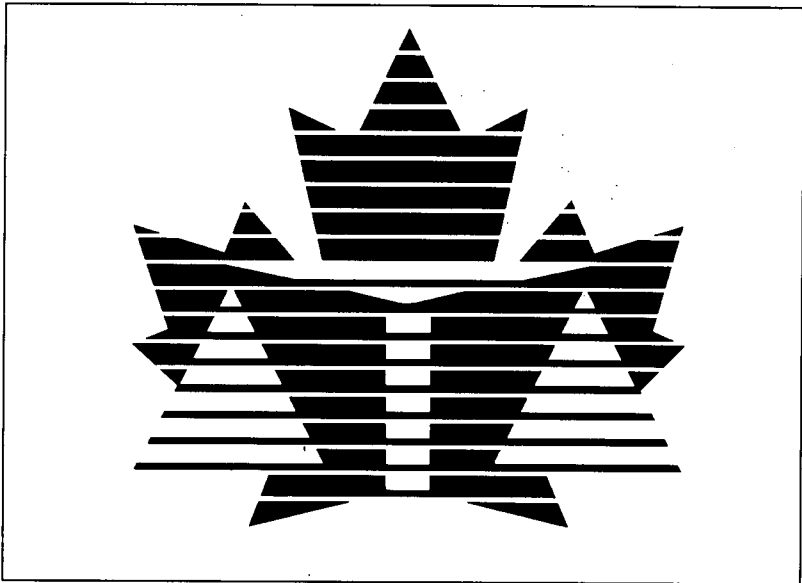


85F0005XPB

c. 3

# UNDERSTANDING THE CANADIAN CRIMINAL JUSTICE SYSTEM

*Process Chart and Handbook*



Canadian Centre for Justice Statistics



Statistics  
Canada

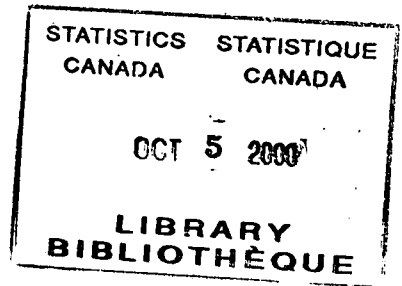
Statistique  
Canada

Canada<sup>131</sup>



# UNDERSTANDING THE CANADIAN CRIMINAL JUSTICE SYSTEM

*Process Chart and Handbook*



Integration and Analysis Program  
Canadian Centre for Justice Statistics

Ref. 85F0005

Price: \$15.00 (chart & handbook)

March 1993



## Contents

<i>The need for information</i> .....	1
<i>What is crime?</i> .....	1
<i>Young offenders</i> .....	1
<i>Administrators of the criminal justice system</i> .	2
<i>Police</i> .....	2
<i>Courts</i> .....	3
<i>Correctional Services</i> .....	3
<i>The justice system</i> .....	3
<i>Crime Committed</i> .....	3
<i>Police Response</i> .....	4
<i>Appearance Notice Issued</i> .....	4
<i>Charges Laid</i> .....	5
<i>Arrested without Warrant</i> .....	5
<i>Alternative Measures</i> .....	5
<i>Judicial Interim Release Hearing</i> .....	6
<i>Trial Court</i> .....	7
<i>Adult Court</i> .....	7
<i>Youth Court</i> .....	8
<i>Preliminary Inquiry</i> .....	8
<i>Plea Entered</i> .....	9
<i>Special Plea</i> .....	9
<i>Trial</i> .....	9
<i>Decision</i> .....	10
<i>Disposition</i> .....	11
<i>Disposition Administration</i> .....	13
<i>Adult Offenders</i> .....	13
<i>Non-custody</i> .....	13
<i>Custody</i> .....	14
<i>Young Offenders</i> .....	14
<i>Non-custody</i> .....	15
<i>Custody</i> .....	15
<i>For more information</i> .....	16



## The need for information

The Canadian Centre for Justice Statistics at Statistics Canada is responsible for providing statistical and qualitative information about the Canadian criminal justice system. This handbook and accompanying chart, "*A Canadian Criminal Justice System Overview*", were designed to help clients better understand the system and its legislative and organizational foundation.

