey. Except for St. John's, Sûreté du Québec and Ontario Provincial Police, all other police services are municipal or regional forces. This is not an exhaustive list of police services responding to the Incident-based UCR Survey, but were selected to provide a view of incident-based data in each jurisdiction with forces reporting to the survey.
- The collection of victim characteristics, such as Aboriginal Identity, is restricted to victims of violent offences only.
- Includes refusal by the police service to report these data.

Data source: Statistics Canada, Canadian Centre for Justice Statistics, 2003, Incident-based Uniform Crime Reporting Survey.

Table source: Statistics Canada, 2005, Collecting Data on Aboriginal People in the Criminal Justice System : Methods and Challenges, Catalogue no. 85-564-XWE2005001.

Table 4

Persons accused of homicide, by Aboriginal Identity and type of police service, Canada, 2003

Identity	Type of police service					
	Total	Municipal and regional police services	Ontario Provincial Police	Royal Newfoundland Constabulary	Royal Canadian Mounted Police	Sûreté du Québec
						% of accused
Non-aboriginal	44	58	82	100	0	92
Inuit/Eskimo	0	1	0	0	0	0
Métis	1	2	6	0	0	0
North American Indian	9	13	12	0	0	8
Not collected/released by police force	43	22	0	0	100	0
Not provided by the accused	0	0	0	0	0	0
Unknown	3	4	0	0	0	0
Total	100	100	100	100	100	100

Note: Due to rounding, percentages may not add up to 100%.

0 true zero or a value rounded to zero

Data source: Statistics Canada, Canadian Centre for Justice Statistics, 2003, Homicide Survey.

Table source: Statistics Canada, 2005, Collecting Data on Aboriginal People in the Criminal Justice System : Methods and Challenges, Catalogue no. 85-564-XWE2005001.

Criminal courts data

The Adult Criminal Court Survey and the Youth Court Survey

The Adult Criminal Court Survey and the Youth Court Survey provide national databases of statistical information on the processing of cases that involve charges under the *Criminal Code of Canada* and other federal statutes through the adult and youth criminal court systems. The Adult Criminal Court Survey represents approximately 90% of the national adult criminal caseload at the provincial court level.⁷ The Youth Court Survey is a census of all cases appearing before youth courts in Canada.

Presently, the Aboriginal identity of persons appearing in court is not included in the national data requirements for the Youth Court Survey or the Adult Criminal Court Survey. However, work is currently underway to integrate these two surveys. Included in the integrated survey is the addition of the data element “Aboriginal Identity”, the response categories for which include: Aboriginal, Non-Aboriginal, and Unknown/Not Stated. The definition of Aboriginal Identity includes the dimensions covered by the Census measurement of Aboriginal Identity, meaning persons who are North American Indian, Métis or Inuit, or those who are registered (or Treaty) according to the *Indian Act*.⁸

This data element, to which jurisdictions have the option to respond, was added due to the broad interest in social policy questions regarding Aboriginal people. Despite the addition of this data element, consultations with all jurisdictions regarding the development of the new integrated survey revealed that the vast majority of jurisdictions do not collect this information in their existing court information systems and have no current plans to do so because this information is not considered necessary for the purposes of court administration.

Although information on the Aboriginal identity of the accused may not be relevant to court administration, the recent Supreme Court of Canada decision in *R. v. Gladue* (1999, 1 S.C.R.) is but one example that illustrates the relevance of these data in terms of broader criminal justice policy. In this case, the Supreme Court was called upon to consider how section 718.2 (e) of the *Criminal Code* should be interpreted and applied. This provision is among several sentencing guidelines that were codified in 1994. Section 718.2 (e) states:

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

In its judgement, the Supreme Court asserts that this section is definitely remedial as the intention of it is to address the “serious problem of overrepresentation of Aboriginal people in prisons and to encourage sentencing judges to have recourse to a restorative approach to sentencing.” The Court also states that section 718.2 (e) directs sentencing judges to consider each Aboriginal accused individually, “but also differently [from non-Aboriginals] because the circumstances of Aboriginal people are unique” (*Ibid*, p.689). It goes further by placing the onus on the courts to play an active role in applying this provision through fact finding about the systemic or background factors that have contributed to the Aboriginal accused’s appearance before the courts and to also investigate alternatives to incarceration: “There is judicial duty to give the provision’s remedial purpose real force” (*Ibid*, p.698).

National statistical information on the Aboriginal identity of persons appearing before court is one way of evaluating the effectiveness of section 718.2 (e). Further, by confirming the duty of the courts to consider an Aboriginal person’s circumstances and to examine alternatives to incarceration, the *Gladue* decision indirectly points to the importance of information beyond just Aboriginal Identity, but information on an Aboriginal person’s community affiliations and culture. Given the diversity of culture and traditions across the more than 600 First Nations, Inuit and Métis people, more detailed information on the individual would enhance not only responses by the courts, but responses by the justice system as a whole.

In the absence of information on Aboriginal Identity in court records, however, this information gap may be overcome through analytical projects linking police-reported records to court records. However, this is dependent on an improvement in the coverage and quality of police-reported information on Aboriginal Identity. Further, the methods required to reliably link police and courts records usually reduce the number of records available for analysis.

7. In addition to some minor qualifications regarding survey coverage, it should be noted that the Adult Criminal Court Survey does not receive data from Manitoba and from Quebec’s 87 municipal courts. Further, no data are provided from superior courts in Newfoundland and Labrador, Quebec, Ontario, Saskatchewan, the Northwest Territories and Nunavut.

8. See footnote 2.

Corrections data

There are several national surveys that collect information on adults and youth who enter the correctional system and that include information on Aboriginal identity. These are the Adult Corrections Survey and the Youth Custody and Community Services Survey. Prior to 2003/04, the Youth Alternative Measures Survey provided information on youth admitted to alternative measures programs. Since the implementation of the *Youth Criminal Justice Act* on April 1, 2003, the Extrajudicial Sanctions Survey has replaced the Youth Alternative Measures Survey.

