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Black People in Criminal Courts in Canada: An Exploration Using the Relative Rate Index

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Black people in criminal courts in Canada: An exploration using the Relative Rate Index.

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Executive summary

This report presents findings on the representation and outcomes of Black people as accused in Canadian criminal courts. This is the first time that national statistics on Black accused in criminal courts are reported in Canada.

This study addresses four key objectives:

- Identify whether the criminal court process itself contributes to the overrepresentation of Black people in the criminal justice system (CJS);
- Identify disproportionality in court outcomes of Black accused, compared to White accused, at key stages/decision points of the criminal court process;
- Identify whether other sociodemographic variables (e.g., sex and age group) affect the level of disproportionate outcomes experienced by Black people at key stages/decision points of the criminal court process; and,
- Identify areas that warrant further exploration and data development.

This study was a collaborative effort between the Research and Statistics Division at the Department of Justice Canada and the Canadian Centre for Justice and Community Safety Statistics at Statistics Canada. The data used in this study were obtained through a data linkage of records from Statistics Canada's 2016 Census of Population long-form (Census) and the Integrated Criminal Court Survey (ICCS). The linked data were used to obtain the racialized identity of accused and generate two types of metrics: 1) proportions of Black and White accused in criminal courts; and 2) the Relative Rate Index (RRI).

RRIs were calculated to measure the likelihood of Black accused encountering specific court outcomes relative to White accused. The study examines three key court outcomes (i.e., stages/decision points within the court process): 1) the final court decision (e.g., found guilty, acquitted); 2) the type of sentence received (e.g., custody, probation); and 3) the length of custodial sentence, if any. The RRI method involves calculating the rate of Black and White accused experiencing a specific court outcome based on the number of Black and White accused "at risk" of experiencing that court outcome.

Key findings indicate that Black people are overrepresented as accused in criminal courts relative to their representation in the Canadian population. Further, compared to their White counterparts, Black accused are:

- more likely to encounter a withdrawal, dismissal or discharge;
- less likely to encounter a stay of proceedings or to be found guilty (including guilty pleas);
- equally likely to be acquitted;¹
- less likely to receive a fine or a conditional sentence;
- more likely to receive probation or a custodial sentence; and,
- more likely to receive long-term custodial sentences of two or more years.

¹ This result is based on an 11-year average that masks important variations in the yearly RRIs; these were much lower from 2007-08 to 2009-10, when Black accused were less likely than White accused to be acquitted, and much higher from 2011-12 to 2013-14, when Black accused were more likely than White accused to be acquitted (see [Chart 2](#)).

These findings suggest that Canadian criminal courts are contributing to differential and disproportionate outcomes for Black accused. Some of these outcomes (e.g., more likely to be sentenced to custody) result in prolonged involvement with the CJS.

The report identifies a number of areas in which further research is necessary to better understand why disproportionality is occurring at specific stages/decision points in the criminal court process, most notably around custodial sentences. In addition, further analyses are required to better understand the representation of Black people at other key stages/decision points in the criminal court process (e.g., bail, guilty pleas).

1. Introduction

With an official policy on multiculturalism, a robust human rights framework and a culturally diverse nation, Canada has often been praised for demonstrating federal leadership in promoting diversity, inclusion and equity. However, these efforts and initiatives hide important historical and current injustices experienced by Black people in Canada. Black communities have existed and contributed to Canadian society for generations; however, their long and unique history is also characterized by colonialism, slavery, segregation, and restrictive immigration practices. Today, they continue to face challenges that arise from this historical legacy, namely systemic discrimination and inequalities in various social spheres, including the criminal justice system (CJS).

Criminal justice data disaggregated by racialized identity remain fairly limited and underreported. The available literature suggests that Black people face differential treatment in their contact with police and are disproportionately represented in custody (Wortley & Owusu-Bempah, 2022; Owusu-Bempah & Jeffers, 2022; Office of the Correctional Investigator, 2022). However, there are important data gaps on the representation of Black people in other areas of the criminal justice system, namely the courts.

This study contributes to the existing literature by providing the first estimates of Black representation among accused in Canadian criminal courts. This work also provides an indication of the extent to which Black accused experience different and disproportionate outcomes, relative to White accused, at various stages of the Canadian criminal court process. The research addresses four key objectives: 1) identify whether the criminal court process itself contributes to the overrepresentation of Black people in the CJS; 2) identify disproportionality in court outcomes of Black accused, compared to White accused, at key stages/decision points of the criminal court process; 3) identify whether other sociodemographic variables (e.g., sex and age group) affect the level of disproportionate outcomes experienced by Black accused at key stages/decision points of the criminal court process; and 4) identify areas that warrant further exploration and data development.

This work was part of the Department of Justice Canada's commitment to review the CJS and broader efforts to identify and address data gaps that hinder evidence-based decision-making. More specifically, this work is centered around Justice Canada's commitment to address systemic racism and the overrepresentation of Black people in the CJS (Office of the Prime Minister, 2021).

Relative rate indexes (RRIs) were calculated to compare court outcomes of Black accused to those of White accused² at key stages/decision points of the criminal court process. The RRI method involves comparing the rate with which a selected group (Black accused) experiences a court outcome (e.g., guilty finding, custodial sentence) to the rate of a comparison group (White accused) experiencing that same outcome. For each court stage/decision point, the RRI provides an indication of the extent to which the rate for Black accused experiencing a particular court outcome is higher than, similar to or lower than the rate for White accused.

This method has been used in different countries to assess the disproportionate level of contact of racialized groups with the CJS. For example, the United States has used the RRI method to identify and monitor the extent of disproportionate contact of racialized youth with the youth justice system (Rovner, 2014). The United Kingdom also recently used this method to identify the extent of disproportionate contact of racialized groups at key stages of the CJS (Uhrig, 2016). This method was applied for the first time in Canada to examine court outcomes for Indigenous accused in the CJS (see: [Indigenous People in Criminal Court in Canada: An Exploration Using the Relative Rate Index](#)). This report presents the analysis of outcomes for Black accused in Canada's CJS using this method and provides the first national statistics on Black accused in criminal courts.

Finally, it is important to note that RRIs only indicate the level of representation at specific junctures of the criminal court process. They do not take into account various factors that may explain the results, such as individual or offence characteristics that may have an impact on the court outcomes examined. For instance, this study did not assess whether Black and White accused differed in the types of offences they allegedly committed, which may also affect the likelihood of encountering a court outcome, such as being sentenced to custody. Further, the national level RRIs do not account for jurisdictional differences in court proceedings and reporting standards of court outcomes. Finally, RRIs do not provide an explanation of why disproportionality may be occurring at specific stages of the criminal court process. To address these questions, the report references existing studies that provide insight as to why the observed outcomes may be occurring. In other instances, the report identifies the need to undertake additional studies to better understand the outcomes.

1.1 Context

The focus of this report is not to examine the issue of overrepresentation of Black people in the CJS compared to their representation in the Canadian population, but rather to better understand the differential and disproportionate outcomes of Black accused compared to White accused in criminal courts. However, it remains important for readers to understand the broader context in which these disproportionate outcomes are occurring, including the factors that have led to overrepresentation.

Available data indicate that Black people are overrepresented in Canada's criminal justice system, both as victims/survivors and convicted persons. In 2020/2021, Black people accounted for 9% of the total federal correction population, while representing 4% of the Canadian population (Correctional Service of Canada, n.d.; Statistics Canada, 2022). Additionally, Black people are overrepresented as both victims and accused in homicide incidents (Statistics Canada, n.d.-a; Statistics Canada, n.d.-b). A higher proportion of Black people have also reported experiencing physical or sexual abuse by an adult before the age of 15 (Statistics Canada, 2018).

² Any reference to the term "White" in the report includes individuals who identified as neither Indigenous nor as a visible minority on the 2016 Census of population long-form (see methodology for more information).

The historical, social, political and economic contexts of Black people's lives in Canada have been shaped by systemic anti-Black racism and discrimination that remain present to this day. The following sections discuss factors influencing the past and present experiences of Black people in Canada: enslavement, segregation, discriminatory immigration policies, socio-economic marginalization, and experiences in the CJS.

Enslavement

Black people have played an integral role in Canada's prosperity; however, their slavery and exploitation was a part of Canadian society for over 200 years, dating as far back as the 1600s, long before Canada became a nation (Saney, 1998; McRae, 2022; Owusu-Bempah & Jeffers, 2022). The abolishment of enslavement in 1834 (McRae, 2022) did not end the oppression of Black people in Canada (Owusu-Bempah & Jeffers, 2022). The effects of slavery resulted in an inferior status for Black people, which had a significant impact on their participation in Canadian society (Aiken, 2007; Bolaria & Li, 1988). Many of those freed from enslavement worked as indentured servants, performing unpaid labour for several years after their enslavement before finally going free (McRae, 2022). Black people were seen as a source of cheap labour by colonial governments, and were often paid far less than their White counterparts (McRae, 2022; Saney, 1998). This income disparity is still present. In 2015, across Canada, the median income of Black men is about \$41,100 compared to \$55,800 for non-Black men, while Black women were earning a median income of about \$35,600 compared to about \$39,600 for non-Black women (Do, 2020; Owusu-Bempah & Jeffers, 2022).

Racial segregation

Racial segregation is the process by which people are separated, excluded or denied equal access to opportunities and services based on their perceived racial characteristics (Henry N. , 2021). In Canada, racial segregation of Black people has historically been enforced through laws and social norms that have impacted all spheres of society (Henry N. , 2021; Saney, 1998). By the mid-1800s, segregated schools were enacted in Ontario and Nova Scotia to keep Black students separate from White students; the last segregated schools closed in 1965 in Ontario and in 1983 in Nova Scotia (Henry N. , 2021). There are many instances of land titles with restrictive covenant clauses that prevented Black people from buying or renting properties (*Ibid.*). In employment, Black people were often assigned to lower service positions, such as waiters, janitors, domestic servants and sleeping car porters, regardless of their education level (*Ibid.*). When workers started organizing trade unions in the end of 1800s, Black people were systematically denied membership from these unions (*Ibid.*). When Black men joined the army, they were forced at times to serve in a separate unit (*Ibid.*). Racial segregation was also present in various public recreational facilities and commercial establishments across Canada (e.g., in theatres; barber shops, restaurants, hotels, cemeteries, public transportation; *Ibid.*).

Discriminatory immigration and deportation policies

Discriminatory immigration policies have greatly impacted Black people's entry into Canada over time. Historically, Black people were excluded from subsidized settlement opportunities in Canada, which greatly restricted their admission to the country in the 1800s (Aiken, 2007).³ Past immigration policy in

³ Towards the end of the 1800s and beginning of the 1900s, the Government of Canada offered free land in the West and other incentives to encourage people to immigrate and exploit these lands (Yarhi & Regehr, 2006). However, Black people, along with other racialized people, were excluded from these opportunities (*Ibid.*).