## What is crime?

Broadly speaking, a "crime" is any act against society as defined by the state. Therefore, the types of events classified as crimes change as the morals and values of society evolve.

In Canada, criminal offences and criminal law are defined by federal and provincial legislation. The Canadian Charter of Rights and Freedoms, the Identification of Criminals Act, the Criminal Code, the Food and Drugs Act, the Narcotic Control Act and the Young Offenders Act are some of the basic statutes that constitute a substantial part of the criminal law of Canada.

There are three types of offences in Canada: **summary conviction**, **indictable** and **hybrid**. The offence often determines the trial process (for adult offenders), the appeal process and the possible sentencing options. Summary conviction offences are relatively less serious crimes compared to indictable offences. If an offence is classified as "hybrid", it can be dealt with either as a summary or an indictable offence; the Crown prosecution decides how the offence will be prosecuted.

## Young Offenders

In many respects, the criminal justice system for youths differs from that for adults. In Canada, those aged 12 to 17 are considered youths under criminal law, and fall within the scope of the Young Offenders Act (YOA). Children under the age of 12 are not held criminally responsible for their actions.

The YOA declares that young persons should not, generally, be held accountable to the same degree as adults, but they are to be held responsible for their actions. The law recognizes the state of dependency and level of maturity of young persons and decrees that special programs be available to ensure minimal interference with the freedom of the young person while protecting society. However, young persons do have the same basic rights and freedoms as adults, defined in the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. As a result, the basic framework of the adult and youth criminal justice systems are very similar.

### *Administrators of the criminal justice system*

The Canadian criminal justice system is complex and involves three major components: **the police, the courts and correctional services**. In addition, there are many other support services within the community — for example, legal aid programs, community-based programs and non-profit agencies — which help offenders and crime victims.

Within each component there are many decision-makers, including: the police, justices of the peace, judges, juries, defence counsel, Crown prosecutors, and parole boards. These decision-makers often consult with others, such as the public, victims, offenders, expert witnesses, victim-advocacy groups, social workers and parole or probation officers. For the most part, this handbook examines the role of the "official" decision-makers.

### **Police**

Municipalities assume most of the responsibility for policing within their jurisdictions. Smaller communities, however, often contract services from provincial forces or the Royal Canadian Mounted Police (RCMP). Some provinces have established provincial forces to police rural or smaller communities. Finally, the federal government is responsible for enforcing federal legislation across the country through the RCMP.



## Courts

Responsibility for the administration of the courts is shared between the provincial, territorial and federal governments. In general, the provinces are responsible for all criminal cases. A provincial court judge has jurisdiction over most criminal matters. More serious offences — murder, for example — are tried in provincial Superior Court. Federal courts hear cases within federal jurisdiction and appeals (Supreme Court of Canada).

## Correctional Services

The provinces, the territories and the federal government provide correctional services. Generally, the provinces and territories are responsible for offenders sentenced to less than two years of incarceration or given a disposition to be served within the community. The provincial governments are also responsible for young offenders serving court dispositions. Adult offenders with sentences of two years or more are the responsibility of the federal government. In some provinces the municipal police are responsible for short-term (for example, overnight) lock-up.

## The justice system

The accompanying chart, "A Canadian Criminal Justice System Overview", summarizes the flow of cases. Central to the philosophy of the Canadian criminal justice system are the mechanisms available for reviews and appeals throughout the process. For simplicity, most review and appeal stages have been excluded from the chart.



Once a crime has been committed the criminal justice system may become involved. Not all cases are detected: many do not involve a victim or the victim may be unaware that a crime has been committed. Such offences include drug-related offences, trespassing or fraud. In addition, some victims may be aware that a crime has taken place, but may not report it.