The Adult Corrections Survey

The Adult Corrections Survey currently collects aggregate caseload and case characteristics data in all provinces and territories in Canada. The categories available to report on the identity of the individual in the Adult Corrections Survey are Aboriginal, Non-Aboriginal or Identity Unknown/Not Stated. Aboriginal is defined as “all North American Indians, Métis, Inuit (Eskimos); treaty and non-treaty Indians; status and non-status Indians,” a definition which is consistent with the Census measurement of Aboriginal Identity.⁹

Aboriginal Identity is routinely collected upon intake of the individual into the correctional system for each jurisdiction and the Correctional Service of Canada. The collection of Aboriginal Identity in the Adult Corrections Survey as a general indicator is consistent across jurisdictions, with negligible reporting of Aboriginal Identity as ‘unknown’. Excluding Newfoundland and Labrador where data were unavailable, less than 1% of all sentenced admissions to provincial/territorial custody in 2002/03 were reported as ‘Aboriginal Identity Unknown/Not Stated’ (Table 6). For probation admissions, 2% were reported as Unknown/Not Stated overall, with Quebec and Saskatchewan reporting higher rates of Unknown/Not stated (Table 7).

The Youth Custody and Community Services Survey and the Youth Alternative Measures Survey

The Youth Custody and Community Services Survey and the Youth Alternative Measures Survey also collect Aboriginal Identity on an aggregate and national level for youth who are admitted to the correctional system. Like the Adult Corrections Survey, the categories available to report on the status of the individual in both youth surveys are Aboriginal, Non-Aboriginal or Identity Unknown/Not Stated (Tables 8 and 9). The surveys on youth define Aboriginal as North American Indian, Métis or Inuit; and, those who are registered or not registered under the *Indian Act* (Treaty).

In terms of the Youth Custody and Community Services Survey, the frequency of reporting Aboriginal status as ‘unknown’ is relatively low and only Quebec’s system is unequipped to capture information on Aboriginal Identity. As illustrated in Table 8, 2% of youths admitted to secure custody were reported with an Aboriginal Identity as Unknown/Not Stated in 2002/03.

Overall, reporting to the Youth Alternative Measures survey is inconsistent and the frequency of jurisdictions to report Aboriginal Identity as ‘unknown’ is usually high (Table 9). As a result of the new *Youth Criminal Justice Act*, the Youth Alternative Measures survey was replaced by the Extrajudicial Sanctions Survey. Data quality issues associated with the underlying administrative systems are not resolved.

The Integrated Correctional Services Survey

The Adult Corrections Survey and the Youth Custody and Community Services Survey have been redeveloped into an integrated microdata survey, meaning one survey will collect individual records for each adult and youth. The Integrated Correctional Services Survey allows for detailed analysis of person and case characteristics and these data have the potential to be linked to court and police records to inform a broader range of criminal justice and social policy issues. Within this survey, the response categories for the data element on Aboriginal Identity have been expanded to enhance the detail available for the category ‘Aboriginal’. These response categories are as follows: North American Indian; Métis; Inuit; Non-Status Indian; and, Aboriginal, but group unknown. These categories, when combined, result in a measure of Aboriginal Identity that is consistent with the definition used in the Census of Canada.¹⁰ The Aboriginal Identity element also includes as response categories: Not collected, and Collected but not available.

9. See footnote 2.

10. See footnote 2.

Collecting Data on Aboriginal People in the Criminal Justice System: Methods and Challenges

Table 6

Adult sentenced admissions to provincial/territorial custody, by Aboriginal Identity, Canada, provinces and territories, 2000/01 to 2002/03

Jurisdiction	Year	Total sentenced admissions	Identity		
			Aboriginal ¹	Non-Aboriginal	Unknown or Not stated
			% of cases		
Newfoundland and Labrador ²	2000/01	944	7	93	0
	2001/02	1,080 ^r	..	..	..
	2002/03	1,031	..	..	..
Prince Edward Island	2000/01	586	1	99	0
	2001/02	650	3	97	0
	2002/03	594	3	97	0
Nova Scotia	2000/01	1,624	7	91	2
	2001/02	1,507	7	90	3
	2002/03	1,376	6	91	3
New Brunswick ³	2000/01	..	..	..	..
	2001/02	1,555	8 ^r	91	1
	2002/03	1,458	7	92	1
Quebec	2000/01	14,951	2	97	1
	2001/02	14,372	2	97	1
	2002/03	13,423	2	97	1
Ontario	2000/01	30,999	9	91	0
	2001/02	31,980	9	91	0
	2002/03	33,050	9	91	0
Manitoba	2000/01	2,901	64	36	0
	2001/02	3,025	69	31	0
	2002/03	3,316	68	32	0
Saskatchewan	2000/01	3,219	77 ^r	23	1
	2001/02	3,410	78 ^r	22	1
	2002/03	3,576	78	21	1
Alberta	2000/01	14,859	39	61	0
	2001/02	15,164	38	62	0
	2002/03	16,190	39	61	0
British Columbia	2000/01	9,520	20	80	0
	2001/02	9,263	21	79	0
	2002/03	8,740	20	78	2
Yukon	2000/01	294	72	28	0
	2001/02	280	76	24	0
	2002/03	206	76	24	0
Northwest Territories	2000/01	802	..	..	..
	2001/02	562	90	10	0 ^s
	2002/03	685	83	17	0
Nunavut	2000/01	229	98	2	0
	2001/02	217	98	2	0
	2002/03	240	98	3	0
Total	2000/01 ⁴	80,126	19	80	0 ^s
	2001/02 ⁵	81,985 ^r	20	79	0 ^s
	2002/03 ⁵	82,854	21	78	1

Note: Due to rounding, percentages may not add up to 100%.

.. not available for a specific reference period.

0 true zero or a value rounded to zero

0^s value rounded to 0 (zero) where there is a meaningful distinction between true zero and the value that was rounded

^r revised

1. The percent Aboriginal in this table differs from those presented in the Adult Corrections Survey reports (Juristat and Data tables) where 'Unknown' or 'Not Stated' responses are excluded in the percent calculations.

2. Newfoundland and Labrador: Data commencing in 2001/02 are from the new Integrated Correctional Services Survey and have been tabulated from micro data. Accordingly, comparisons to data from previous years should be made with caution. Data on Aboriginal Identity are unavailable.

3. New Brunswick: Data unavailable for 2000/01 due to conversion to a new system.

4. Total reflects data reported by the jurisdictions, excluding data from the Northwest Territories and New Brunswick.

5. Total reflects data reported by the jurisdictions, excluding data from Newfoundland.

Data source: Statistics Canada, Canadian Centre for Justice Statistics, 2000/01 to 2002/03, Adult Corrections Survey.