Canada specifically prohibited Black American immigrants (1911), while ongoing restrictions to Black people's immigration have resulted in further segregation and discrimination against Black people in Canada (Henry N. , 2021; Owusu-Bempah & Jeffers, 2022). To this day, Black immigrants and refugees continue to face anti-immigrant and anti-refugee sentiments, as well as xenophobia (Owusu-Bempah & Jeffers, 2022).

Black people admitted to Canada as non-citizens face significant barriers to permanent residency and citizenship associated with domestic workers and other employment based programs. For example, the regime under the *Immigration and Refugee Protection Act* (IRPA) and Regulations implemented in 2002 does not favour Black workers and leads to them being considered as non-skilled workers (Aiken, 2007; IRPA, 2001). Further, discrimination is also embedded in deportation policies, which reinforce processes that prevent Black people from remaining in the country on the grounds of being a "danger to the public."⁴ This is particularly concerning for Black people who experience over-policing and racial profiling in their communities, which enhance their likelihood of coming in contact with the CJS (Owusu-Bempah & Jeffers, 2022; Davis-Ramlochan, 2013; Gordon, 2006; Henry & Tator, 2006).

Socio-economic marginalization

Research shows a strong relationship between the overrepresentation of Black people in the CJS and the discrimination and marginalization they face in other socio-economic areas such as child welfare, education and employment. Black children are overrepresented in child welfare cases (Colley, 2019; Owusu-Bempah & Jeffers, 2022; Ontario Association of Children's Aid Societies, 2016). Because much of the literature on parenting is grounded in Eurocentric parenting practices, Canadian professionals may misrecognize certain parenting styles as requiring intervention (Okpokiri, 2021). This can result in children being removed unnecessarily from Black families instead of parents being provided with the appropriate supports needed (Owusu-Bempah & Jeffers, 2022). Contact with child welfare systems has been shown to increase the likelihood of criminal justice contact later in life (Owusu-Bempah & Jeffers, 2022; Jonson-Reid & Barth, 2000; Owusu-Bempah K., 2010).

The relationship between the education system and the CJS is well established, with academic underperformance, absence from school, and failure to graduate increasing the likelihood of involvement in the CJS (Owusu-Bempah & Jeffers, 2022; Groot & Van Den Brink, 2010; Lochner & Moretti, 2004; Maynard, 2017). This is a concern for Black students, as research suggests that education systems are not properly equipped to address their educational, emotional and developmental needs, thus leading to higher rates of academic issues (Owusu-Bempah & Jeffers, 2022; DasGupta & al., 2020).

Black people also face discrimination and exclusion in the labour market (Owusu-Bempah & Jeffers, 2022; Henry & Ginzberg, 1985; Douthwright, 2017). The unemployment rate among Black people in Canada is approximately twice that of the rest of the population (Do, 2020). Further, Black people who are employed face systemic discrimination when it comes to their earnings (Do, 2020; Owusu-Bempah & Jeffers, 2022). This results in Black people in Canada facing greater poverty and being overrepresented in disadvantaged neighbourhoods that lack appropriate resources and have higher rates of criminal activity and victimization, which in turn lead to further contact with the police and the CJS (Owusu-Bempah & Jeffers, 2022; Hulchanski, 2010; Meng, 2017).

⁴ Bill C-44, introduced in 1995, brought new changes to the *Immigration Act* that implemented the notion of "danger to the public" (Davis-Ramlochan, 2013). Under this Bill, the Minister had the authority to remove a permanent resident considered a "danger to the public" (*Ibid.*). A person convicted of certain offences constituted grounds for deportation (Davis-Ramlochan, 2013; Chan, 2005; Barnes, 2009).

Finally, the relationship between the socio-economic marginalization of Black people and their experiences in the CJS is not unidirectional. For example, the over-criminalization of Black men, among other factors, has led to high proportions of single Black parents, which reproduces socio-economic inequities among Black families and communities (Owusu-Bempah & Jeffers, 2022; Houle, 2020).

Criminal justice system experiences among Black people in Canada

Black people have historically faced differential and negative treatment in the CJS. Studies conducted in Toronto have found that Black people report higher rates of police stop and search activity than those from other backgrounds (Wortley & Owusu-Bempah, 2022) and are overrepresented among those involved in use-of-force incidents with the police and in investigations conducted by the Special Investigation Unit (SIU) (Wortley, Lanionu, & Laming, 2020).

Black people have also faced discrimination within the courts. Available research suggests that the courts use a much tougher approach when dealing with Black youth (Owusu-Bempah & Jeffers, 2022). Additionally, in Toronto, studies show that the conviction rate for Black people is 3.2 times greater than that of White people (Wortley & Jung, 2020). However, Black people are also overrepresented in withdrawn charges, dismissals and acquittals, which may be indicative of racial bias in policing that leads to Black people being charged with offences without merit (*Ibid.*).

Black people are overrepresented in federal correctional services (Correctional Service of Canada, n.d.) and in provincial correctional services in four reporting jurisdictions, including Nova Scotia, Ontario, Alberta and British Columbia (Statistics Canada, n.d.-c; Statistics Canada, n.d.-d). Black people are also disproportionately represented among federal offenders involved in use-of-force incidents (Office of the Correctional Investigator, 2022). Owusu-Bempah & Jeffers (2022) found that Black youth reported negative experiences in custody, including racist comments, dehumanization and neglect as well as violence and physical abuse from others in custody and staff.

2. Method

2.1 Procedures and measures

This study uses the same methodology and datasets as a separate recent study that focused on Indigenous people in criminal courts (Saghbini, Bressan, & Paquin-Marseille, 2021). This project was a collaborative effort between the Research and Statistics Division at the Department of Justice Canada and the Canadian Centre for Justice and Community Safety Statistics at Statistics Canada. The data presented in this report were obtained through a data linkage: records from Statistics Canada's 2016

Census of Population long-form (Census)⁵ and the Integrated Criminal Court Survey (ICCS)⁶ were assessed and linked based on the probability that they belonged to the same person. Both the ICCS appearance and charge files were required to complete the linkage since each file contained specific information on the court outcomes examined in this study. More specifically, data from the ICCS appearance file with personal identifiers were first sent to the Social Data Linkage Environment (SDLE)⁷ to identify unique individuals. These individuals were then linked back to the ICCS charge file, which is composed of charges for completed court cases (i.e., cases where all charges received a final decision).⁸ To obtain the Black identity of ICCS accused, individuals from the ICCS charge file were linked to the long form Census, which was administered to 25% of the Canadian population. The ICCS cohort had a linkage rate of 13% (or 52% of the possible 25%). In order to make inferences to the entire population of ICCS individuals, Census weights were adjusted to match the complete ICCS cohort.⁹ Within the ICCS cohort, only individuals who had a completed court case and were linked to the Census were retained for this study, along with their weights and Black identity.

The data obtained through the data linkage procedure are national in scope and include information from 11 provinces/territories. Data from Quebec and Alberta were excluded since the personal identifiers required for linkage were not available in the ICCS.¹⁰

The “Visible minority group” variable in the Census was used to create two study groups: Black accused and White accused. The term “Black accused” represents those who identified as Black on the 2016

⁵ The Census (long-form) is a sample-based and mandatory survey, conducted every five years, that provides demographic, social and economic information on Canada’s population. The Census excludes Canadian citizens living temporarily in other countries, full-time members of the Canadian Forces stationed outside Canada, persons living in institutional collective dwellings such as hospitals, nursing homes and penitentiaries, and persons living in non-institutional collective dwellings such as work camps, hotels and motels, and student residences.

⁶ The ICCS collects data from administrative court records and maintains a national database of statistical information on appearances, charges and cases in both youth and adult criminal courts. The Survey covers only provincial and superior courts and excludes appeal courts, federal courts and the Supreme Court of Canada.

⁷ The SDLE at Statistics Canada promotes the use of existing administrative and survey data to address important research questions and inform socioeconomic policy through record linkage. The SDLE expands the potential of data integration across multiple domains, such as health, justice, education, and income through the creation of linked analytical data files without the need to collect additional data from Canadians.

⁸ A final decision consists of a finding of guilt (including guilty pleas), an acquittal, a stay of proceedings, charges being withdrawn by the prosecution, a case being dismissed or an accused being discharged, a verdict of not criminally responsible, and other decisions, such as mistrials, special pleas (e.g., *autrefois acquit*) and being unfit to stand trial.

⁹ The maximum linkage rate possible was 25% since only 25% of the Canadian population received the Census long-form questionnaire. Census weights were used to represent the entire population based on the information gathered from the sample, such as sociodemographic information. The ICCS cohort had a 13% linkage rate to the records of the Census. Census weights were re-adjusted to represent the remaining 87% of the cohort that did not link using information available in the ICCS dataset. This means that each person from the cohort who linked to the Census represents a certain number of persons in the total cohort based on specific characteristics, which include the age, the sex, the region, and the common offence classification group.

¹⁰ As of 2005-06, all provinces and territories report provincial/territorial court data to the ICCS. Most provinces and territories also report superior court data, with the exception of Ontario, Manitoba, Saskatchewan, and until 2018-19, Prince Edward Island.

Census.¹¹ For the purpose of this study, the term “White accused” includes individuals identified as neither Indigenous, nor as a visible minority¹² (hereinafter “racialized group”) in the Census.

The linked data for Black and White groups were used to generate two types of metrics: 1) proportions of Black and White accused in criminal courts; and 2) Relative Rate Index.

1) Proportions of Black and White accused in criminal courts

To obtain the representation of Black people as accused in criminal courts, proportions of both Black and White accused were calculated based on the total number of accused in the ICCS. These were contrasted with the proportions of Black and White people in the Canadian population, which were calculated using the total Census population. For comparison purposes, individuals under 12 years of age were excluded from the Census population counts, as individuals within this age group are excluded in the ICCS.¹³ Proportion data (both ICCS- and Census-based) were generated for the three most recent Census years for which there were exact population counts: 2006, 2011 and 2016.¹⁴

2) Relative Rate Index

The RRI method measures the likelihood of a selected group (Black accused) encountering an outcome (e.g., guilty finding, custodial sentence) relative to a reference group (White accused) encountering the same outcome. In this study, RRIs were calculated by dividing the rate of Black accused experiencing a court outcome by the rate of White accused experiencing the same outcome (see [Annex 1](#)). These rates are based on the number of Black and White accused experiencing a court outcome out of the total number of Black and White accused, respectively, “at risk” of experiencing the outcome. The term “at risk” refers to the different stages of the criminal court process; only those accused present in the court system at the previous stage are “at risk” of moving through to the next stage. For example, only those convicted—as opposed to all accused—are “at risk” of receiving a custodial sentence.¹⁵ Consequently, RRIs represent the level of disproportionality at key stages/decision points of the criminal court process, independent of any disproportionality that may have occurred at an earlier stage in the court process.

