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[Home](#) > [85-002-X](#) > [Juristat](#)

Court outcomes in homicides of Indigenous women and girls, 2009 to 2021

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Highlights

- Between 2009 and 2021, the rate of homicide against First Nations, Métis and Inuit women and girls was six times higher than the rate among their non-Indigenous counterparts. Homicides of Indigenous women and girls take complex pathways through the Canadian criminal courts, from police laying or recommending charges to court processes and outcomes.
- The majority (87%) of homicides involving Indigenous women and girls reported by police between 2009 and 2021 were cleared by police, in that an accused person was identified in relation to the case. This proportion was slightly lower than in homicides of non-Indigenous women and girls (90%).
- Most Indigenous women and girls were killed by someone that they knew (81%), including an intimate partner (35%), acquaintance (24%), or family member (22%). In most cases, the person accused of their homicide was also Indigenous (86%).
- Police were less likely to lay or recommend a charge of first-degree murder—the most serious type of homicide charge—when the victim was Indigenous (27%) compared to when she was not (54%). Instead, charges of second-degree murder (60%) and manslaughter (13%) were more common. Manslaughter charges were also more common when the accused person was Indigenous.
- When incidents of homicide of Indigenous women and girls moved to court, manslaughter charges were twice as common when the victims were Indigenous women and girls (41% of homicide charges) than when they were not (20%).
- Manslaughter charges were the most likely to result in a finding of guilt, in homicides of Indigenous (66%) and non-Indigenous (72%)

women and girls. Overall, 45% of homicides of Indigenous women and girls (including manslaughter and other homicide charges) resulted in a guilty finding. Acquittals were rare in homicides of Indigenous women and girls (1.6%), as they were when the victims were non-Indigenous (0.4%).

- At the case level, guilty findings in cases of homicides of Indigenous women and girls were most common in cases where the accused was a spouse (82%) or a stranger (79%). Overall, stranger homicides were less common among Indigenous victims (8%, versus 12% of non-Indigenous women and girls who were killed).
- Custody was by far the most common type of sentence passed in cases linked to homicides of both Indigenous and non-Indigenous women and girls. The average length of sentenced custody was three years shorter for those found guilty in a case involving the homicide of an Indigenous woman or girl, compared to when the victim was non-Indigenous.

Introduction

In Canada, Indigenous women and girls continue to experience many forms of violence at higher rates than their non-Indigenous counterparts—including homicide, the most extreme form of violence (Miladinovic & Mulligan, 2015; David & Jaffray, 2022; Perreault, 2022). Indigenous peoples and their advocates have long drawn attention to the disproportionate rate of violence experienced by First Nations, Métis and Inuit women and girls, and have pointed to its roots in colonialism and forced assimilation; more recently, national and international organizations have amplified these voices to denounce the intergenerational trauma and socioeconomic marginalization created by these policies (Missing and Murdered Indigenous Women, Girls,

and 2SLGBTQQIA+ People National Action Plan, 2021; National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019; Native Women's Association of Canada, 2010; Truth and Reconciliation Commission of Canada, 2015; Committee on the Elimination of Discrimination of Women, 2015). As is the case in many communities who struggle with poor mental and physical health, poverty, addictions and discrimination, women and girls are often subjected to their worst consequences, including extreme violence (David & Jaffray, 2022; Heidinger, 2022a; Heidinger, 2022b; Sutton, 2023).

The over-representation of Indigenous peoples as both victims and people accused of crimes, as well as issues related to accessing justice, are interwoven into the courts process. Pathways through the Canadian criminal courts can be complex, starting where police investigations end and culminating with a decision and sentence. Along the way, decisions are made about the charges seen in court, the disposition of those charges, and any potential verdicts and sentences passed down. Using data from the Homicide Survey and the Integrated Criminal Court Survey, this *Juristat* article examines how homicides of Indigenous women and girls moved through the court system between 2009 and 2021, how they were treated at crucial decision points along the way, and how their outcomes compared to homicides of victims who were non-Indigenous. While the linked data used for this analysis provide important information with which to contextualize court outcomes of homicides of Indigenous women and girls, they are not without their limitations. For more information, please see Data sources and methodology.