Table source: Statistics Canada, 2005, Collecting Data on Aboriginal People in the Criminal Justice System : Methods and Challenges, Catalogue no. 85-564-XWE2005001.

Collecting Data on Aboriginal People in the Criminal Justice System: Methods and Challenges

Table 7

Adult probation admissions, by Aboriginal Identity, Canada, provinces and territories, 2000/01 to 2002/03

Jurisdiction	Year	Total probation admissions	Identity		
			Aboriginal ¹	Non-Aboriginal	Unknown or Not stated
			% of cases		
Newfoundland and Labrador ²	2000/01	1,906	7	89	4
	2001/02	1,786 ^r	..	..	..
	2002/03	1,726	..	..	..
Prince Edward Island	2000/01	533	..	..	..
	2001/02	563	..	..	..
	2002/03	541	..	..	..
Nova Scotia	2000/01	3,653	6	93	2
	2001/02	3,547	5	93	2
	2002/03	3,728	6	92	1
New Brunswick ³	2000/01	1,733	..	..	..
	2001/02	1,830	8	89	3
	2002/03	1,764	8	91	1
Quebec	2000/01	7,704	7	83	10
	2001/02	8,277	7	83	10
	2002/03	8,280	6	82	12
Ontario	2000/01	34,920	9	91	0
	2001/02	38,236	6	94	0
	2002/03	39,778	6	94	0
Manitoba ⁴	2000/01	6,811	46	54	0
	2001/02	5,219	51	49	0
	2002/03	3,501	46	54	0
Saskatchewan	2000/01	3,457	59	32	9
	2001/02	3,402	60	32	8
	2002/03	3,434	59	32	9
Alberta	2000/01	9,360	21	79	0
	2001/02	9,438	21	79	0
	2002/03	8,821	21	79	0
British Columbia	2000/01	11,509	18	82	0
	2001/02	11,067	18	79	3
	2002/03	10,429	19	78	3
Yukon	2000/01	353	57	43	0
	2001/02	338	65	35	0
	2002/03	363	60	40	0
Northwest Territories	2000/01	..	..	..	..
	2001/02	..	..	..	..
	2002/03	..	..	..	..
Nunavut	2000/01	..	..	..	..
	2001/02	801	95	5	0
	2002/03	885	90	10	0
Total	2000/01 ⁵	81,406	15 ^r	82	2
	2001/02 ⁶	82,155 ^r	16	83	2
	2002/03 ⁶	80,983	14	84	2

Note: Due to rounding, percentages may not add up to 100%.

.. not available for a specific reference period.

0 true zero or a value rounded to zero

^r revised

1. The percent Aboriginal in this table differs from those presented in the Adult Corrections Survey reports (Juristat and Data tables) where 'Unknown' or 'Not Stated' responses are excluded in the percent calculations.

2. Newfoundland and Labrador: Data commencing in 2001/02 are from the new Integrated Correctional Services Survey and have been tabulated from micro data. Accordingly, comparisons to data from previous years should be made with caution. Data on Aboriginal Identity are unavailable.

3. New Brunswick: Data unavailable for 2000/01 due to changeover to a new system.

4. Manitoba: While probation admissions for 2001/02 and 2002/03 have decreased from 2000/01 levels, some of the decrease can be attributed to the implementation in 1999/00 of a new information system (COMS).

5. Total reflects data reported by the jurisdictions, excluding data from the Northwest Territories, Nunavut and Prince Edward Island.

6. Total reflects data reported by the jurisdictions, excluding data from Newfoundland and Prince Edward Island.

Data source: Statistics Canada, Canadian Centre for Justice Statistics, 2000/01 to 2002/03, Adult Corrections Survey.

Table source: Statistics Canada, 2005, Collecting Data on Aboriginal People in the Criminal Justice System : Methods and Challenges, Catalogue no. 85-564-XWE2005001.

Collecting Data on Aboriginal People in the Criminal Justice System: Methods and Challenges

Table 8

Cases of youths admitted to secure custody, by Aboriginal Identity, Canada, provinces and territories, 2002/03

Jurisdiction	Total number of cases	Identity		
		Aboriginal	Non-Aboriginal	Unknown or Not stated
% of cases				
Newfoundland & Labrador	201	7	75	18
Prince Edward Island	37	..	..	..
Nova Scotia	33	12	88	0
New Brunswick	196	8	89	3
Quebec	876	..	..	..
Ontario 16- to 17-year-olds ¹	1,601	5	95	0
Manitoba	223	74	26	0
Saskatchewan	309	73	26	1
Alberta	845	35	65	0
British Columbia	448	31	66	3
Yukon	11	91	9	0
Northwest Territories	48	94	6	0
Nunavut	12	100	0	0
Total Admissions to Secure Custody	4,840	...	...	...
Total Reported (i.e. excludes Quebec and PEI)	3,927	26	73	2

Note: YCCS units of count for Alberta and Newfoundland and Labrador have been tabulated from micro-data based on standardized definitions that may differ from those being applied locally. In Alberta, there are substantial methodological differences such that these statistics cannot be produced by Alberta Correctional Services. Accordingly, caution should be used when comparing statistics produced independently by jurisdictions against similar statistics generated by the Canadian Centre for Justice Statistics.

Due to rounding, percentages may not add up to 100%.

.. not available for a specific reference period

... not applicable

0 true zero or a value rounded to zero

1. Ontario data for 12- to 15-year-olds are unavailable for 2002/03 due to a consolidation of the two ministries responsible for young offenders into one. The new ministry is called the 'Ministry of Children and Youth Services'.

Data source: Statistics Canada, Canadian Centre for Justice Statistics, 2002/03, Youth Custody and Community Services Survey.

Table source: Statistics Canada, 2005, Collecting Data on Aboriginal People in the Criminal Justice System : Methods and Challenges, Catalogue no. 85-564-XWE2005001.

Presently, the Integrated Correctional Services Survey is being implemented in several provinces. While reporting trends of Aboriginal Identity are currently unavailable at a national level, it is expected that the current quality and coverage of the Aboriginal Identity information will be maintained with the movement from the aggregated approach to the integrated microdata approach. While no changes in the quality or coverage of the Aboriginal Indicator in the integrated microdata survey are expected, the microdata will enable more robust analysis than the aggregate administrative data currently being reported to the Adult Corrections Survey and the Youth Custody and Community Services Survey. Detailed records on each individual entering the corrections system will permit the analyses of specific issues related to corrections, such as on the complexity of individual case histories and re-involvement with the correctional system. Individual records from the Integrated Correctional Services Survey will also have the potential to be linked to records reported through the policing and court surveys to examine broader justice questions related, for instance, to the progression of cases through the justice system, re-involvement and re-offending.