A crime may be detected by the police, a victim, a witness or the coroner. If a victim or witness discovers a crime, he or she will decide whether to report it to the police. (Victimization surveys have shown that only about 40% of incidents are actually reported.)



Police  
Response

Once a crime has been reported to the police, they must determine whether the offence actually occurred. If the offence did not occur, the report will be classified as "**unfounded**". Otherwise, the investigation will continue. In some cases, although the police have identified a suspect, the case will be "**cleared otherwise**" because the police are not able to charge the suspect (for example, a suspect may die).

Next the accused must be brought before the court. There are three ways this may happen:



Appearance  
Notice  
Issued

For less serious crimes, the police may issue an **appearance notice** at the scene of the crime which tells the accused when to appear in court. The officer then charges the accused by **laying an information** (presenting the case) before a justice of the peace who cancels or confirms the appearance notice. A notice may be cancelled if the justice deems it advisable to issue a **warrant of arrest**, which authorizes the police to arrest an accused, or a **summons**, which compels the accused to appear in court. A notice may be cancelled when there is insufficient evidence to proceed. In such cases, charges are withdrawn and the case is terminated.

## Charges Laid

Charges may be laid even if the accused is not in custody. The court may either accept or dismiss the charges; if the charges are accepted, the court may issue a summons or a warrant of arrest.

## Arrested without Warrant

If the accused is in custody and has committed a relatively serious crime or has been caught in the process of committing an offence, he or she may be **arrested without warrant**. The police must lay charges within 24 hours of arrest or release the accused if there is insufficient evidence to proceed. Once charges have been laid, the court may dismiss them and release the accused on a **promise to appear** or on a **recognizance**. A promise to appear is a form which the accused signs promising to appear before the court at a specified time. For a recognizance, the accused signs a statement promising to abide by the court's conditions (for example, with or without sureties or bail) and to appear in court at a later date. The court may decide to hold the accused in custody if: it is a very serious offence; the accused pleads guilty; or the Crown prosecution successfully argues that the accused should not be released.

## Alternative Measures

For young offenders, the police and the court may decide that criminal court proceedings are not in the best interests of the youth or society. In such cases, the youth is referred to an **alternative measures program** where the youth and the justice system agree on an appropriate penalty.

Alternative measures can be applied either before or after a youth has been charged. In the pre-charge model, youths may participate in the program before any charges are laid. If the youth has already been charged, the charges are dismissed or withdrawn once the alternative measures agreement has been completed.

Alternative measures may be used only for certain offences, under certain conditions. Once a youth has agreed to participate, an **alternative measures agreement** is negotiated between the youth and the Crown prosecution. If the youth does not comply with the agreement, the case can be referred back to the court.



A person charged with an offence may be temporarily held in custody to await appearance before a justice when the police consider it to be in the public interest or when they do not have the authority to release the accused due to the severity of the offence.

For most offences, the accused is brought before the court for a judicial interim release hearing. The accused may plead guilty, not guilty, or may refuse to plead. If a guilty plea is entered, the justice may release the accused pending sentencing by the appropriate court. If a not guilty plea or no plea is entered, the court is obliged to release the accused unless the Crown prosecution can show why the accused should be detained.

There are two basic reasons for detaining an accused: to ensure the accused will appear in court and to protect the public. If the court decides to release the accused, certain conditions may be applied. Such conditions might include an undertaking or a recognizance with or without sureties, deposit (monetary conditions) or other conditions. A **surety** gives another person responsibility for ensuring that the accused will appear in court. For some offences, the court must detain the accused unless the accused can show why he or she should be released.

The same procedures apply to young offenders; however, there are some additional provisions. All judicial proceedings are dealt with in youth court and, in most cases, youths must be held in facilities separate from adults. Finally, rather than detaining the youth in custody, the court may order the youth placed in the care of a responsible person who must ensure that he or she attends court.



