

Just Facts

May 2019

Research and Statistics Division

Preliminary Inquiries

This fact sheet is based on two Canadian publications from 2005 and 2010,¹ publicly available and special request data from the Canadian Centre for Justice Statistics at Statistics Canada, and internal research reports prepared by Justice Canada.

A preliminary inquiry is a judicial hearing that is used in serious criminal cases to determine whether the evidence assembled by the Crown against an accused person is sufficient to proceed with a trial. The preliminary inquiry is not a trial in the strict sense, although evidence is given under oath and the accused or the accused's counsel is entitled to cross examine any witnesses summoned by the Crown.

The findings reported below may differ from other Statistics Canada and Justice Canada reports on preliminary inquiries. One reason for the differences is the change in concept/methodology used to produce the figures. The change in this JustFacts involves reporting preliminary inquiries if there were "any-in-the-case". Previous work on preliminary inquiries has generally used data and reported trends only for the most serious offence. Different figures are also due to data updates following the last statistical release.

Small increase in the number of completed cases² in adult criminal court³

There were 357,642 cases (provincial and superior courts) completed in adult criminal court across Canada in 2016/2017 that involved 1,227,546 charges (includes both those with and

¹ Webster, Cheryl. 2005. "A Preliminary Inquiry into the Preliminary Inquiry."; Justice Canada. 2010. "Preliminary Inquiries: An Analysis of the Impact of the Bill C-15A Amendments." Research and Statistics Division, Department of Justice Canada (Internal Report).

² As defined by Statistics Canada, a case is one or more charges against an accused person or company that were processed by the courts at the same time (date of offence, date of initiation, date of first appearance, or date of decision), and received a final decision.

³ This is based on data from the adult component of the Integrated Criminal Court Survey (ICCS). The ICCS is administered by the Canadian Centre for Justice Statistics (Statistics Canada) in collaboration with provincial and territorial government departments responsible for criminal courts in Canada. The survey collects statistical information on adult and youth court cases involving Criminal Code and other federal statute offences. Data contained in this table represents the adult criminal court portion of the survey, namely, individuals who were 18 years of age or older at the time of the offence. Data are based on a fiscal year (April 1 through March 31). Data exclude information from municipal courts in Quebec due to the unavailability of data. All data for Quebec are counted at the provincial level due to an inability to distinguish data by court level for that province. Data exclude information from superior courts in Prince Edward Island, Ontario, Manitoba and Saskatchewan due to the unavailability of data. Superior court data also exclude data from Nunavut, where there is one single level of court in which judges hear all matters.

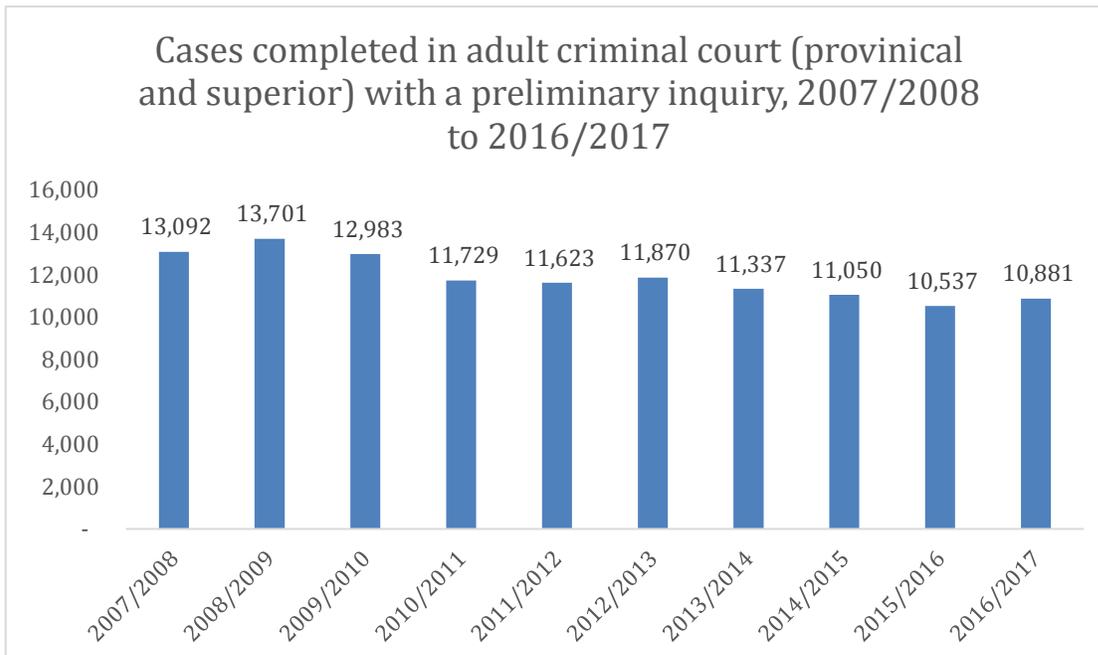
Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey.



without a preliminary inquiry).⁴ The number of completed adult criminal court cases increased 2% from the previous year marking the first increase since 2009/2010. The number of charges completed in adult criminal court (provincial and superior) increased 6% from the previous year.