Quality of corrections data on Aboriginal identity

Corrections data are considered to be of relatively sound quality and have historically been the primary source of information for analyzing the representation of Aboriginal people in the criminal justice system. The level of quality is due mostly to the nature of the operational objectives of correctional services, which includes the delivery of programs and services to individuals. Consequently, correctional systems often have a vested interest in collecting characteristic data to facilitate the delivery of correctional programming. For example, many programs and services in correctional systems are designed for specific groups, such as for Aboriginal people. Reliable data on the number of Aboriginal people helps to determine which programs and services should exist and/or be developed to meet various needs. The intake process of individuals into the correctional system allows for the collection of this data to facilitate such program delivery in a consistent manner.

Collecting Data on Aboriginal People in the Criminal Justice System: Methods and Challenges

Table 9

Cases of youths reaching agreement in alternative measures, by Aboriginal Identity, Canada, provinces and territories, 2002/03

Jurisdiction	Total number of cases	Identity		
		Aboriginal	Non-Aboriginal	Unknown or Not stated
		% of cases		
Newfoundland & Labrador	424	..	..	..
Prince Edward Island	133	x	x	x
Nova Scotia	..	...	...	...
New Brunswick	618	..	..	..
Quebec	10,427	..	..	..
Ontario 16- to 17-year-olds ²	2,117	0 ^s	100	0
Manitoba ³	1,182	..	..	..
Saskatchewan	2,637	26	48	26
Alberta	6,706	12	88	0
British Columbia	..	...	...	...
Yukon	91	64	36	0
Northwest Territories	208	82	10	9
Nunavut	..	...	...	...
Total ¹	24,543	...	...	...

Note: Due to rounding, percentages may not add up to 100%.

.. not available for a specific reference period

... not applicable

0 true zero or a value rounded to zero

0^s value rounded to 0 (zero) where there is a meaningful distinction between true zero and the value that was rounded

x suppressed to meet the confidentiality requirements of the Statistics Act.

1. The total reflects jurisdictions that have provided data on the total number of cases of Alternative Measures. The percent distribution for Aboriginal Identity is not presented because the data are unavailable from several jurisdictions.

2. Ontario data for 12- to 15-year-olds are unavailable for 2002/03 due to a consolidation of the two ministries responsible for young offenders into one. The new ministry is called the 'Ministry of Children and Youth Services'.

3. The reporting rate is so low that the data are not reportable from the data source.

Data source: Statistics Canada, Canadian Centre for Justice Statistics, 2002/03, Alternative Measures Survey.

Table source: Statistics Canada, 2005, Collecting Data on Aboriginal People in the Criminal Justice System : Methods and Challenges, Catalogue no. 85-564-XWE2005001.

Although corrections data on Aboriginal Identity are generally comprehensive, data quality cautions do exist. Given that the collection of Aboriginal Identity in correctional services is based on self-identification, individuals may be more or less inclined, depending on the circumstances, to self-identify as Aboriginal. For example, individuals who fear discrimination may be unwilling to identify themselves as Aboriginal, whereas the availability of culturally-sensitive programming may encourage offenders to self-identify as Aboriginal. In fact, trend data of admissions by Aboriginal origin show that the proportion of Aboriginal people in custody has increased slightly in many jurisdictions. Similar to increases in the Aboriginal population as measured by the Census of population, this increase may be partly attributable to individuals developing a greater sense of affiliation with their Aboriginal identity and are therefore self-identifying as Aboriginal more often than in the past.

Corrections data are also subject to some of the data quality issues generally associated with administrative data. Generally, administrative records in correctional systems are intended to serve the program delivery and administrative functions of corrections. These systems are often jurisdictionally-specific and focus on local, provincial or federal system or program requirements. Consequently, source data may need to be converted, or 'mapped' to Statistics Canada national data requirements. To date, while there have been no issues to question the reliability of the data, there have also been no data quality audits.

To provide more insight on data quality, in 2001, the corrections jurisdictions were informally canvassed by the Canadian Centre for Justice Statistics about the methods used to determine Aboriginal Identity. It was found that, generally speaking, self-identification by the offender is the predominant and more pragmatic approach taken though, in some instances, visual identification by corrections staff does take place. Consultations have found that there exists little in the

way of clear policy surrounding the identification, classification, definition and collection of this information. Manitoba Justice, however, has developed the following guidelines with respect to data collection within correctional systems in Manitoba. These guidelines have been approved by the Aboriginal community within Manitoba.

- Ask the offender if he/she identifies himself/herself in being of Aboriginal ancestry.
- If the offender affirms that he/she is Aboriginal, staff should ask their status.
- Status would be identified as status (i.e. First Nation), non-status or Métis.
- If an offender declares himself/herself as status, have them identify his/her band.
- In all cases staff should also ensure that their address is accurate.

As with other sectors of the criminal justice system, standardizing data collection at the corrections level and ensuring categories within administrative systems are compatible with national data requirements would enhance data quality. However, these initiatives are beyond the control of Statistics Canada whose responsibility is to provide standards and definitions for survey concepts and to assess the degree of compliance with these standards. Further, assessments regarding compliance are not continuous and are normally performed only when a jurisdiction makes changes to the interface used to report administrative data to Statistics Canada.

Victim services data

The unique needs of Aboriginal victims have been recognized by a number of groups, and information on the availability and use of services could help inform policy and programming for Aboriginal victims. For instance, according to the 2003 *Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation*, meeting the needs of Aboriginal people who are victims of domestic abuse is critical. As well, the Federal government's *Family Violence Initiative's Year Five Report* also affirms that, with regards to family violence, providing for the unique needs of specific communities, including Aboriginal communities, within Canada's diverse population continues to be a "pressing challenge" (Health Canada, 2002).