¹¹ The data presented in this study are part of Statistics Canada’s “accused file.” Therefore, the study unit is an accused. As an accused progresses through the CJS, they eventually become an offender based on their court outcomes (i.e., when found guilty). In this report, to ensure consistent terminology and avoid confusion, the term “accused” is used throughout to refer to both accused and offenders.

¹² Visible minority is defined by the Employment Equity Act as “persons, other than [Indigenous] peoples, who are non-Caucasian in race or non-white in colour.” The visible minority population consists mainly of the following groups: South Asian; Chinese; Black; Filipino; Latin America; Arab; Southeast Asian; West Asian; Korean, and Japanese. The “not a visible minority” category predominantly consists of White people, but also includes individuals that identified themselves as both White and a small subset of visible minority groups (i.e., White and Latin American or White and Arab). These individuals represent less than 1% of the “not a visible minority” category in the Census.

¹³ Children under 12 years of age are not subject to criminal prosecution in Canada.

¹⁴ For 2006 counts, all individuals (ICCS and Census population) with an invalid value for the Black identity indicator were excluded. The 2016 Census counts were compared to 2015-16 ICCS data.

¹⁵ For certain key stages (i.e., preliminary inquiry and trial), RRIs were calculated based on all accused at previous stages, since the data did not allow to identify the “at risk” group. Rates were only calculated where 30 or more individuals were “at risk” of experiencing the event or the outcome or where 10 or more individuals experienced a specific court stage/decision point. In cases where the White group had zero individuals, the RRI could not be calculated.

This RRI study examines the representation of Black accused relative to White accused at three key stages/decision points in the criminal court process: 1) court decisions;¹⁶ 2) sentencing;¹⁷ and 3) length of custodial sentences.¹⁸ In addition to the RRIs, for information purposes, data on the length of custodial sentences are also presented using the median length of custodial sentences in days as a measure (see [Annex 2](#), [Table 8](#) and [Table 10](#)).¹⁹

RRIs were generated for each of the years from 2005-06 to 2015-16.²⁰ To limit the scope of the report and facilitate reporting of results for Black and White accused, RRIs are primarily presented in the text of the report as a single average across the 11-year period (i.e., rather than as 11 separate data points). Unless otherwise stated, RRIs are reported only if the data were available for each year of the 11-year period. This allowed for consistency in the reporting timeframe across court outcomes (e.g., court decisions and sentence types), as well as sub-outcomes (e.g., guilty finding and stay of proceedings or custodial sentence and probation). Since the average RRI may hide important variations from year to year, charts presenting the yearly RRIs are included for each court outcome examined, and notable trends are discussed.

The key RRI data presented in the report capture the total ICCS population. The RRI data were broken down by age groups (adults and youth), by sex (male and female), and by type of offence (violent and non-violent). RRIs for these groups are presented in the text where the data show a different trend than that of the Black population as a whole or where disproportionality is more pronounced at a specific juncture of the criminal court process when additional variables are taken into account. These breakdowns are also reported as an average over the 11-year period. In some cases, these reported breakdowns may hide important variations over time. It should be noted that certain breakdowns, such as for youth and female accused, resulted in low sample sizes; in these cases, certain data points had to be suppressed to ensure data quality and the confidentiality of individuals.²¹ These breakdowns are therefore unavailable for certain years. In these various instances, a note was made in the report. This issue was particularly pronounced with jurisdiction-specific data where breakdowns for most jurisdictions were not available. Therefore, jurisdictional data are not presented in the text of the report. Finally, data reported in the text of the report focus on the most notable results; complete data tables, including all available breakdowns, are presented in [Annex 2](#).

¹⁶ Court decisions include: guilty; acquitted; stay of proceedings; withdrawn, dismissed and discharged; and, other (e.g., not criminally responsible, unfit to stand trial, special pleas, and waived out of province or territory).

¹⁷ Sentence types include: custody; conditional sentence; probation; fine; and, other (e.g., absolute and conditional discharge, suspended sentence, community service order, and prohibition order).

¹⁸ Other relevant court outcomes could not be included in this study due to data unavailability. These include bail hearings and decisions; pre-trial hearings, such as Charter challenges and preliminary inquiries; and trials.

¹⁹ The median represents the point at which half of all cases had longer custodial sentence lengths and half had shorter custodial sentence lengths.

²⁰ A case year refers to a twelve-month duration beginning April 1 and ending March 31, and represents the year in which all charges in the case reached a final decision. Individuals can appear across multiple years for different cases.

²¹ Census suppression rules are applied to prevent direct or residual disclosure of any information deemed confidential that could identify respondents. Consequently, jurisdictions with a population below a certain threshold are not disclosed.

2.2 Interpretation of RRI results

For each court outcome and breakdown, the average RRI of Black accused is established in comparison with that of their White counterparts, which constitute the reference group. For example, the likelihood of Black female accused being found guilty is established in comparison to White female accused being found guilty. A RRI of 1.00 means there is no disproportionality compared to the reference group. A RRI over 1.00 means that Black accused are more likely to encounter a court outcome than the reference group. A RRI lower than 1.00 means that Black accused are less likely to encounter a court outcome than the reference group.

For the purpose of this report, these thresholds were slightly adjusted. RRI values that were within four percent of the reference category (i.e., 1.00 +/- 0.04) were considered to present no disproportionality. For instance, Black accused and White accused are considered equally likely to encounter a court outcome when the RRI value is situated between 0.96 and 1.04. A RRI of 0.95 (or -5%) or less would indicate that Black accused are less likely than White accused to encounter a court outcome. A RRI of 1.05 (or +5%) or more would indicate that Black accused are more likely than White accused to encounter a court outcome.

Table 1: Reporting and interpretation of RRI results

RRI value	Data reporting	Data interpretation
1.05 or more	+5% or more	Black accused are more likely than White accused to encounter an outcome
0.96 to 1.04 (1.00 = Reference)	-4% to +4%	Black and White accused are equally likely to encounter an outcome
0.95 or less	-5% or less	Black accused are less likely than White accused to encounter an outcome

In this report, RRI values are presented as percentages (see Table 1). For example, a RRI value of 1.20 would be reported as 20% more likely or +20%. The same applies to RRI values that are less than 1.00. For example, a RRI value of 0.85 would be reported as 15% less likely or -15%. RRI values of 2.00 or greater can also be reported in multiples. For example, a RRI of 2.00 (or +100%) would be reported as twice as likely. However, charts plotting the RRI data trends over an 11-year period (presented in the findings) use the RRI values, rather than percentages.

3. Results

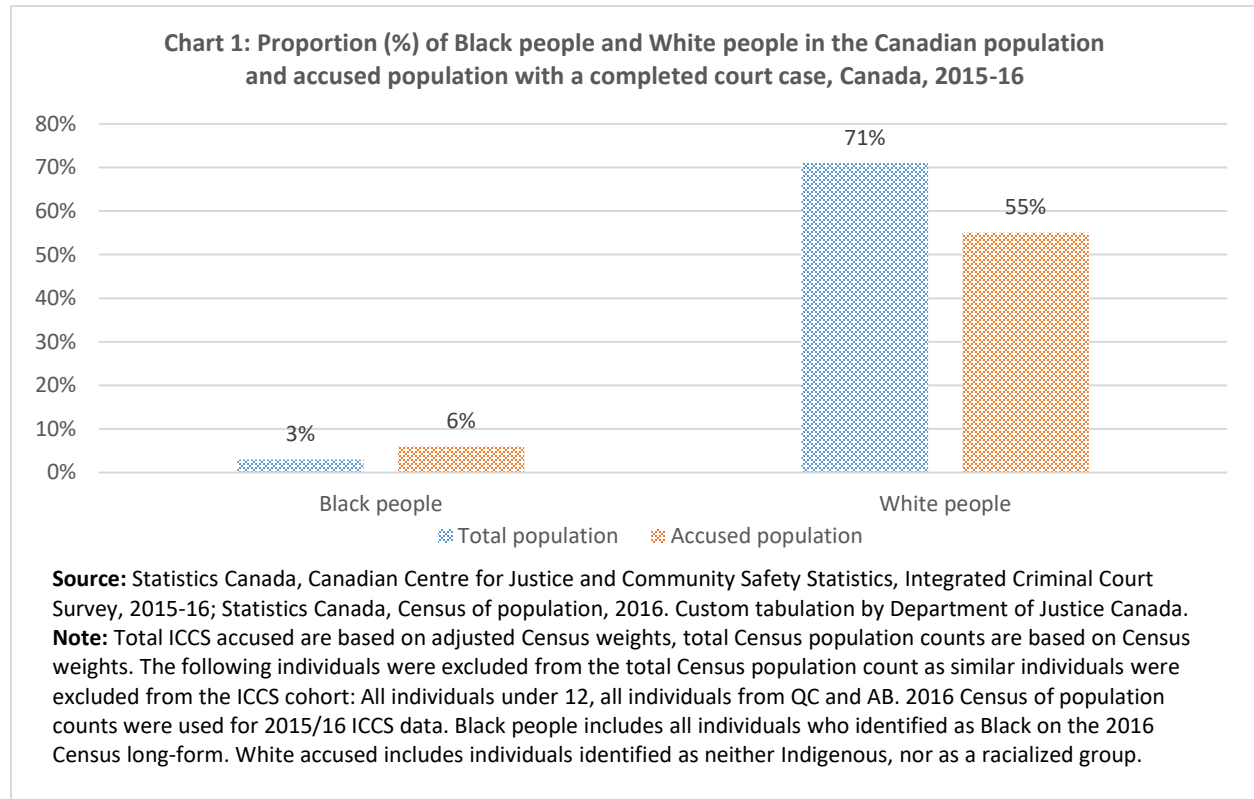
3.1. Proportion of Black accused in criminal court

Black people overrepresented in criminal court

In 2015-16, there were 199,895 accused (adults and youth) with a completed court case. Black people accounted for 6% of all accused; a proportion that is double their representation in the Canadian population (see [Chart 1](#)).²² In comparison, White people made up 55% of all accused in 2015-16 and 71% of the Canadian population in 2016. The proportions of Black people in the accused and Canadian

²² Individuals under 12 years of age were excluded from the Census population counts, as individuals within this age group are excluded in the ICCS.

populations have remained stable over the previous decade (i.e., across Census years—2006, 2011, 2016). In contrast, the proportion of White people in the accused population decreased from 63% in 2006-07 to 55% in 2015-16 while their representation in the Canadian population decreased from 78% in 2006 to 71% in 2016.



There is currently a dearth of data on Black people in other areas of the CJS. However, the available data suggests that Black people are overrepresented in correctional services, consistent with the findings of this study. In 2015-16, Black people accounted for 8% of the total offender population in federal correctional institutions (Public Safety Canada, 2016).