A larger proportion of charges and cases in superior courts have a preliminary inquiry⁵

In provincial courts in 2016/2017, 4% of completed charges (n = 47,250) and 3% of completed cases (n = 10,456) had a preliminary inquiry. In superior courts in 2016/2017, 27% of completed charges (n = 1,526) and 28% of completed cases (n = 425) had a preliminary inquiry. The proportions of cases and charges with a preliminary inquiry in provincial courts have remained relatively stable over the last decade. In superior courts, the proportions of cases and charges with a preliminary inquiry have slightly increased over the last decade.



Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey. Custom tabulation prepared by Department of Justice Canada.

⁴ A charge refers to a formal accusation against an accused person or company involving a federal statute offence that has been processed by the courts and received a final decision.

For more discussion of the charge and case terminology and current work to develop additional measures that would better reflect court workflow in the provinces and territories, consult: Miladinovic, Zoran. 2019. "Adult criminal and youth court statistics in Canada, 2016/2017." Available online: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00002-eng.htm>

⁵ Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey.

Cases completed with a preliminary inquiry have decreased over the last 10 years⁶

When counting “any-in-the-case⁷” preliminary inquiries, in 2007/2008, 13,092 preliminary inquiries (3% of all cases) were scheduled and/or held⁸ in provincial and superior courts.^{9,10} In 2016/2017, there were 10,881 preliminary inquiries (3% of all cases), representing a 17% decrease in the number of preliminary inquiries over the last ten years.

Preliminary inquiries may impact the time required for case completion

In 2016/2017, the majority (78%; n = 8,471) of adult criminal court cases (provincial and superior court cases) with a preliminary inquiry requested and/or held were completed in less than 30 months. The remaining cases (22%; n = 2,410) took 30 months or longer to complete.

Over the past ten years, applying the 30 month cutoff retroactively to examine case processing trends, the percentage of cases with a preliminary inquiry completed within 30 months has decreased from 89% in 2007/2008 to 78% in 2016/2017. There has been a small decrease between 2015/2016 and 2016/2017 from 80% to 78%.

The majority of cases (92%) completed in adult criminal court (provincial and superior) without a preliminary inquiry are completed in less than 18 months in provincial court and less than 30 months in superior court. Less than one in ten (8%, n = 27,073) cases completed in adult criminal court (provincial and superior) without a preliminary inquiry are completed in more than 18 months in provincial court and 30 months in superior court. The proportions of cases without a preliminary inquiry being over or under the 18 and 30 month timeframes have been stable over the last ten years.¹¹

⁶ Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey. Custom tabulation prepared by Department of Justice Canada.

⁷ Preliminary inquiries are counted if there were “any in the case,” not just for the most serious offence. Counting any in the case is distinguished from other JustFacts where preliminary inquiries have only been counted for the most serious charge.

⁸ ICCS data is currently not able to distinguish between preliminary inquiries that are scheduled and held, as opposed to those that may be scheduled, but are not held. Situations can arise where an accused’s court appearance may have initially been for a preliminary inquiry, however the accused decides to plead guilty before the preliminary inquiry takes place.

⁹ It is important to note that if the case is transferred to superior court, the data related to that case in the ICCS is also transferred to superior court. In jurisdictions where there is no superior court coverage, this data is lost and therefore may result in an undercounting of preliminary inquiries in some jurisdictions.

¹⁰ Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey.

Note that a breakdown of the number of cases that proceeded summarily and by indictment is not available and therefore the proportion of preliminary inquiries for eligible cases cannot be determined using the recent data.

¹¹ The time to complete a case is important in light of the *Jordan* (R. v. Jordan, 2016 SCC 27) decision at the Supreme Court of Canada which set time limits to bring an accused person to trial. In provincial court, charges completed in more than 18 months (without a preliminary inquiry) or more than 30 months (with a preliminary inquiry) are over the time limit to complete a case. In superior court, charges completed in more than 30 months (with or without a preliminary inquiry) are over the time limit to complete a case.