The Transition Home Survey

The Transition Home Survey is a biennial survey that collects national aggregate information on residential services for abused women and their children in order to profile services and clients served. From this survey, the number of shelters on or serving reserve areas and the number that have culturally-sensitive programming for Aboriginal women and children can be determined. However, no information on the Aboriginal identity of clients is gathered. Such information could prove useful for assessing service needs, particularly in urban areas. Without adequate support and instruction, however, the collection of this information could be a challenge for shelters. For instance, many do not currently maintain records that would contain this type of information about residents. Further, if required to ask residents to identify themselves as Aboriginal or non-Aboriginal, without adequate support and guidance, shelter workers could face the same concerns regarding sensitivities that have been expressed by police.

The Victim Services Survey

In 2003, the Canadian Centre for Justice Statistics conducted the Victim Services Survey through funding by the Policy Centre for Victim Issues at the Department of Justice Canada. Similar to the Transition Home Survey, the information collected through this first-ever survey provides a profile of victim service agencies, the services they offer and the people they assisted. The survey was intended to be a census of system-based, police-based and court-based victim service agencies, sexual assault centres and financial benefit programs for victims of crime. Selected community-based agencies were also surveyed.

From this survey, we know the number of services that have specialized programming for Aboriginal people, the number that can provide services in Aboriginal languages, and the number that target victims of residential school abuse for service. For some jurisdictions, information is available on the number that serve reserve areas and that are actually located on reserves. The Victim Services Survey is an aggregate survey and does not gather any information on the Aboriginal identity of persons assisted.

During the development of the Victim Services Survey, several stakeholders identified information on the Aboriginal identity of the persons assisted as a priority for developing and assessing policies and programming. However, further consultations with service providers revealed that many would not be able to provide these data because of operational or policy constraints. The data collection issues raised by service providers for victims of crime mirrored those raised by

the police. Concerns were primarily related to the legal authority to collect and report this information and to the sensitivity or appropriateness of asking victims seeking help to identify themselves as Aboriginal or non-Aboriginal.

Other sources of data on Aboriginal people

General Social Survey on Victimization

Statistics Canada's General Social Survey on Victimization is a source of information on the victimization of Canadians and their perceptions of crime and of the criminal justice system. The survey is a general population survey of individuals 15 years and older and is conducted every five years. Socio-demographic information is collected and respondents are asked about their experiences with certain types of crimes.

The 1999 General Social Survey on Victimization was the first attempt to measure the ethno-cultural background of respondents. Through a random telephone survey, a question was adapted from the Census that allowed respondents to self-identify their ethno-cultural background. Survey respondents, who self-identified themselves as Aboriginal, including North American Indian, Métis, or Inuit, were considered to be Aboriginal people.

The 1999 General Social Survey included Canadians living in the ten provinces but excluded the Yukon and Northwest Territories. Following consultations with territorial statistical agencies and various Statistics Canada experts, it was decided that the 1999 General Social Survey would be tested in these territories.¹¹ The main objective of the testing was to assess whether reliable estimates of criminal victimization could be obtained in the territories, where high concentrations of Aboriginal people reside. Testing in the North was completed by telephone, based on a sample of 1,000 interviews. While response rates were higher in the Yukon (84.8%) and the Northwest Territories (82.5%) than they were for Canada overall (81.3%), undercoverage of the target population was encountered. Consequently, these data were not released.¹² In order to address the data quality issues identified through this testing, a sampling frame from the Canadian Community Health Survey frame was used in the 2004 General Social Survey on Victimization to more accurately target populations in the North.

In general, there are some limitations or factors to consider when using data from the General Social Survey on Victimization to analyze Aboriginal populations. First, the small number of Aboriginal people in both the 1999 and 2004 survey sample, as well as the lack of over-sampling, may restrict the depth of analysis that can be done. However, since rates of victimization are generally higher among Aboriginal populations compared to non-Aboriginal populations, the number of victims in the survey sample is usually large enough to permit cross-tabulations of the data and reliable estimates of the nature and extent of victimization among Aboriginal people. For example, according to the 1999 General Social Survey, it was found that rates of non-spousal violent victimization among Aboriginal people were two and one-half times higher than the national rate (206 incidents per 1,000 versus 81 per 1,000) (Mihorean, 2001; Statistics Canada, 2001b).

Second, as mentioned, a limitation of the 1999 General Social Survey is that it excluded the territories where high concentrations of Aboriginal people reside. While the 2004 General Social Survey includes the territories, the reliability of data is still to be determined. Third, comparisons between Aboriginal and non-Aboriginal populations should be made with the consideration that the Aboriginal population is younger, on average, than the non-Aboriginal population. According to the 2001 Census of Canada, the median age for the Aboriginal population was 25 years, while that of the non-Aboriginal population was at an all-time high of 38 years. This difference is relevant given that the General Social Survey does not collect information from Canadians under the age of 15 and that the risk of victimization declines with age. Finally, the General Social Survey collects data from respondents through telephone interviews using a random digit dialing technique and, while this does not exclude on-reserve populations, some anecdotal evidence suggests that telephone ownership may be lower on reserves and in remote areas (Brzozowski & Mihorean, 2002).

Despite some limitations, the General Social Survey on Victimization is a rich source of data for several reasons. In addition to collecting data on criminal incidents that are reported to police, information on criminal victimization which is not reported to police is also obtained. Consequently, data are collected on the nature and extent of victimization so that rates of victimization, including rates of spousal and multiple victimization, can be determined. Moreover, the survey collects information on various risk factors of victimization, including socio-economic and socio-demographic factors, as well as protective measures taken to avoid criminal victimization. This information allows for comparisons among various groups of people, including between Aboriginal and non-Aboriginal peoples.

11. At the time of the 1999 General Social Survey, Nunavut was just being formed as a territory.

12. For further detail, refer to: Brzozowski, J. and Mihorean, K. 2002. *Technical Report on the Analysis of Small Groups in the 1999 General Social Survey*. Statistics Canada catalogue no. 85F0036XIE. Ottawa: Industry Canada.

The Census of Population

The Census of Population is the main source for population counts on Aboriginal people in Canada. This survey provides population counts by age and sex for North American Indian, Métis and Inuit people. In addition, information is collected on language, ancestral origin, status and affiliation with First Nations. Census respondents self-identify their Aboriginal affiliation. For each Census, there are normally some Indian reserves and Indian settlements where enumeration is either not permitted or is interrupted before it can be completed (77 of these geographic areas in the 1996 Census and 30 in the 2001 Census). The impact of the missing data is very small for higher level geographic areas (Canada, provinces, Census metropolitan areas and census agglomerations), but the impact can be significant for smaller areas where the affected areas account for a higher proportion of the population.