While data on Black people in provincial and territorial custody remain limited and underreported, previous studies have shown that Black accused are more likely to be detained prior to trial than accused from other racial backgrounds (35% vs 23%, respectively) (findings specific to Toronto; Kellough & Wortley, 2002). Recent data further show that Black people are overrepresented to varying degrees among admissions to provincial corrections in four reporting jurisdictions, namely Nova Scotia, Ontario, Alberta and British Columbia. In 2020-2021, Black adults accounted for 10% of provincial correctional admissions in Nova Scotia (vs 3% of the general adult population), 13% in Ontario (vs 5% of the general adult population), 5% in Alberta (vs 3% of the general adult population), and 2% British Columbia (vs 1% of the general adult population) (Statistics Canada, n.d.-c; Statistics Canada, n.d.-d). Additionally, Black youth, who represented almost 4% of the combined youth population in Nova Scotia, Alberta and British Columbia, accounted for approximately 10% of youth admissions to corrections in these reporting jurisdictions (Statistics Canada, n.d.-d; Statistics Canada, n.d.-e).

3.2. Relative rate index

This section presents findings using the RRI method. The purpose of these analyses is to understand whether the criminal court process produces different and disproportionate outcomes for Black accused at different junctures (stages/decision points) of the process. The results presented are based on different “at risk” groups, depending on the court stages/decision points.²³ For this reason, the disproportionality found at each stage is considered independent of the disproportionality occurring at previous stages.

3.2.1. Court decisions

This sub-section presents findings on the different court decisions encountered by individuals accused in criminal courts. Specifically, these analyses looked at all accused (group at risk) to identify whether Black accused were more or less likely than White accused to: 1) have their charges withdrawn, their case dismissed, or be discharged; 2) have their case stayed; 3) be acquitted; and 4) be found guilty.²⁴

Black accused more likely to encounter a withdrawal, dismissal and discharge, equally likely to be acquitted, and less likely to be found guilty and encounter a stay of proceedings

Withdrawal, dismissal, and discharge

In criminal court, charges may be withdrawn, a case dismissed, or an accused discharged. These dispositions all put an end to criminal court proceedings. A Crown prosecutor has the discretion to withdraw charges, which means that the charges will no longer be before the court and the prosecution will not continue. This may arise in cases where there is no reasonable prospect of conviction (Roach, n.d.), or when it is not in the public interest to continue the prosecution.²⁵ Additionally, the judge has a discretionary power to dismiss a case by not allowing it to proceed after the charges are filed. This may occur in various circumstances, including lack of prosecution (i.e., failure to take appropriate actions to properly prosecute the accused). An accused may also be discharged upon a preliminary inquiry where the court decides not to commit the accused for trial on the basis that there is insufficient evidence to prosecute (*Criminal Code*, s 548).²⁶ For the purpose of this analysis, these three outcomes were combined.

Black accused were on average 65% more likely than White accused to encounter a withdrawal, dismissal or discharge from 2005/06 to 2015/16 (see [Chart 2](#)). A greater chance of encountering this

²³ In this report, the legal terms used to refer to the different stages and decision points of the process—such as withdrawal, dismissal, discharge, stay, acquittal, finding of guilt and sentence—are defined or intended in accordance to their meaning in the *Criminal Code*. These terms apply to both the adult and youth criminal justice system. As stipulated in section 2 of the *Youth Criminal Justice Act*, “[u]nless otherwise provided, words and expressions used in this Act have the same meaning as in the *Criminal Code*.”

²⁴ In cases where there are two or more charges, a case is represented by the most serious decision. Decisions are ranked from most to least serious as follows: guilty; acquitted; stay of proceedings; withdrawn, dismissed and discharged; and other (e.g., not criminally responsible, unfit to stand trial, special pleas, and waived out of province or territory). Other decisions were not specifically examined in this study due to their lower occurrence.

²⁵ Withdrawals for alternative measures, such as completion of a diversion program under *Criminal Code* s 716 and 717, are captured under *Stay of proceedings*.

²⁶ Cases where an accused is discharged after being found guilty (absolute or conditional discharge) are captured under *Guilty finding*.

outcome was observed regardless of the sex, age group and offence type of the accused. RRI data broken down by accused characteristics and jurisdictions are provided in [Annex 2, Table 1](#) and [Table 2](#).

Stay of proceedings

A stay of proceedings is an order by the judge or the Crown prosecutor that prevents any further action on a prosecution, either temporarily or permanently (*R v Jewitt*, 1985; *Criminal Code*, s 579). A judge may enter a stay as a form of remedy under section 24(1) of the *Canadian Charter of Rights and Freedoms* when the rights of an accused have been infringed or denied (*R v O'Connor*, 1995), for example, due to unconstitutional delays in proceedings (*Canadian Charter of Rights and Freedoms*, s 11(b)). A Crown prosecutor may also enter a stay, for example, for the purpose of conducting further investigation that was previously unforeseen (Roach, n.d.), or protecting the identity of an informant (*R v Scott*, 1990). In this study, data on the decision to stay the proceedings may also include instances where charges are stayed or withdrawn due to alternative measures, extrajudicial measures or other diversion programs. It is currently not possible to distinguish between these various decisions due to data limitations.

Black accused were on average 14% less likely than White accused to encounter a stay of proceedings from 2005/06 to 2015/16 (see [Chart 2](#)). These results varied when taking into account accused characteristics. A lesser chance of encountering this outcome was observed for Black people accused of non-violent offences, Black male accused, and more notably, Black people accused of violent offences (-28%) and Black adult accused (-27%), relative to their White counterparts. Black female accused were also less likely to encounter a stay of proceedings, but to a much lesser extent (-5%). In the case of youth accused, Black and White accused were equally likely to encounter this outcome (Black = 0%). RRI data broken down by accused characteristics and jurisdictions are provided in [Annex 2, Table 1](#) and [Table 2](#).

Acquittal

An accused may be acquitted when a judge or jury returns a verdict of not guilty. From 2005-06 to 2015-16, Black accused and White accused were on average equally likely to be acquitted (Black = +2%). However, this average masks important variations in the yearly RRIs observed; these were much lower from 2007-08 to 2009-10, when Black accused were less likely to be acquitted, and much higher from 2011-12 to 2013-14, when Black accused were more likely to be acquitted (see [Chart 2](#)). An equal chance of encountering this outcome was observed for Black people accused of violent and non-violent offences,^{27 28} as well as for Black adult accused, relative to their White counterparts.²⁹ However, Black male accused were more likely (+9%) than White male accused to be acquitted.³⁰ RRI data broken down by accused characteristics and jurisdictions are provided in [Annex 2, Table 1](#) and [Table 2](#).

Guilty finding

²⁷ The average RRI for Black people accused of non-violent offences should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

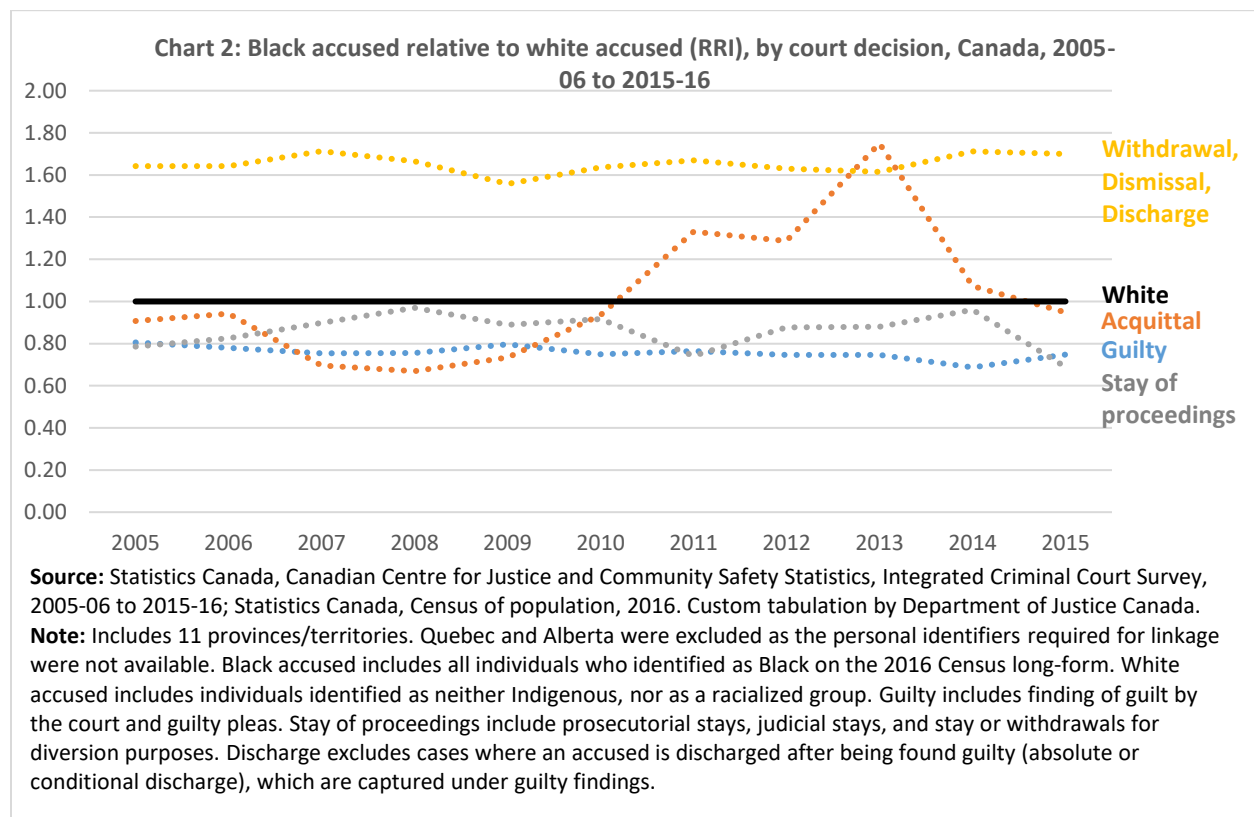
²⁸ Important variations in the yearly RRIs were observed for Black people accused of violent and non-violent offences, at times indicating contrary trends.

²⁹ RRIs specific to Black youth accused are not reported due to the unavailability of data.

³⁰ RRIs specific to Black female accused are not reported due to the unavailability of data.

Upon undergoing a trial, an accused may be found guilty and convicted of an offence. Used here, the term “guilty finding” includes both findings of guilt³¹ by the court and guilty pleas, since available data do not allow for the examination of guilty pleas on their own. Guilty findings are the most frequent type of court outcome. In 2015-16, guilty findings represented 64% and 55% of all completed cases in adult and youth criminal court, respectively; these proportions have remained fairly stable over the past decade (Statistics Canada, n.d.-f; Statistics Canada, n.d.-g).

Black accused were on average 24% less likely than White accused to be found guilty from 2005-06 to 2015-16 (see [Chart 2](#)). A lesser chance of encountering this outcome was observed regardless of the sex, age group and offence type of the accused. Black female accused were the least likely to encounter this outcome (-37%), relative to their White counterparts. RRI data broken down by accused characteristics and jurisdictions are provided in [Annex 2](#), [Table 1](#) and [Table 2](#).