Proceedings may be terminated at any point before or during a trial. Questions relating to court jurisdiction, the mental fitness of the accused or charter arguments may be raised. If the court loses jurisdiction, the accused is found unfit or a charter argument is accepted, the case may be terminated. Early termination of a trial may also occur if the court or the Attorney General **stays the proceedings** (a temporary or permanent halt in proceedings) or the Crown withdraws charges. An accused found unfit to stand trial may subsequently be determined fit and then sent to trial.



For adults, the type of trial is determined by the type of offence. Summary conviction cases are usually tried by provincial court judges or justices of the peace in a summary conviction court; the trial procedure for indictable offences depends on the seriousness of the offence and, often, the choice of the accused.

The most serious offences must be tried by a superior court judge and jury, unless both the Crown prosecution and the defence agree to a non-jury trial (such offences include treason and murder). For other indictable offences, the defendant may choose to be tried by a provincial court judge or by a judge and jury, while relatively less serious indictable offences are tried by a provincial court judge.

A **jury** is selected from a list of eligible citizens within the jurisdiction of the court. From this list, a subset is drawn and those individuals are requested to attend court for possible jury duty. Twelve people are required to form a jury. The jury is selected by the Crown prosecution and the defence counsel; each side questions potential jurors to determine their suitability.

### Youth Court

Unlike adults, youths charged with either summary conviction or indictable offences are prosecuted in youth court only. Generally, these proceedings are similar to those applied in summary conviction trials. However, at any time after an information is laid and prior to a decision, the court may order a transfer hearing to determine whether the youth should be transferred to an adult court. A youth may be transferred only if certain conditions exist — the youth must be at least 14 years old and charged with a serious indictable offence.

### Preliminary Inquiry

For some indictable offences, a preliminary inquiry may take place before the trial to determine if there is sufficient evidence to proceed. Hearings are usually held for all cases except those appearing before a provincial court judge. These hearings provide an opportunity for the defence to hear the Crown prosecution's case. During the hearing, both the Crown and the defence call and cross-examine witnesses. If the court is satisfied that sufficient evidence exists to proceed, a trial date is set. Otherwise, the case is dismissed.



Plea  
Entered

The trial begins with the reading of the charge and the plea. The defendant may plead guilty, guilty of another offence, or not guilty. If the defendant refuses to plead, a not guilty plea is entered and the trial proceeds.

The court is not obliged to accept a guilty plea if there is any indication that the accused does not fully understand the implications of the plea, or if the court suspects the plea may not be voluntary. If a guilty plea is accepted, a sentencing date is set.



Special  
Plea

In addition, a **special plea** may be entered (autrefois acquit, autrefois convict, pardon or justification). The pleas of autrefois acquit and autrefois convict are entered where the accused has been previously acquitted or convicted for the current offence. Under common law, a pardon may be granted by the Sovereign or an Act of Parliament and is still accepted as a special plea. Finally, a plea of justification may be made in defamation cases when the act in question is considered justified because the statement was true and was made in the public interest. If a special plea is accepted, the case ends; otherwise, the case proceeds to trial.



Trial

During the trial, the Crown prosecution must prove beyond a reasonable doubt that the accused committed the alleged offence. The defence must show reasonable doubt, not prove innocence.

The Crown prosecution calls and examines witnesses to give evidence. After each witness has been questioned, the defence has the opportunity to cross-examine. At this point, the defence may move for a non-suit or dismissal of the charge on the basis of insufficient evidence. If this motion is refused, the defence may call witnesses on behalf of the accused. After cross-examining defence witnesses, the Crown may enter evidence in reply to the defence. After all the evidence has been presented, both sides summarize their cases. Then the judge directs the jury by reviewing the evidence and explaining any relevant points of law.