Charges with a preliminary inquiry take longer to complete, have more appearances, and have more days between court appearances¹²

In 2016/2017, charges with a preliminary inquiry in provincial court took a median of 458 days, a median of 13 appearances to complete, and there were on average 42 days between appearances. Charges without a preliminary inquiry in provincial court took a median of 115 days, a median of 6 appearances to complete, and there were on average 27 days between appearances.

In 2016/2017, charges with a preliminary inquiry in superior court took a median of 401 days, a median of 11 appearances to complete, and there were on average 35 days between appearances. Charges without a preliminary inquiry in superior court took a median of 284 days, a median of 8 appearances to complete, and there were on average 29 days between appearances. These trends are presented in Table 1 below.¹³

Mixed results regarding the likelihood of a trial following a preliminary inquiry

Research by Justice Canada¹⁴ found that holding a preliminary inquiry did not affect the likelihood of a trial taking place, while other research¹⁵ found some evidence to indicate that when a preliminary inquiry was held the likelihood of a trial taking place decreased.¹⁶ However, the critical question of the relationship between holding a trial and having a preliminary inquiry cannot be fully answered.

2004 Amendments to the Preliminary Inquiry

The administrative and procedural amendments of former Bill C-15A (short title: the *Criminal Law Amendment Act, 2001*) were assessed in a Justice Canada study, which suggested that the legislative changes made by former Bill C-15A had to some extent succeeded in reducing the number and scope of preliminary inquiries in Canada.¹⁷ In this 2004 study, it was found that there

¹² Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey. Grand total, all offences.

¹³ The median number of appearances is the point at which half of all charges had more court appearances and half had fewer court appearances.

¹⁴ Justice Canada. 2010. "Preliminary Inquiries: An Analysis of the Impact of the Bill C-15A Amendments." Research and Statistics Division, Department of Justice Canada (Internal Report). The Preliminary Inquiry Study investigates straight indictable cases that were closed in fiscal year 2006/2007. The study is based on data from the Canadian Centre for Justice Statistics Adult Criminal Court Survey (ACCS) and Integrated Criminal Court Survey (ICCS) for Newfoundland, New Brunswick, Ontario, Manitoba, Alberta, British Columbia, Northwest Territories, Nunavut and Quebec. The dataset represents a total of 80,881 straight indictable offence cases. The pre/post Study investigates cases where a preliminary inquiry was held between June 1, 2003 and May 31, 2005. The data are from the CCJS ACCS and ICCS for British Columbia, New Brunswick, Nunavut and Quebec. This dataset represents 17,616 cases where a preliminary inquiry was held.

¹⁵ Webster, Cheryl. 2005. "A Preliminary Inquiry into the Preliminary Inquiry." This report is an initial examination of the use of the preliminary inquiry in Canadian Criminal Courts. The dataset used in this paper includes all cases involving Criminal Code and other federal statute charges dealt with in the provincial/territorial adult criminal courts of Newfoundland & Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Saskatchewan, Alberta, British Columbia, Yukon and the Northwest Territories. Data were available from these 11 Canadian jurisdictions for at least one of five years between 1998/9 and 2002/3 and represent slightly more than 2.2 million cases.

¹⁶ In the jurisdictions studied.

¹⁷ Justice Canada. 2010. "Preliminary Inquiries: An Analysis of the Impact of the Bill C-15A Amendments." Research and Statistics Division, Department of Justice Canada (Internal Report).

was a 68% decline in the number of preliminary inquiries held in Quebec and an average of a 20% decline in British Columbia, New Brunswick, and Nunavut. Furthermore, the proportion of cases for offences against the person with a preliminary inquiry increased while the proportion of cases that involved property offences decreased.¹⁸

Table 1: Adult criminal court processing times, charges ^a for all offences, 2016/2017				
	Superior court		Provincial court	
	With a preliminary inquiry	Without a preliminary inquiry	With a preliminary inquiry	Without a preliminary inquiry
Median length ^b of charge (days) ^c	401	284	458	115
Median number of appearances ^d	11	8	13	6
Average number of days per appearance	35	29	42	27

Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey. Custom tabulation prepared by the Department of Justice Canada.

Notes:

a. A charge refers to a formal accusation against an accused person or company involving a federal statute offence that has been processed by the courts and received a final decision.

b. The median is the point at which half of all charges had longer charge lengths and half had shorter charge lengths.

c. Charge lengths are calculated based on the number of days it takes to complete a charge, from first appearance to final decision.

d. The median number of appearances is the point at which half of all charges had more court appearances and half had fewer court appearances. An appearance refers to the act of attending court, either in person or as represented by legal counsel, in response to a criminal charge(s). One appearance is counted for each unique date associated with a charge (e.g., appearances on three different days equal three charge appearances).

¹⁸ In the jurisdictions studied.