The Aboriginal Peoples Survey

The Aboriginal Peoples Survey is a post-censal survey and was first conducted by Statistics Canada in 1991. As a result of the Royal Commission on Aboriginal People's final report, the federal government mandated Statistics Canada to conduct a second Aboriginal Peoples Survey following the 2001 Census. It surveyed about 117,000 individuals to collect information on the lifestyles and living conditions of Aboriginal people. While the core of the survey was directed to those aged 15 years and older, there was an additional component to collect information on children and youth. As well, there were supplemental questions specifically for Métis people and persons 15 years and older residing in Inuit communities. Examples of topics covered include education, language, labour activity, income, health, mobility and housing.

Other Statistics Canada surveys

Surveys on other topics at Statistics Canada, such as those listed below, collect data on Aboriginal identity. However, with the exception of the Aboriginal Entrepreneurs Survey, limited information is available from these because of the small number of Aboriginal people surveyed. Some of these surveys collect information that can provide some insightful contextual information regarding Aboriginal people and crime, such as information on income, education, health, etc.

- Aboriginal Entrepreneurs Survey
- Canadian Community Health Survey
- International Adult Literacy and Skills Survey
- Survey of Labour and Income Dynamics
- Youth in Transition Survey and Program for International Student Assessment
- Adult Education and Training Survey
- General Social Survey: Time Use and Social Engagement (Cycle 17)
- General Social Survey: Social Support and Aging (Cycle 16)
- General Social Survey: Access to and Use of Communications Technology (Cycle 14)

Statistics Canada's Aboriginal Data Initiative

In light of the need for data on Aboriginal people and the challenges in collecting these data, Statistics Canada was asked by the federal government in 2002 to develop a "blueprint" for a comprehensive Aboriginal statistical program that would meet the information needs of Aboriginal groups, governments and other stakeholders. This two year project has three components, including consultation, data development, and training and skills development. In particular, the project includes evaluating the feasibility of developing an ongoing statistical program that will permit the collection of integrated information and outcomes measures in the areas of social, economic and First Nations public sector statistics through the development of household surveys, population estimates and projections and public-sector financial statistics. The feasibility study also includes assessing the training and statistical needs of First Nation, Inuit, Non-Status Indians and Métis people.

If implemented, the Aboriginal Data Initiative projects will produce information that parallels what is currently available for the non-Aboriginal population from these sources as well as information that is relevant and meaningful to Aboriginal peoples. The Aboriginal Data Initiative will also provide training and skill development to First Nation, Non-Status Indians, Inuit, and Métis people pertaining to the production, collection, compilation and analysis of statistics.

Other administrative data on Aboriginal people in the criminal justice system

Police, court and corrections data that are reported to the Canadian Centre for Justice Statistics at a national level all originate from individual records management systems in the jurisdictions. As such, any of these types of systems that collect data on Aboriginal identity are potentially an additional source of information as they likely contain other information not collected at a national level. For instance, the National Parole Board collects information on Aboriginal persons with regard to conditional release. In addition, the Yukon Territory collects information on the First Nations status of sentenced adults and youth.

Jurisdictions may have sources of data other than the records management systems that are used to feed into national surveys at Statistics Canada. For instance, the Aboriginal Court Worker Program is a joint-funded initiative between the federal and provincial/territorial governments designed to provide third-party assistance to Aboriginal adults and youth accused before the courts. The program operates in 8 jurisdictions: Newfoundland, Nova Scotia, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia. Under the funding agreement, programs are requested to report a set of standard aggregate data on a quarterly basis to Justice Canada. While some jurisdictions, such as Manitoba, report complete, consistent data, there are variations in levels of reporting and quality of data among several jurisdictions. Justice Canada is currently working with the jurisdictions to improve data quality and coverage.

Data collection in other parts of the world

In some parts of the world where Aboriginal Identity or race/ethnicity data are collected, there is an increasing recognition of the need for these data to inform social policy questions. Examples of such countries that have focused on the improvement of data collection of Aboriginal peoples include Australia, New Zealand and the United States. Another example of the recognition to improve the quality and collection of data in the area of race/ethnicity is England & Wales. Recognition of the value of these data has led to initiatives to improve data quality and expand data collection.

In Australia, there has been a growing demand for high quality, regularly reported data on its Aboriginal and Torres Strait Islander (Indigenous) population for the purpose of policy and program development in various sectors (Trewin and Madden, 2003). The Australian Bureau of Statistics has reacted by developing partnerships to improve the quality of these data collected through the census of population, various general population surveys, specific Indigenous surveys and through administrative systems in sectors such as health, education and criminal justice. The Australian Bureau of Statistics developed a standard question for the collection of Indigenous status across a range of administrative systems and data collections, including those in the justice sector.

Over the last few years, the National Centre for Crime and Justice Statistics within the Australian Bureau of Statistics has been working in partnership with criminal justice agencies across the states and territories to implement this standard. The Indigenous status of incarcerated offenders has been collected and published for a number of years. More accurate and reliable data on the Indigenous status of victims and offenders are required to better understand the interactions between Indigenous people and the crime and justice system in its totality. Emphasis was placed on working with police to address data quality problems, problems which are mirrored in Canadian statistics. In addition to setting standards for police collection and reporting, educational material has been developed and distributed to assist police in data collection (Appendix B) and to educate the public (Appendix C) on the importance of collecting this information. While data have been collected by police in the past, until now, they have never been published because of data quality issues. Beginning in 2005, state and territory data will become progressively available.

As their population landscape becomes more diverse, New Zealand recognizes the continued relevance of sound data on the ethnic makeup of its people for the purposes of policy research and planning. In June 2004, Statistics New Zealand released a review which assessed how ethnicity (including the identity of the country's indigenous population) is defined, collected and organized (Statistics New Zealand, 2004). The recommendations from this review form the foundation for setting national standards for definitions and collection methods in order to improve data collected through New Zealand's Census of population and other official statistics.

As part of its leadership role, Statistics New Zealand conducted, on behalf of the justice sector, a data quality review of the collection and reporting of race and ethnicity data by the New Zealand Police, the Ministry of Justice (responsible for the courts database) and the Department of Corrections (Statistics New Zealand, unpublished). In New Zealand, police and corrections are presently the main sources of justice sector data on ethnicity, with the Ministry of Justice only beginning to collect ethnicity data and only from within the jurisdiction of family court.