## Decision

If the trial is by judge alone, the judge can enter a decision of guilty or not guilty. In addition, the judge may find the accused not guilty of the charged offence, but guilty of an **included offence** (another offence arising out of the same incident).

If the trial is by judge and jury, the jury must return with a unanimous decision — guilty or not guilty. The jury may also find an accused guilty of an included offence. If the jury is unable to agree, it may be discharged and a new jury empanelled.

Finally, an accused may be found **not criminally responsible on account of mental disorder**. In such cases, the court or a review board may order that the defendant be absolutely discharged, conditionally discharged or detained in hospital. If the defendant is conditionally discharged or detained in hospital, the case is reviewed periodically to determine whether the individual should be absolutely discharged. Otherwise, an individual can be detained indefinitely. Recent amendments to the Criminal Code have "capped" the length of time a person can be detained to match maximum sentence lengths as defined in the Criminal Code. These amendments will be implemented after provincial mental health legislation has been amended appropriately.





## Disposition

Sentencing options for adults vary depending on how the court proceeds with the charges. The maximum penalty for summary conviction offences is six months imprisonment and/or a \$2,000 fine. Maximum sentences for offences tried by indictment are more severe, ranging from two years to life imprisonment.

Young offenders may be sentenced to a maximum of two years in custody for offences not punishable by life under the Criminal Code, three years for those punishable by life and five years for murder. The maximum fine is \$1,000.

Before sentencing, the court may request a pre-sentencing or disposition report which provides information about the offender's support within the community and other relevant information. The court may also hear or receive a victim impact statement.

Most sentencing options can be ordered alone or in combination. The following is a list of possible dispositions (unless otherwise noted the dispositions may be ordered for both adult and young offenders).

***Discharge:*** A sentence of absolute or conditional discharge may be given to offenders found guilty, but not convicted. Young offenders may not receive a conditional discharge. Offenders given an absolute discharge are not under any obligation to the court.

***Fine:*** A fine may be imposed. In some cases a fine option program may be used. Such programs allow an offender to earn credits for work performed in lieu of payment.

***Forfeiture of proceeds:*** An offender may be ordered to forfeit any proceeds gained through the commission of a crime to the rightful owner or, if the owner is not known, to the state.

***Probation order:*** A probation order requires the offender to abide by a set of conditions. Often a probation order is made in conjunction with other dispositions. A youth may be placed on probation for a maximum of two years.

**Suspended sentence:** Under certain conditions, the court may suspend the passing of sentence and place an offender on probation.

**Compensation to victim/innocent purchaser:** An offender may be ordered to compensate for loss or damage of property. An offender may be ordered to compensate an innocent purchaser where property obtained through the commission of the offence was sold to an innocent purchaser.

**Personal service order/community service order:** An offender may be ordered to provide services to an individual or to the community.

**Custody:** The length of imprisonment can vary greatly. For more than one count or offence, the court will order that the terms of imprisonment be served consecutively or concurrently. For consecutive terms, the offender must complete the first sentence before beginning any subsequent sentences, otherwise the sentences are served at the same time.

Custodial sentences may be normal, intermittent or indeterminate. Normal sentences require that time be served over an uninterrupted period. Sentences of 90 days or less may be served intermittently. "Dangerous offenders" receive indeterminate sentences.

Youth court must specify how a custodial term is to be served -- under either open custody (for example, a group home) or secure custody (designated by the province).

**Treatment:** A youth may be detained for treatment in a place the court considers appropriate. Such an order may be made when the court believes that the young offender is suffering from a physical or mental illness or mental disorder.

In some cases, recent Criminal Code amendments permit the court to order adult offenders suffering from a mental disorder be detained for treatment as part of a disposition. These provisions will be implemented once provincial legislation has been amended.



Disposition  
Administration

Once the court has passed sentence, the corrections system is responsible for ensuring that the court order is fulfilled. The corrections system consists of two components: custodial and non-custodial (community services).