Overall, Black accused were more likely to encounter a withdrawal, dismissal or discharge, less likely to be found guilty and encounter a stay, and equally likely to be acquitted (except for Black men who were more likely to be acquitted), relative to their White counterparts.

Data on the likelihood of Black accused encountering a withdrawal, dismissal or discharge may show cause for concern at the policing stage. Withdrawals, dismissals and discharges can occur, for example, due to lack of prosecution and lack of evidence to convict an accused. This trend is consistent with previous research that suggests that Black people may be more vulnerable to unnecessary charges with

³¹ Guilty findings include findings of guilt for the charged offence, but can also include findings of guilt for an included offence, an attempt of the charged offence, or an attempt of an included offence, as well as cases where an absolute or conditional discharge has been imposed.

a low probability of conviction that are eventually withdrawn or dismissed (Wortley & Jung, 2020). These findings may be an indication of racially motivated differential and biased police treatment whereby Black people are more likely to be charged with offences, even in cases where charges should not proceed, thus introducing Black people to the court system unnecessarily (Owusu-Bempah & Jeffers, 2022).

3.2.2. Sentencing outcomes

This sub-section presents findings on the different sentencing outcomes of criminal court cases with a guilty disposition. Specifically, these analyses looked at all accused who were found guilty (group at risk) to identify whether Black accused were more or less likely than White accused to obtain: 1) fines; 2) probation sentences; 3) conditional sentences; and, 4) custody sentences.³²

Among those found guilty, Black accused less likely to receive a fine and a conditional sentence, and more likely to be sentenced to custody and to receive probation

Upon being found guilty of an offence, an individual receives a sentence based on a number of factors and principles (*Criminal Code*, s 718, s 718.1 and s 718.2). Possible sentences, in order of seriousness from least to most, include fines, probation, conditional sentence and custody.³³

Fine

A court may impose that an accused pays a fine as their sentence. Unless it is a mandatory fine, courts must be satisfied that the offender has the ability to pay or is able to discharge it under a fine option program. Among all those found guilty, Black accused were on average 46% less likely than White accused to receive a fine from 2005-06 to 2015-16 (see [Chart 3](#)). A lesser chance of encountering this outcome was also observed among Black male and female accused, adult accused, and those accused of non-violent offences.³⁴ RRI data broken down by accused characteristics and jurisdictions are provided in [Annex 2, Table 3](#) and [Table 5](#).

Probation

A probation order (up to three years) may be imposed as a standalone sentence or in addition to a fine or to a term of imprisonment of no more than 2 years (*Criminal Code*, s 731). Probation allows an offender to serve their sentence in the community under conditions prescribed in the order. In 2015-16, probation was one of the most common sentence in both adult criminal and youth courts, representing 43% and 56% of all sentences ordered in guilty cases, respectively (Statistics Canada, n.d.-h; Statistics Canada, n.d.-i).

³² The data presented in this study are part of Statistics Canada's "accused file." Therefore, the study unit is an accused. As an accused progresses through the CJS, they eventually become an offender based on their court outcomes (i.e., when found guilty). In this report, to ensure consistent terminology and avoid confusion, the term "accused" is used throughout to refer to both accused and offenders.

³³ It is possible to receive more than one type of sentence in relation to a single guilty charge in a case. These findings are based on the most serious sentence in a case. Other sentences include, among others, absolute and conditional discharge, suspended sentence, community service order and prohibition order. Other sentences, which are the least serious sentence types, are often used in combination with other more serious sentences. These were not specifically examined in this study due to their lower occurrence as a most serious sentence.

³⁴ RRIs specific to Black youth accused and those accused of violent offences are not reported due to the unavailability of data.

Among all those found guilty, Black accused were on average 13% more likely than White accused to receive a probation sentence from 2005-06 to 2015-16 (see [Chart 3](#)). A greater likelihood of encountering this outcome was observed for Black male and female accused, Black adult accused and Black people accused of non-violent offences, relative to their White counterparts. However, Black youth accused and Black people accused of violent offences were less likely to encounter this outcome (-17% and -8%, respectively), compared to their White counterparts. RRI data broken down by the accused characteristics and jurisdictions are provided in [Annex 2](#), [Table 3](#) and [Table 5](#).

Conditional sentence

A conditional sentence is a term of imprisonment of less than two years that may be served in the community under strict conditions (*Criminal Code*, s 742.1).³⁵ Courts must be satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing.³⁶ Conditional sentences were introduced by Parliament in 1996 as part of sentencing reforms (former Bill C-41) in an attempt to decrease the use of custody sentences in Canada.³⁷

Among all those found guilty, Black accused were on average 9% less likely than White accused to receive a conditional sentence from 2005-06 to 2015-16. Important variations were observed in the yearly RRIs; these were higher in earlier years, even indicating a greater likelihood among Black accused of obtaining this outcome in 2005-06, 2006-07 and 2008-09, and showed a downward trend in more recent years (see [Chart 3](#)). Results varied when taking into account accused characteristics. A lower likelihood of encountering this outcome was predominantly found for Black male accused (-9%) and more notably, Black people accused of violent offences (-29%). Black adult accused, Black female accused, and Black people accused of non-violent offences were equally likely as their white counterparts to encounter this sentencing outcome.³⁸ RRI data broken down by the accused characteristics and jurisdictions are provided in [Annex 2, Table 3](#) and [Table 5](#).

Custodial sentence

A custodial sentence is considered the most restrictive type of sentence as it involves a term of imprisonment. The *Criminal Code* directs courts not to deprive offenders of their liberty if less restrictive sanctions are appropriate in the circumstances.

Among all those found guilty, Black accused were on average 24% more likely than White accused to be sentenced to custody from 2005-06 to 2015-16 (see [Chart 3](#)). These results showed varying trends when considering specific accused characteristics. A greater likelihood of encountering this sentencing outcome was observed for Black adult accused, Black male accused and both Black people accused of violent and non-violent offences. The likelihood of being sentenced to custody was much more pronounced in the case of Black youth accused, who were more than twice as likely (+103%) as their White counterparts to be sentenced to custody. Black female accused showed a different trend; they were 21% less likely than their White counterparts to encounter this sentencing outcome.³⁹ RRI data broken down by accused characteristics and jurisdictions are reported in [Annex 2, Table 3](#) and [Table 5](#).

³⁵ While a conditional sentence may be similar to a probation sentence in that they are both served in the community, they present multiple differences. A probation sentence is primarily a rehabilitative sentencing tool, while a conditional sentence seeks to fulfill punitive and rehabilitative sentencing objectives (*R v Praultx*, 2000).

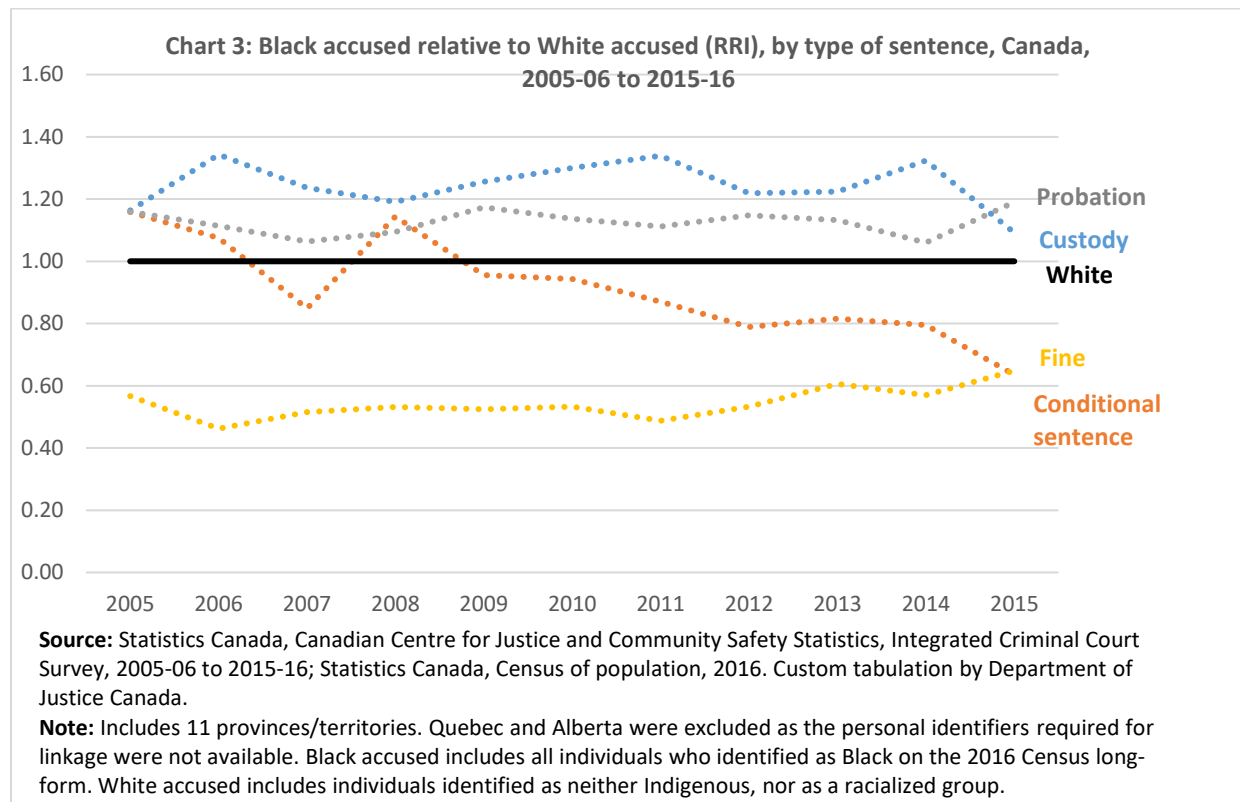
³⁶ Conditional sentences are unavailable for certain offences, including offences punishable by a mandatory minimum term of imprisonment.

³⁷ In November 2022, the Government passed former *Bill C-5, An Act to Amend the Criminal Code and the Controlled Drugs and Substances Act*. Among other reforms, the new law increased the availability of conditional sentences, allowing judges to impose sentences that reflect the seriousness of the offence while maintaining public safety. While these amendments were not applicable during the timeframe covered by this study, these new provisions may affect future trends.

³⁸ RRIs specific to Black youth accused are not reported due to the unavailability of data.

³⁹ The average RRI for Black female accused receiving a custodial sentence should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

Since these results indicate that Black accused were more likely than White accused to receive a probation sentence as well as more likely to obtain a custodial sentence, further analyses were completed to examine whether Black accused were more or less likely to receive a probation sentence over a custody sentence. Among accused who received either a probation or a custody sentence, Black accused were on average equally likely to White accused to receive probation (Black accused = -3%) from 2005/06 to 2015/16. An equal chance of encountering this outcome was found for Black adult accused and Black people accused of non-violent offences. However, results differed for other groups; a lesser chance of obtaining probation over custody was observed for Black male accused (-5%), Black people accused of violent offences (-7%), and even lesser in the case of Black youth accused (-14%), relative to their White counterparts. Additionally, a greater chance of obtaining probation over custody was observed for Black female accused (+8%).⁴⁰ RRI data broken down by accused characteristics and jurisdiction are provided in [Annex 2](#), [Table 4](#) and [Table 6](#).