The review concluded that the overarching issues were related to inconsistent definitions of race/ethnicity, a lack of resources for operational staff to understand the concept of ethnicity and the relevance of data collection, and a lack of standard procedures for data collection. Overall, the operational challenges and inconsistent methods of data collection experienced by the officers of New Zealand Police are similar to those experienced by the policing community in Canada and affect the quality of data in similar ways. For instance, in addition to data definitions that were incompatible with Census and corrections definitions, police in New Zealand did not necessarily ask individuals to identify their ethnicity, used their own judgement, or coded ethnicity as unknown or other. While ethnicity definitions used in corrections are potentially compatible with Census definitions, and there are standard business practices for recording a person's ethnicity, the review suggested additional investigation be done to determine whether a standard ethnicity question is asked nationwide. Further, when there are multiple ethnicities, corrections prioritizes these, a practice which is not supported according to the recommendations for national standards. New Zealand's review of justice sector data on race and ethnicity is a first step toward the improvement of these data.

The United States has a long-standing tradition of collecting data on American Indians in several areas including the criminal justice system. Data on American Indians are reported by police, courts and corrections. Over the last few years, efforts have been made to make data on American Indians as victims and offenders more accessible and to improve data (Greenfeld and Smith, 1999). For instance, statistical programs have been implemented to learn more about tribal criminal justice agencies and amendments were made to the National Crime Victimization Survey to improve data collection on crime and its consequences for American Indians.

While social policy questions in relation to Indigenous populations are not relevant for England and Wales, they are with respect to their visible minority and ethnically-diverse populations. Efforts by these countries to inform these issues through data collection serve as examples for Canada. In England and Wales, those concerned with improving race relations have stressed for decades the need for accurate data on the ethnicity of people who come into contact with the criminal justice system (Home Office, 2000). Within the Home Office, both the Criminal Justice Policy Unit and the Race Equality Unit play a role in the government's commitment to eliminate racial discrimination within the criminal justice system. The need for quality data has led to various improvements in data collection across several sectors of the criminal justice system (e.g. using standard categories and definitions that are consistent with Census groupings) (Home Office, 2000). With respect to police-reported data, the Home Office, after discussions with the Association of Chief of Police Officers, mandated police services to begin collecting data on race in April 1996. Prior to implementing mandatory collection, pilot research on the difficulties associated with collecting and interpreting these data was conducted. The results of this research allowed the Home Office to provide clearer guidelines to police prior to the mandatory directive taking effect (FitzGerald and Sibbitt, 1997). Despite these efforts to improve data collection and reporting, not all police services have been able to provide these data due to limitations in information technology.

Conclusion and next steps

The collection of data on Aboriginal people in the criminal justice system is needed to maintain government accountability to the Aboriginal community and to inform policy and program development for Aboriginal people. Although data on Aboriginal identity can be collected at other points in the criminal justice system, the collection of these data by police is crucial and unique. As the point of initial contact for all persons in conflict with the law, police are able to provide information on those persons diverted away from the formal justice system, those who are victims of violent crime, as well as those who are charged and proceed through the criminal justice system.

Presently, there are a number of police services not providing data on Aboriginal identity and, for those that are, there are issues of data quality that stem from operational and methodological concerns. Without participation from all forces, including the Royal Canadian Mounted Police, full coverage in several provinces, all territories and at the national level is unattainable. Further, with gaps in police data, comparisons and linkages with courts and corrections data are compromised.

It is also noteworthy that no data on Aboriginal people are reported by adult and youth criminal courts and that there is little interest by court administrators to do so. Yet, the Supreme Court of Canada decision in *R. vs. Gladue* ruled that the courts, when sentencing, are obliged to consider the context of Aboriginal offenders' lives and culturally-sensitive sentencing options, pointing perhaps to the importance of understanding court activity in relation to Aboriginal people and to the importance of more detailed information on an Aboriginal person's community affiliations and culture.

Collecting Data on Aboriginal People in the Criminal Justice System: Methods and Challenges

Together, various strategies that would make data collection on Aboriginal people in the criminal justice system a priority would help improve coverage and data quality. Such strategies include the following:

- Fostering relationships and consulting with Aboriginal groups to better understand the positions of different groups regarding data collection and self-identification, to resolve concerns and encourage/promote self-identification and the use of the data.
- Developing a coordinated communication strategy directed at the police and other justice sectors, Aboriginal people, other stakeholders and the public to raise awareness of and support for the collection of Aboriginal identifying information.
- Having appropriate governing bodies encourage and support police and other criminal justice sectors to collect these data.
- Implementing national standards for defining and collecting Aboriginal identity, including ensuring administrative systems either mirror or are correctly mapped to standard national definitions.
- Educating and training police and other criminal justice sectors regarding standard definitions and collection methods.
- Evaluating data submissions, such as detailed auditing and data verification exercises.
- Where appropriate, cross-referencing data with other more reliable sources of data that use self-identification, such as police booking systems or corrections case management systems.
- Continuing to assess the feasibility and encourage the development of collecting Aboriginal identity through other crime-related national surveys, such as the Transition Home Survey.

These strategies could be approached on a jurisdiction by jurisdiction basis, beginning with a pilot project in one jurisdiction. Once measures to improve data quality are implemented, effort and support to maintain and keep improving data quality will be needed.

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Appendix A: Statements supporting the need for information on Aboriginal people in the criminal justice system

Recommendation 2 of an Amnesty International report states: *“The federal government should ensure adequate funding for comprehensive national research on violence against Indigenous women, including the creation of a national registry to collect and analyse statistical information from all jurisdictions.”*

- Amnesty International. October 2004. *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada*, page 35.

“In consultation with Indigenous peoples’ organizations and organizations representing ethnic minorities, protocols should be developed to ensure that police consistently record and appropriately use data on the ethnicity of the victims and perpetrators of violent crimes.”

- *Ibid*, page 35.

“There is not enough information on Aboriginal people in the criminal justice system.”

- Canada. April 2002. *Report of the Auditor General of Canada to the House of Commons. Chapter 4 – The Criminal Justice System: Significant Challenges.*

“It is a tragic reality that too many Aboriginal people are finding themselves in conflict with the law. Canada must take the measures needed to significantly reduce the percentage of Aboriginal people entering the criminal justice system, so that within a generation it is no higher than the Canadian average.”