Adult  
Offenders

The provincial and federal governments share responsibility for administering adult offender dispositions. Generally, the provinces are responsible for non-custodial dispositions and offenders sentenced to less than two years, while the federal government is responsible for those sentenced to two years or more. Parole and mandatory supervision release programs are mainly the responsibility of the federal government, although parole boards have been established in some provinces.



Non-custody

Offenders sentenced to probation must report to a probation officer regularly throughout the period of the order. Often other sentence types are attached to probation orders including conditional discharges, compensation to victims, and community service orders. If an offender does not comply with the conditions of the probation order, he or she can be charged with a summary conviction offence.

Individuals or corporations may be given a fine. If the fine is not paid in the allotted time and no extension has been requested, a warrant of committal to custody may be issued for **default of fine payment**. Proceedings against a corporation which defaults on a fine must be carried out through the civil justice system.

## Custody

Offenders sentenced to less than two years in custody are placed in a provincial facility; offenders with sentences of two years or more are held in a federal penitentiary. However, inmates may be transferred, under exchange-of-service agreements, between provincial and federal facilities to have better access to family or community resources.

A federal inmate sentenced to a determinate term is required to serve at least one-sixth of his or her sentence before becoming eligible for **day parole**. Day parole is not available to provincial inmates. **Full parole**, available to federal and provincial inmates, is possible after one-third of a sentence has been served. **Mandatory supervision**, also available only to federal inmates, is possible after two-thirds of a sentence has been served.

Inmates serving life sentences must serve a minimum period of time before they are eligible for parole. For example, offenders convicted of first degree murder are not eligible for parole until they have served 25 years.

Inmates who have been released on parole or mandatory supervision are required to report to parole officers regularly. Parole or mandatory supervision may be suspended if the offender does not comply with the conditions of the parole order or if he or she commits a new offence. The release order may then be re-instated, revoked or terminated. When the sentence period has expired, the offender is released for custody or community services without further supervision.

## Young Offenders

The provinces are solely responsible for administering young offender dispositions which differ greatly from those for adults. A mechanism for automatic and optional reviews has been incorporated into the administration of custodial and non-custodial dispositions.

## Non-custody

With the young offender's consent, the court may order that the youth be detained for treatment in a hospital or other suitable place.

Young offenders serving probation dispositions are also required to report to probation officers on a regular basis. Usually, other non-custodial dispositions are attached to a probation order.

Fine option programs are also available to young offenders. Unlike adult offenders, young offenders cannot be committed to custody for not paying their fines. A dispositional review determines the consequences of non-payment.

**Non-custodial reviews** are the sole responsibility of the youth court. An application for review by the youth, a parent, the Attorney General or the administration responsible for young offenders may be made six months after the date of disposition. However, if the court permits, an application may be made at an earlier date. Generally, grounds for review include: changed circumstances; the youth's inability to comply with the court order; or adverse effects from the disposition ordered (for example, the youth is unable to benefit from other services such as school). The youth court may confirm the disposition, vary the disposition – it cannot, however, be more onerous than the current disposition – or terminate the disposition and discharge the youth.

## Custody

Young offenders in custody are kept in **secure** or **open custody** facilities, as ordered by the courts. Unlike adults, young offenders are not eligible for parole or mandatory supervision. Instead, transfers between custodial security levels and custody and probation are obtained through a review process.

**Custodial disposition reviews** can be conducted by either the youth court or the provincial review board, depending on the nature of the review. The youth court is responsible for automatically reviewing custodial dispositions after one year has been served. It is within the court's mandate to confirm the disposition, place the offender on probation, or transfer the offender from secure to open custody.

An application for optional review may be made after six months has been served if: the youth has made sufficient progress to warrant a change in disposition; the circumstances leading to committal have changed; or new services or programs are available. The court may confirm or vary the disposition or transfer the youth to probation.