While the findings in this study suggest that Black accused are less likely to be found guilty (including guilty pleas), among those that are found guilty, Black accused are more likely to receive a custodial sentence. Additionally, they are more likely to receive probation and less likely to receive a fine or a conditional sentence, relative to their White counterparts, with a few exceptions when considering other accused characteristics.

⁴⁰ The average RRI should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

While findings on custodial sentences are not new in that accounts of the overrepresentation of Black people in custody have been previously documented (Office of the Correctional Investigator, n.d.) , they are a cause for concern as previous research has shown that the further an individual proceeds through the justice system (e.g., police, courts, corrections) the more likely they are to reoffend and return to the system (Brennan & Matarazzo, 2016). This is particularly concerning for Black youth as they are twice as likely to be sentenced to custody.

While the *Youth Criminal Justice Act* has been successful at reducing youth incarceration by taking an approach that is more oriented towards rehabilitation (Statistics Canada, n.d.-j), the level of incarceration for Black youth accused has not decreased to the same extent. This may indicate the need for the broader and more systematic use of Impact of Race and Culture Assessments (IRCAs). IRCAs are pre-sentencing reports that provide information to sentencing judges to better understand how an offender’s lived experiences of systemic racism and subsequent poverty, marginalization, and social exclusion, can inform the circumstances of the offender and the offence committed. This in turn helps judges to factor in the impact of systemic racism during sentencing to explore alternatives to incarceration and/or culturally appropriate accountability measures within a sentence of incarceration.

3.2.3. Length of custodial sentences

This sub-section presents findings on the length of custodial **sentences**. Specifically, these analyses looked at all accused who were sentenced to custody (group at risk) to identify whether Black accused were more or less likely than White accused to obtain varying custodial terms. The ICCS categorizes custodial terms into six groups: 1) “1 month or less”; 2) “greater than 1 month to 3 months”; 3) “greater than 3 months to 6 months”; 4) “greater than 6 months to 12 months”; 5) “greater than 1 year to less than 2 years”; and, 6) “2 years or more.”^{41,42} However, in this study, data were not available for custodial lengths “greater than 1 year to less than 2 years.” For the purpose of this report, custodial terms have been grouped into three categories: short-term custodial sentence (“1 month or less” and “greater than 1 month to 3 months”), medium-term custodial sentence (“greater than 3 months to 6 months” and “greater than 6 months to 12 months”), and long-term custodial sentence (“2 years or more”).

The length of custodial sentences determines which correctional service will have jurisdiction over an individual. Provincial or territorial correctional services have jurisdiction over individuals sentenced to a custodial term of less than two years, while federal correctional services have jurisdiction over individuals sentenced to a custodial term of two years or more.

Among those sentenced to custody, Black accused more likely to receive a long-term custodial sentence of two years or more

Short-term custodial sentence (“1 month or less” and “greater than 1 month to 3 months”)

⁴¹ The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custodial sentence represents the full sentence.

⁴² Data on the length of custodial sentences are not available for Manitoba. Additionally, from 2005-06 to 2015-16, information on the remaining length of custody was unknown for 4% to 13% of guilty cases with a custodial sentence.

Among those sentenced to custody, Black and White accused were equally likely to receive a custodial term of “1 month or less” (Black accused = -3%) from 2005-06 to 2015-16 (see [Chart 4a](#)). An equal chance of encountering this outcome was found for Black male and female accused,⁴³ Black adult accused and Black people accused of non-violent offences. However, a different trend was observed when taking into account other accused characteristics. Black youth (-12%) were less likely than their White counterparts to encounter this outcome. In the case of violent offences, Black accused were also less likely to encounter this outcome, but to a much lesser extent (-5%). RRI data broken down by accused characteristics and jurisdictions are reported in [Annex 2, Table 7](#) and [Table 9](#).

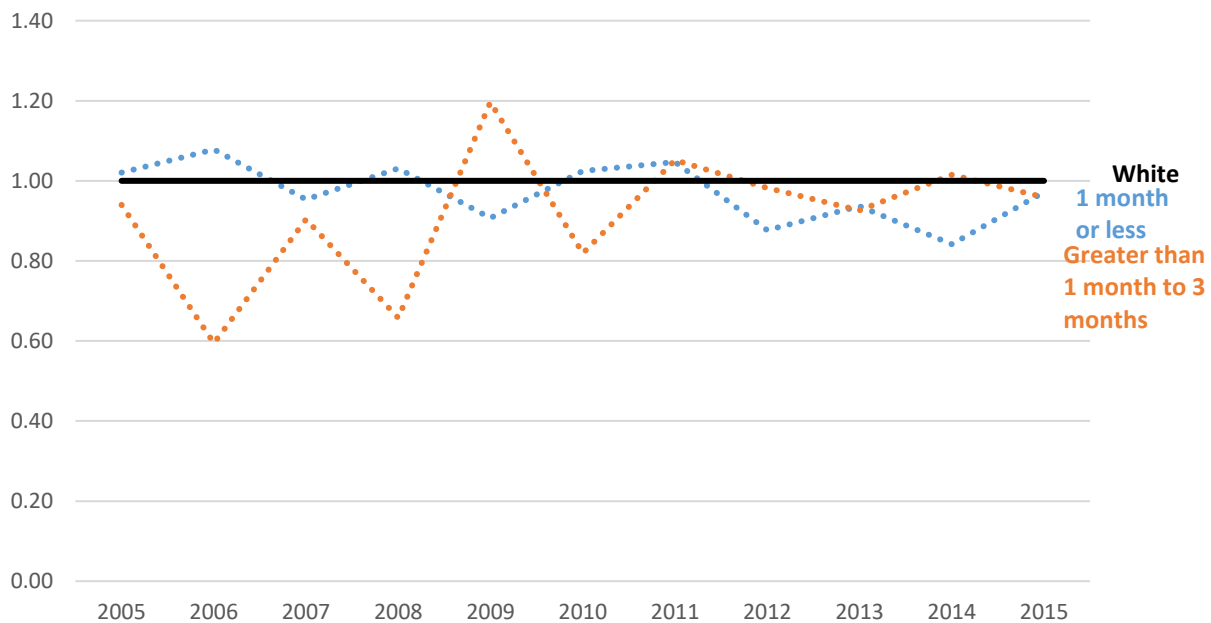
Furthermore, Black accused were on average 9% less likely than White accused to receive a custodial term “greater than 1 month to 3 months” from 2005-06 to 2015-16. There were marked variations across the 11-year reference period; Black accused were less likely to encounter this outcome in earlier years and from 2005-06 to 2008-2009, more likely in 2009-10 and almost equally likely in more recent years (see [Chart 4a](#)). A lesser chance of encountering this outcome was also found when taking into account specific accused characteristics. Black adult accused (-10%),⁴⁴ Black male accused (-10%)⁴⁵ and Black people accused of non-violent offences (-16%) were all less likely than their White counterparts to encounter this outcome. In the case of violent offences, Black and White accused were equally likely to receive this custodial sentence (Black = +1%). RRI data broken down by accused characteristics and jurisdictions are reported in [Annex 2, Table 7](#) and [Table 9](#).

⁴³ The average RRI for Black female accused receiving a custodial term of “1 month or less” should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

⁴⁴ RRIs specific to Black youth accused are not reported due to the unavailability of data.

⁴⁵ RRIs specific to Black female accused are not reported due to the unavailability of data.

Chart 4a: Black accused relative to White accused (RRI) who received a short-term custodial sentence, Canada, 2005-06 to 2015-16



Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

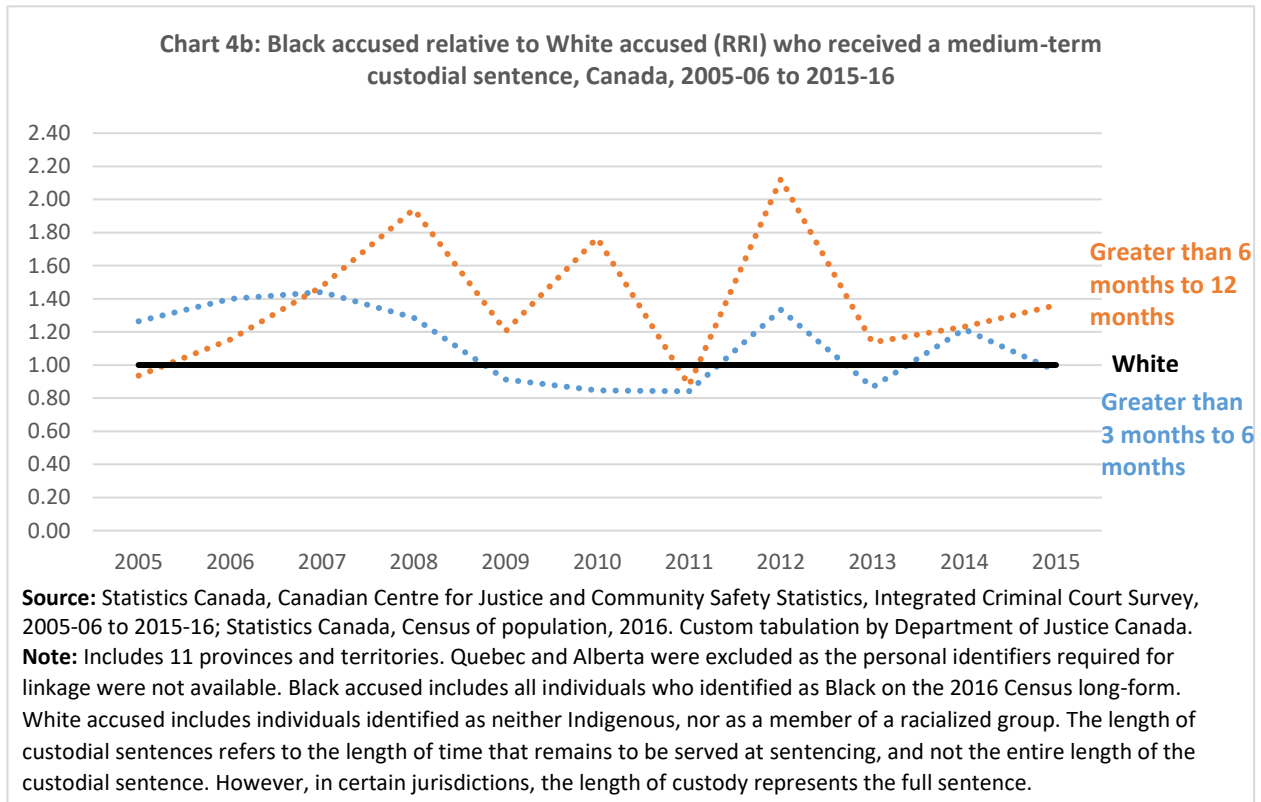
Note: Includes 11 provinces and territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a racialized group. The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence.