While a distinctions-based approach—that is, an approach that allows for cases involving First Nations, Métis and Inuit women and girls to be considered separately—is ideal, the relatively small number of individual victims belonging to these groups means that in most cases, a pan-Indigenous approach to the analysis is taken. Additionally, throughout this article the main comparator group to Indigenous women and girls is non-Indigenous women and girls. For readability, the terms “Indigenous victims”

and “non-Indigenous victims” are often used, without making reference to victims’ gender. Unless otherwise noted, these terms refer to the women and girls within these groups.

Section 1: Homicides of Indigenous women and girls

Homicide rates for Indigenous women and girls are six times higher than for their non-Indigenous counterparts

Between 2009 and 2021, 490 Indigenous women and girls were the victims of homicide. This translated into a rate of 4.27 Indigenous women and girls killed per 100,000 Indigenous women and girls in the population—a rate that was six times higher than for their non-Indigenous counterparts (0.73). While Indigenous women and girls made up between 2% and 3% of the Canadian population during this time, they represented between 5% and 7% of homicide victims (Table 1). The overrepresentation of Indigenous peoples, and Indigenous women and girls in particular, as victims of homicide and other violent crimes in Canada is well-documented (see Text box 1).

Among the 490 Indigenous women and girls killed between 2009 and 2021, 60% were First Nations, 8% were Inuit, and 7% were Métis. For 24% of victims, police either did not know the Indigenous group to which victims belonged or did not report that information to Statistics Canada (Table 2).

The rate of homicide against Indigenous women and girls varied from year to year, ranging from a low of 3.28 per 100,000 in 2016 to a high of 5.15 in 2009. Each year, the rate of Indigenous women and girls killed was higher than the rates of non-Indigenous women and girls, and of men and boys¹ (Table 1).

Text box 1

Victimization of Indigenous women and girls in Canada

Self-reported data show that many forms of violence, including violence that is never reported to police, are more commonly experienced by Indigenous women in Canada than by other groups. This includes violence experienced during childhood, during adulthood, and intimate partner and gender-based violence (Burczycka, 2017; Heidinger, 2022a and Heidinger, 2022b; Perreault, 2022; Sutton, 2023). These findings echo those put forward by the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019), which posit that the devastating effects of settler colonialism continue to have a disproportionate impact on women and girls.

For many Indigenous women, exposure to violence begins in childhood. Many more Indigenous women (42%) than non-Indigenous women (27%) indicated that they had experienced physical and sexual abuse before they turned 15 (Heidinger, 2022b).

Notably, a cohort analysis showed that this disparity in childhood victimization is found among older women specifically: among those who were aged 30 and under in 2014, the prevalence of childhood sexual abuse was similar among Indigenous and non-Indigenous women (Burczycka, 2017). In other words, while older Indigenous women were more likely to state that they had experienced violence as children than non-Indigenous women in the same age group, this difference was not found among younger women.

Numerous studies have shown a correlation between abuse during childhood and victimization in adulthood (Heidinger, 2022a; Perreault, 2022). As adults, Indigenous women again faced higher rates of violence than their non-Indigenous counterparts. For instance, almost half (46%)

had experienced sexual assault, compared to 33% of non-Indigenous women (Heidinger, 2022b). Indigenous women were also more likely to self-report experiences of intimate partner violence since age 15 (61%, compared to 44% of non-Indigenous women; Heidinger, 2021).

Indigenous women are also overrepresented as victims of gender-based homicide, specifically. Gender-based homicides are homicides of women committed by men, where the accused was an intimate partner or family member of the victim, inflicted sexual violence on the victim as part of the killing, or killed a victim who was identified as a sex worker. Here, between 2011 and 2021, 21% of all gender-related homicides reported by police involved Indigenous women and girls (Sutton, 2023).

Nine in ten homicides of Indigenous women and girls from 2009 to 2021 were solved

The majority (87%) of homicides involving Indigenous women and girls reported by police between 2009 and 2021 were cleared (solved)—that is, an accused person was identified in relation to the case (Table 2). This proportion was slightly lower than in homicides of non-Indigenous women and girls (90%).

While 13% of homicides of Indigenous women and girls—representing 65 victims—remained unsolved at the time of the present study, the proportion varied between Indigenous identity groups. Among First Nations women and girls specifically, 12% of homicides remained unsolved; this was also the case for 23% of homicides of Métis women and girls, 5% of homicides of Inuit women and girls and 16% of homicides of Indigenous women and girls whose distinction was unknown to police or not reported by them. It should be noted that homicide investigations can be complex and lengthy; thus, for some victims, the homicide may be noted as unsolved because the investigation is ongoing. Notably, when it came to the most recent homicides included in the

study—those reported by police in 2021—higher proportions remained unsolved, including 29% where the victim was an Indigenous woman or girl and 17% where the victim was non-Indigenous.