*For more information...* \* \* \* \* \*

**[REDACTED]**  
**[REDACTED]** For further information on the criminal justice system and related statistics please contact the Canadian Centre for Justice Statistics, 19th Floor, R.H. Coats Building, Tunney's Pasture, Ottawa, Ontario, K1A 0T6 or call toll-free: 1-800-387-2231.



**ORDER FORM**



**MAIL TO**  
Canadian Centre  
for Justice Statistics  
Statistics Canada  
Ottawa, Ontario  
Canada K1A 0T6



**PHONE**  
1-800-387-2231  
Charge to VISA or MasterCard.



**FAX TO**  
(613) 951-6615  
VISA, MasterCard and Purchase  
Orders only. Please do not send  
confirmation. A fax will be treated  
as an original order.

Company \_\_\_\_\_  
Department \_\_\_\_\_ Attention \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ Province \_\_\_\_\_  
Postal Code \_\_\_\_\_ Phone ( ) \_\_\_\_\_ Fax ( ) \_\_\_\_\_

Please ensure that all information is completed.

**METHOD OF PAYMENT (Check only one)**

Charge to my:  MasterCard  VISA

Card Number \_\_\_\_\_

Signature \_\_\_\_\_ Expiry Date \_\_\_\_\_

Payment Enclosed \$ \_\_\_\_\_ Please make cheque or money order payable to the Receiver General for Canada - Publications.

Bill me later (Maximum credit \$500.)

Purchase Order Number \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Title		*Canada \$	Quantity	Total \$
Understanding the Criminal Justice System: Process chart and handbook		\$15.00		
Cheque or money order should be made payable to the Receiver General for Canada - Publications. *Canadian clients pay in Canadian funds and add 7% GST. GST # R121491807.		THANK YOU FOR YOUR ORDER!		Subtotal
		PF 000000		GST* (7%)
				Grand Total





**BON DE COMMANDE**



**ENVOYEZ À**

Centre canadien de la  
Statistique juridique  
Statistique Canada  
Ottawa (Ontario)  
Canada K1A 0T6



**COMPOSEZ**

**1-800-387-2231**  
Faites débiter votre compte VISA ou  
MasterCard.



**TÉLÉPHONÉZ AU**

**(613) 951-6615**  
VISA, MasterCard et bon de commande  
seulement. Veuillez ne pas envoyer de con-  
firmation. Le bon téléphone tient lieu de  
commande originale.

Compagnie \_\_\_\_\_

Service \_\_\_\_\_ À l'attention de \_\_\_\_\_

Adresse \_\_\_\_\_ Ville \_\_\_\_\_ Province \_\_\_\_\_

Code postal \_\_\_\_\_ Téléphone ( ) \_\_\_\_\_ Télécopieur ( ) \_\_\_\_\_

Veuillez vous assurer de remplir le bon au complet.

Titre \_\_\_\_\_

Le système de justice pénal du Canada : Guide et schéma du processus

Le chèque ou mandat-poste doit être établi à l'ordre du *Receveur général du Canada - Publications*.

\*Les clients canadiens paient en dollars canadiens et ajoutent la TPS de 7%. TPS N° R121491807

**MODALITÉS DE PAIEMENT** (cochez une seule case)

Veuillez débiter mon compte:  MasterCard  VISA

N° de carte \_\_\_\_\_

Signature \_\_\_\_\_ Date d'expiration \_\_\_\_\_

Paiement inclus \$ \_\_\_\_\_

Facturez-moi plus tard (Un crédit maximum de 500 \$.)

N° du bon de commande \_\_\_\_\_

Signature de la personne autorisée \_\_\_\_\_

Veuillez être patient avec chaque bon mandat-poste à l'ordre du  
Receveur général du Canada - Publications.

	*Canada \$	Quantité	Total \$
	15,00 \$		
		Total	
<b>MERCI DE VOTRE COMMANDE!</b>		TPS* (7%)	
PF 000000		Total général	



Statistique Canada / Statistics Canada