Medium-term custodial sentence (“greater than 3 months to 6 months” and “greater than 6 months to 12 months”)

Overall, a different trend was observed for medium-term custodial sentences as Black accused were more likely to encounter this outcome. Among all those sentenced to custody, Black accused were on average 12% more likely than White accused to receive a custodial term “greater than 3 months to 6 months” from 2005-06 to 2015-16. The yearly RRIs also showed important variations; these were generally higher between 2005-06 to 2008-09, and lower between 2009-10 to 2011-12 and in 2013-14, when Black accused were in fact less likely to encounter this custodial term, which may affect the average RRI (see [Chart 4b](#)). A greater chance of encountering this outcome was observed for Black adult accused, Black male accused and Black people accused of non-violent offences.⁴⁶ RRI data broken down by accused characteristics and jurisdictions are provided in [Annex 2](#), [Table 7](#) and [Table 9](#).

⁴⁶ RRIs specific to Black youth accused, Black female accused, and Black people accused of violent offences are not reported due to the unavailability of data.

To a greater extent, Black accused were on average 38% more likely to receive a custodial term “greater than 6 months to 12 months” from 2005-06 to 2015-16. The yearly RRIs showed notable fluctuations; they were much higher in 2008-09, 2010-11 and 2012-13, and much lower in 2005-06 and 2011-12, which can affect the average RRI (see [Chart 4b](#)). A greater chance of encountering this outcome was observed for Black adult accused and Black male accused, relative to their White counterparts.⁴⁷ RRI data broken down by accused characteristics and jurisdictions are provided in [Annex 2, Table 7](#) and [Table 9](#).



Long-term custodial sentence (“2 years or more”)

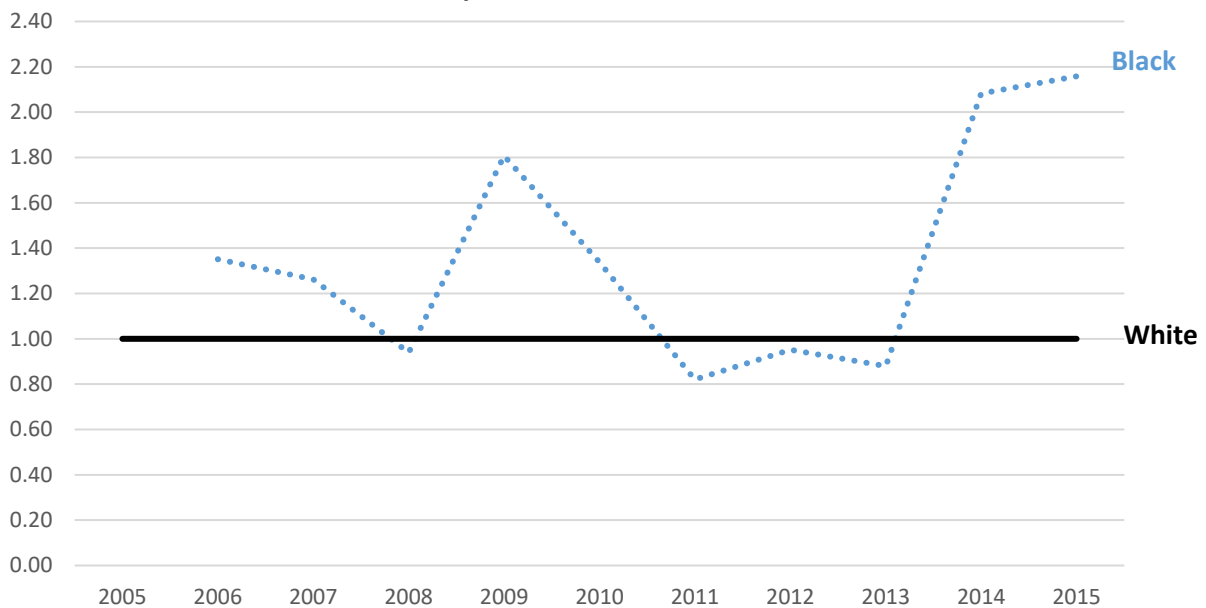
A similar trend was observed for Black accused receiving a long-term custodial sentence of two years or more. Among all those sentenced to custody, Black accused were on average 36% more likely than White accused to receive a custodial term of “two years or more” from 2006-07 to 2015-16.⁴⁸ The yearly RRIs showed important variations; they were lower in 2008-09 and between 2011-12 and 2013-14, indicating that Black accused were equally as or less likely than White accused to receive a long-term custodial sentence, and much higher in 2009-10, 2014-15 and 2015-16, which can affect the average RRI (see [Chart 4c](#)). A greater chance of encountering this outcome was observed for Black adult accused and Black male accused, relative to their White counterparts.⁴⁹ RRIs broken down by accused characteristics are provided in [Annex 2, Table 7](#) and [Table 9](#).

⁴⁷ Other accused characteristics are not reported due to the unavailability of data.

⁴⁸ The average RRI should be used with caution as the average was calculated based on a ten-year period due to the unavailability of data in 2005-06.

⁴⁹ Other accused characteristics are not reported due to the unavailability of data.

Chart 4c: Black accused relative to White accused (RRI) who received a custodial sentence of two years or more, Canada, 2006-07 to 2015-16



Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces and territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a member of a racialized group. The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence.

In sum, Black accused were equally or less likely to be the subject of short custodial terms and more likely to encounter a medium or a long custodial term, with a few exceptions when taking into account other sociodemographic variables and the offence type.

It is important to note that the RRI method does not take into account the multiple factors that may affect the length of custodial sentences, such as aggravating and mitigating factors, the criminal record of an accused and the severity of the offence. In fact, the findings above could be further explained by differences between Black and White accused in the severity of offences or in the offences being subject to mandatory minimum penalties. Previous research has shown that, over a ten year period (from 2010-11 to 2019-20), Black offenders were more likely than White offenders to be admitted to federal custody for an offence punishable by a mandatory minimum penalty (53% of Black offenders vs 46% of White offenders) (Department of Justice, 2022). That said, previous literature has also shown that Black accused tend to be sentenced more harshly than White counterparts (Owusu-Bempah & Jeffers, 2022; Commission on Systemic Racism in the Ontario Criminal Justice System, 1995).

4. Conclusion

The overrepresentation of Black people in the CJS is a complex issue, for which the causes are deeply rooted in Canada’s history of colonialism, slavery, segregation, and restrictive immigration practices. The impacts of this history are still very much present today, in the form of systemic racism, marginalisation

and discrimination in various social spheres. There is a dearth of quantitative data disaggregated by race from criminal justice agencies. This presents a significant challenge to inform evidence-based policy decisions. This study intends to address some of these gaps by providing national statistics on Black people in criminal court for the first time. Specifically, this study provided an indication of whether the criminal court process itself contributes to the overrepresentation of Black people in the CJS. The RRI analysis also pinpointed key stages/decision points where Black and White accused experience different and disproportionate court outcomes. Finally, this study identified areas that warrant further exploration and data development with regards to Black people in criminal courts, and more broadly, the CJS.

Overall, the data show that Black people are overrepresented as accused in criminal court relative to their representation in the Canadian population. These findings are consistent with trends in correctional services.

Using the RRI method, the findings from this study suggest that Black accused are more likely to encounter a withdrawal, dismissal or discharge, less likely to encounter a stay of proceedings or to be found guilty, and equally likely to be acquitted⁵⁰ (except for Black men who were more likely to be acquitted). Among those who were found guilty, Black accused were more likely to receive probation or a custodial sentence, and less likely to receive a fine or a conditional sentence as their most serious sentence in the case. Finally, of the accused who received a custodial sentence, Black accused were overall more likely to receive a medium and long custodial term, and equally or less likely to receive a short custodial term. A visual representation of key findings is provided in [Annex 3](#).

In sum, these findings suggest that Canadian criminal courts are contributing to different and disproportionate outcomes for Black people. Some of these different and disproportionate outcomes (e.g., being more likely to be sentenced to custody) can be described as contributing to the overrepresentation of Black people in the CJS by further entrenching them into the system.

This report provides an indication of where Black people are experiencing disproportionate outcomes at specific junctures of the criminal court process, but cannot alone explain why this may be occurring. Additional research is needed to better understand the reasons behind these differential outcomes. In addition, further analysis is required to better understand the representation of Black people at other key stages/decision points in the criminal court process. For example, bail appearances and decisions, preliminary inquiries and trials constitute key criminal court stages/decision points, but could not be examined in the current study due to the unavailability of data at the time of the study. In addition, the data on guilty findings in this study do not distinguish between guilty verdicts and guilty pleas. Further, the disaggregation of offence type in the current study was limited to two groups, namely violent and non-violent offences. Further analysis is required on specific types of offences, as the severity of an offence constitutes a key factor in judicial decision-making, particularly around the decision to remand the accused to custody and to select an appropriate sentence. Criminal history also constitutes another key factor in judicial decision-making, which could not be examined in the current study as this would require a different dataset than what was available at the time of this study. Lastly, future studies may help better understand the representation of Black people in the CJS by examining their involvement at the police stage and prior to their charge being processed by the courts.

⁵⁰ This result is based on an 11-year average that masks important variations in the yearly RRIs; these were much lower from 2007-08 to 2009-10, when Black accused were less likely than White accused to be acquitted, and much higher from 2011-12 to 2013-14, when Black accused were more likely than White accused to be acquitted (see Chart 2).