- Chrétien, The Right Honourable Jean. 2001. *Speech from the Throne to Open the First Session of the 37th Parliament of Canada.* December 2001.

“...knowledge alone is insufficient to change fundamental attitudes. Despite an overlay of concern, it does not take much provocation to uncover prejudiced attitudes and deep-seated hostility among Aboriginal and non-Aboriginal people alike. Sound information is an important element in overcoming this hostility. But also needed are opportunities for meaningful interaction as well as strong public role-modelling by leaders of both sectors — and not only the political leadership. Finally, ways need to be found to make discriminatory and racist behaviour unacceptable in private as well as public circles. The building of an open and inclusive society is a complex process that extends well beyond what is commonly understood as public education.”

- Canada. 1996. Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples, “Building Awareness and Understanding”* in Volume 5, *Renewal: A Twenty Year Commitment.* Ottawa: The Commission.

“We recommend that governments consult with Aboriginal groups to design and implement a data collection system that will provide detailed information to compare the impact on and treatment of, Aboriginal and non-Aboriginal persons by the justice system, to evaluate the success of programs dealing with Aboriginal offenders and to provide information to help identify needed reforms.”

- Manitoba. 1991. Public Inquiry into the Administration of Justice and Aboriginal People. *Report of the Aboriginal Justice Inquiry of Manitoba, vol.1, The Justice System and Aboriginal People*, page 672. Winnipeg: Public Inquiry into the Administration of Justice and Aboriginal People.

Recommendation 2.94 from Alberta’s Cawsey Commission states *“That all police organizations in Alberta maintain statistics which would allow for the identification of Aboriginal workload and contact.”*

- Alberta. 1991. *Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta.* Department of Justice Alberta.

Recommendation 0.1 from the Saskatchewan Indian Justice Review Committee states *“In consultation with Indian and Métis organizations, federal and provincial government departments design and implement data collection systems to provide detailed information to compare aboriginal and non-aboriginal contact with, and treatment by, the criminal justice system, especially with respect to family violence.”*

- Linn, Patricia. 1992. *Report of the Saskatchewan Indian Justice Review Committee.* Regina: Saskatchewan.

“One reason Donald Marshall, Jr. was convicted of and spent 11 years in jail for a murder he did not commit is because Donald Marshall is an Indian. [This statement] is simply one of the more blatant and overt examples of the seemingly unconscious racism and racial stereotyping that influenced what happened to Donald Marshall, Jr.”

- Nova Scotia. 1989. *The Report of the Royal Commission on the Donald Marshall, Jr., Prosecution. Vol.1 Commissioner’s Report – Findings and recommendations*, page 148. Halifax: The Province of Nova Scotia.

Recommendation 9 of the Donald Marshall Inquiry states *“We recommend that the Departments of the Attorney General and Solicitor General adopt and publicize a Policy on Race Relations that has as its basis a commitment to employment equity and the elimination of inequalities, based on race, in these Departments and their agencies and the reduction of racial tensions between these Departments and the communities with which they interact.”*

- *Ibid.*, page 153.

Appendix B: Australian education pamphlet for police officers



(see accompanying pamphlet text on following page)

Why do you need to ask?

Recording appearance is important for operational reasons BUT you cannot assume by looks alone that a person is of Aboriginal and/or Torres Strait Islander origin. Asking the question provides the opportunity for victims and accused persons of Aboriginal and/or Torres Strait Islander origin to be correctly identified.

Why should Aboriginal and/or Torres Strait Islander people be identified?

In the case of both offenders and alleged offenders, correct identification of Aboriginal and Torres Strait Islander people was a key recommendation of the Royal Commission into Aboriginal Deaths in Custody. These recommendations require that custodial care, Aboriginal Legal Aid and interpreter services are made available to Aboriginal and Torres Strait Islander people.

In the case of victims, correct identification is necessary to determine access to appropriate victim support schemes. Correct identification is also important for monitoring any racially targeted aggression.

Correctly recording people's Indigenous status also assists effective case management.

Ask the question clearly and confidently

Remember why you are asking – to gather important information that will help Aboriginal and Torres Strait Islander people. There is nothing discriminatory about asking the question. It is the same as asking a person their age and what sex they are. So ask the question clearly and confidently, in a matter-of-fact way.

You're not the only one asking

People are asked if they are of Aboriginal or Torres Strait Islander origin by staff from any of the following organisations:

- hospitals
- community medical centres
- Australian Bureau of Statistics
- local community councils
- schools
- with many more government organizations asking the question all the time.

The more we know, the better

Governments and Aboriginal and Torres Strait Islander organisations need to know all they can about Aboriginal and Torres Strait Islander people: their well being, how old they are, where they were born, their participation in education and the labour force, and where they live.

The answers collected from clients provide information that will enable policies to be developed, funds to be allocated more appropriately, and services to be customized to address areas of most need.

We all need to work together to collect better information, to achieve better social and economic outcomes for everyone.

Source: *Australian Bureau of Statistics, National Centre for Aboriginal and Torres Strait Islander Statistics*

Appendix C: Australian education pamphlet for the public



(see accompanying pamphlet text on following page)

Why do people need to ask you this question?

There are two main reasons:

- Deciding if a person is of Aboriginal or Torres Strait Islander origin based on looks alone is not reliable. So you can't assume. The only sure way to find out is to ask.
- The answers provide valuable information about the representation of all Australians in the criminal justice system. This information will help to make decisions about the types of programs and services needed in the criminal justice system, such as legal aid and interpreters.

Who might ask you?

As a member of the public you could be asked by staff in any of the following organisations:

- hospitals
- community medical centres
- Australian Bureau of Statistics
- local community councils
- The Registrar-General Births, Deaths and Marriages Office
- schools/universities
- and many more

Other important questions you will be asked

You'll be asked other questions such as your date of birth, where you were born and where you live. These questions are not discriminatory and do not mean that you will be treated any differently.

Commonwealth, State and Territory governments and Aboriginal and Torres Strait Islander organisation need to know what they can about people's indigenous status to assist with the planning and provision of appropriate services.

The information your answers provide enables policies to be developed, funds to be allocated more appropriately, and services to be customised to address areas of most need.

The aim of asking these questions is to work together with you to achieve better service provision for everyone.

Source: Australian Bureau of Statistics, National Centre for Aboriginal and Torres Strait Islander Statistics