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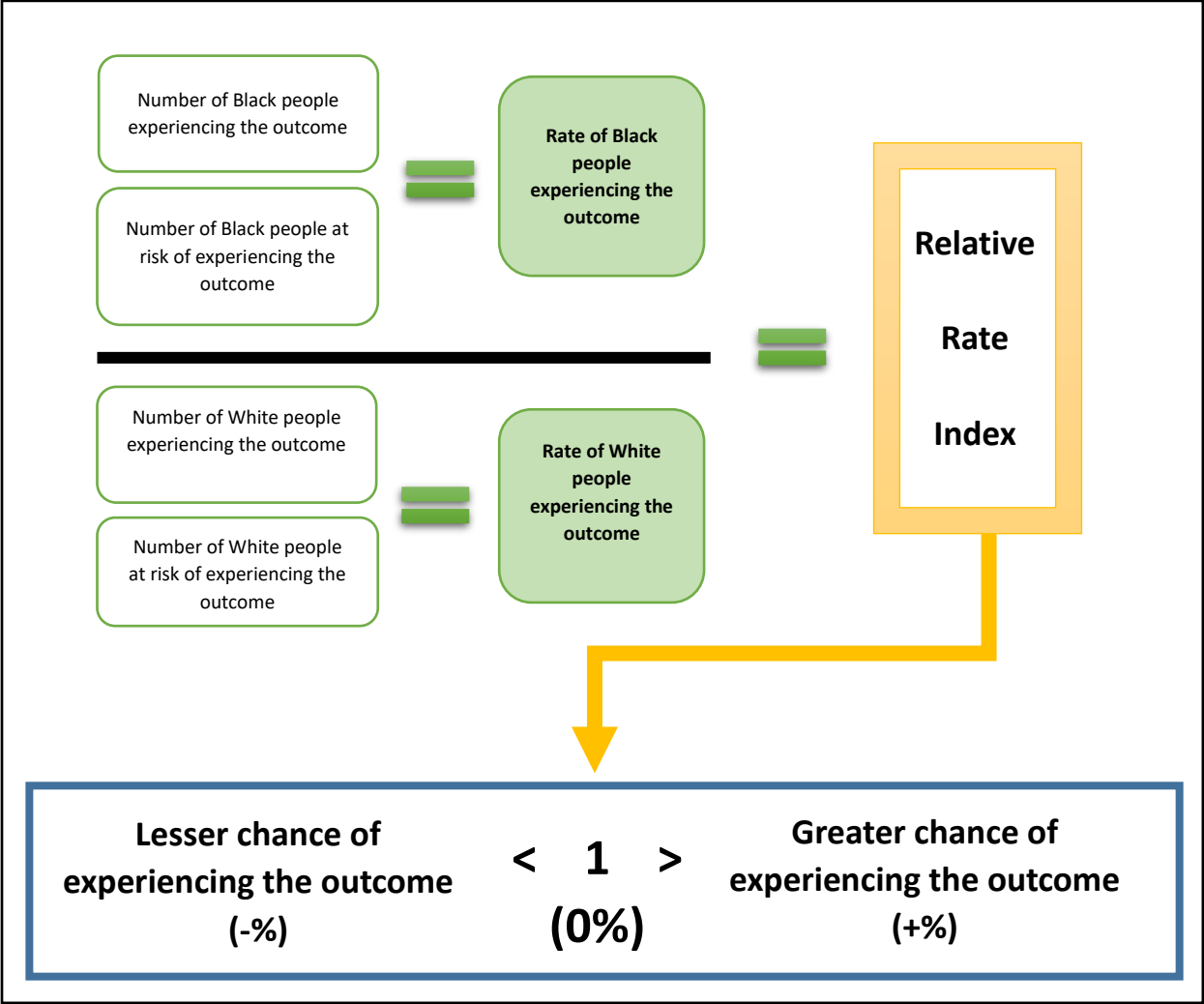
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Annex 1. Relative Rate Index Calculation



Annex 2. Data Tables

Table 1: Black accused relative to White accused (average RRI, shown as a +/- %), by court decisions and selected characteristics, Canada, 2005/06 to 2015/16

Selected characteristics	Guilty	Acquittal	Stay of proceeding	Withdrawn / Dismissed / Discharged	Other
All	-24%	+2%	-14%	+65%	..
Male	-21%	+9%	-18%	+65%	..
Female	-37%	..	-5%	+64%	..
Adult	-22%	+4%	-27%	+67%	..
Youth	-28%	..	0%	+58%	..
Violent	-25%	+4%	-28%	+53%	..
Non-violent	-23%	-2% ⁱ	-8%	+67%	..

.. : not available or suppressed (due to yearly reporting)

ⁱ: The average RRI should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a member of a racialized group. Guilty includes guilty findings by the court and guilty pleas. Other includes: not criminally responsible, waived out of province or territory, any order where a guilty decision was not recorded, special pleas, cases which raise Charter arguments and unfit to stand trial.

Table 2: Black accused relative to White accused (average RRI, shown as a +/- %), by court decision and jurisdiction, Canada, 2005/06 to 2015/16

Jurisdictions	Guilty	Acquittal	Stay of proceedings	Withdrawn/Dismissed/ Discharged	Other
British Columbia	-7%	..	+15%	..	..
Manitoba	-4%	..	+1%	..	..
New Brunswick	+2%	..	..	..	..
Newfoundland and Labrador	..	..	..	..	..
Nova Scotia	-2%	..	..	+1%	..
Northwest Territories	..	..	..	..	..
Nunavut	..	..	..	..	..
Ontario	-22%	+23%	+1%	+36%	..
Prince Edward Island	..	..	..	..	..
Saskatchewan	..	..	..	..	..
Yukon	..	..	..	..	..

.. : not available or suppressed (due to yearly reporting)

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a member of a racialized group. Guilty includes guilty findings by the court and guilty pleas. Other includes: not criminally responsible, waived out of province or territory, any order where a guilty decision was not recorded, special pleas, cases which raise Charter arguments and unfit to stand trial.

Table 3: Black accused relative to White accused (average RRI, shown as a +/- %), by type of sentence and selected characteristics, Canada, 2005/06 to 2015/16

Selected characteristics	Custody	Conditional sentence	Probation	Fine	Other
All	+24%	-9%	+13%	-46%	+43%
Male	+29%	-9%	+11%	-45%	+42%
Female	-21% ⁱ	-3%	+21%	-53%	+55%
Adult	+25%	-2%	+17%	-41%	+25%
Youth	+103%	..	-17%	..	+16%
Violent	+22%	-29%	-8%	..	+30%
Non-violent	+26%	-1%	+19%	-41%	+46%

.. : not available or suppressed (due to yearly reporting)

ⁱ: The average RRI should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a member of a racialized group. Other includes: restitution, absolute and conditional discharge, suspended sentence, community service order and prohibition orders.

Table 4: Black accused relative to White accused (average RRI, shown as a +/- %), probation vs. custody sentences, by selected characteristics, Canada, 2005-06 to 2015-16

Selected characteristics	Probation (vs. custody sentences)
All	-3%
Male	-5%
Female	+8% ⁱ
Adult	-2%
Youth	-14%
Violent	-7%
Non-violent	-2%

.. : not available or suppressed (due to yearly reporting)

ⁱ: The average RRI should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 10 provinces/territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. The Northwest Territories do not report conditional sentences at this time. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a member of a racialized group.

Table 5: Black accused relative to White accused (average RRI, shown as a +/- %), by type of sentence and jurisdiction, Canada, 2005/06 to 2015/16

Jurisdictions	Custody	Conditional sentence	Probation	Fine	Other
British Columbia	+22 ⁱ	..	+28%	..	..
Manitoba	..	..	..	..	..
New Brunswick	..	..	..	..	..
Newfoundland and Labrador	..	..	..	..	..
Nova Scotia	+129	..	-1%	-48%	..
Northwest Territories	..	..	..	..	..
Nunavut	..	..	..	..	..
Ontario	+15%	+3%	+3%	-40%	+74%
Prince Edward Island	..	..	..	..	..
Saskatchewan	..	..	..	..	..
Yukon	..	..	..	..	..

.. : not available or suppressed (due to yearly reporting)

i. The average RRI should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a member of a racialized group. Other includes: restitution, absolute and conditional discharge, suspended sentence, community service order and prohibition orders.

Table 6: Black accused relative to White accused (average RRI, shown as a +/- %), probation vs. custody sentences, by jurisdiction, Canada, 2005-06 to 2015-16

Jurisdictions	Probation (vs. custody sentences)
British Columbia	0%
Manitoba	..
New Brunswick	..
Newfoundland and Labrador	..
Nova Scotia	-23%
Northwest Territories	..
Nunavut	..
Ontario	-4%
Prince Edward Island	..
Saskatchewan	..
Yukon	..

.. : not available or suppressed (due to yearly reporting)

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a member of a racialized group.

Table 7: Black accused relative to White accused (average RRI, shown as a +/- %), by length of custody and selected characteristics, Canada, 2005/06 to 2015/16

Selected characteristics	1 month or less	Greater than 1 month to 3 months	Greater than 3 months to 6 months	Greater than 6 months to 12 months	Greater than 1 year to less than 2 years	2 years or more
All	-3%	-9%	+12%	+38%	..	+36% ⁱ
Male	-1%	-10%	+12%	+34%	..	+27% ⁱ
Female	-3% ⁱ	..	..	..	..	..
Adult	-1%	-10%	+6%	+32%	..	+44% ⁱ
Youth	-12%	..	..	..	..	..
Violent	-5%	+1%	..	..	..	..
Non-violent	+1%	-16%	+12%	..	..	..

.. : not available or suppressed (due to yearly reporting)

i. The average RRI should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a member of a racialized group. The length of sentenced custody refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence.

Table 8: Average median length of custodial sentences (in days) of Black accused relative to White accused, by selected characteristics, Canada, 2005-06 to 2015-16

Selected characteristics	Black	White
All	31	30
Male	33	30
Female	..	19
Adult	30	30
Youth ⁱ	47	36
Violent	63	64
Non-violent	27	30

...: not available or suppressed (due to yearly reporting)

i. Caution should be used when looking at median lengths, especially on the youth file as the counts were low but did not meet requirements of Census suppression rules.

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a member of a racialized group. The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence. The median represents the point at which half of all cases had longer custodial sentence lengths and half had shorter custodial sentence lengths. Weighted medians were calculated using adjusted Census weights.

Table 9: Black accused relative to White accused (average RRI, shown as a +/- %), by length of custody and jurisdiction, Canada, 2005/06 to 2015/16

Jurisdictions	1 month or less	Greater than 1 month to 3 months	Greater than 3 months to 6 months	Greater than 6 months to 12 months	Greater than 1 year to less than 2 years	2 years or more
British Columbia
Manitoba
New Brunswick
Newfoundland and Labrador
Nova Scotia	+15%	..	..	..	..	..
Northwest Territories
Nunavut
Ontario	-4%	-13%	+19%	+46%	..	..
Prince Edward Island
Saskatchewan
Yukon

.. : not available or suppressed (due to yearly reporting)

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a member of a racialized group. The length of sentenced custody refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence.

Table 10: Average median length of custodial sentences (in days) of Black accused relative to White accused, by jurisdiction, Canada, 2005-06 to 2015-16

Jurisdictions	Black	White
British Columbia	..	26
Manitoba
New Brunswick	..	43
Newfoundland and Labrador	..	29
Nova Scotia	..	31
Northwest Territories
Nunavut
Ontario	31	30
Prince Edward Island	..	11
Saskatchewan	..	56
Yukon

.. : not available or suppressed (due to yearly reporting)

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the personal identifiers required for linkage were not available. Black accused includes all individuals who identified as Black on the 2016 Census long-form. White accused includes individuals identified as neither Indigenous, nor as a member of a racialized group. The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence. The median represents the point at which half of all cases had longer custodial sentence lengths and half had shorter custodial sentence lengths. Weighted medians were calculated using adjusted Census weights.

Annex 3. Graphical Summary of Key Findings