Data from 2015 to 2021² show that unsolved homicides involving Indigenous women and girls more often involved a victim who had been reported missing at the time of her death (32%) than who had not (13%). Similarly, homicides of Indigenous women and girls were more often unsolved when the cause of death was unknown or not stated by police (66%). Police may choose not to report some facts of a homicide to the Homicide Survey if the investigation is ongoing.

It should be noted that many Indigenous peoples and the organizations which advocate for them describe the difficulties encountered by Indigenous survivors and victims' families in their interactions with police (Native Women's Association of Canada, 2010; National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019). These difficulties can manifest as barriers to the kind of information sharing that is necessary for police investigations and can lead to homicides remaining unsolved for longer periods of time.

Most often, the person accused of the homicides was also Indigenous

Research has shown that most women and girls—regardless of their ethnicity or Indigenous identity—are killed by an intimate partner, family member or someone they know (David & Jaffray, 2022). As such, their killers are often part of their community and thus may be people with whom they share cultural and other commonalities. Overall, eight in ten (81%) Indigenous women and girls were killed by someone they knew, most often an acquaintance (24%), a spouse (23%) or a family member (22%) (Table 2).³ Most solved homicides of Indigenous women and girls involved an accused person who was also Indigenous. Specifically, between 2014 to 2021⁴, eight in ten (86%) persons accused of killing an Indigenous woman or girl were themselves Indigenous;

when the victim was a non-Indigenous woman or girl, more than nine in ten (94%) persons accused were also non-Indigenous (Table 3). Many observers have noted that early exposure to family violence, family breakdown due to residential schools and forced apprehension of Indigenous children, and other factors related to colonialism are related to violence within Indigenous communities (Clark, 2019; Truth and Reconciliation Commission of Canada, 2015).

The Indigenous identity of those accused of the homicides of Indigenous women and girls is noteworthy for several reasons, including the implications for how those offenders are treated in the justice system (see Text box 2). For the present study, which aims to examine court outcomes of cases linked to Indigenous victims, offenders' pathways through the justice system are particularly relevant. In Canada, Indigenous people are overrepresented among those accused of crime and those who are incarcerated (Department of Justice 2016; Robinson et al., 2023; Truth and Reconciliation Commission of Canada, 2015), and advocates and government have sought to better understand and address this disparity.

8 in 10 homicides of Indigenous women and girls result in police laying or recommending homicide charges

When police become aware of a homicide, the most common outcome is the laying or recommendation of a charge. When the victim was an Indigenous woman or girl, it was more likely that charges would be laid or recommended in relation to the case. Charges were laid or recommended by police in the majority (79%) of the 490 homicides of Indigenous women and girls which occurred between 2009 and 2021, including 81% of homicides where the victim was First Nations, 71% where she was Métis, 79% where she was Inuit, and 77% where her Indigenous identity group was unknown (Table 2). In contrast, a smaller proportion (71%) of homicides of non-Indigenous women and girls were cleared with the laying of a charge.

Text box 2

Overrepresentation of Indigenous peoples in the Canadian justice system

Indigenous persons are overrepresented among individuals accused of committing crimes and among those who are incarcerated (Department of Justice, 2016; Robinson et al., 2023; Saghbini et al., 2021; Truth and Reconciliation Commission of Canada, 2015). Canadian courts and legislatures have sought to address this issue, with inquiries, commissions and reviews, Supreme Court decisions, and legislative changes taking place since the 1980s (Department of Justice, n.d.). Findings and opinions resulting from these undertakings have underscored the relationship between colonialism, intergenerational trauma and offending, as well as systemic biases within the justice system and Canadian society, which further disadvantage Indigenous peoples when it comes to criminality and incarceration.

Legislative changes and court precedents are particularly relevant to court outcomes of persons accused of homicide. For instance, the Supreme Court of Canada's 1999 decision in *R v Gladue*⁵ focused on the requirement for judges to consider the systemic and background factors that may have led to an Indigenous persons' involvement in the criminal justice system at sentencing (even as was the case in *Gladue* specifically, when an Indigenous person was convicted of homicide). Other Supreme Court decisions (for example, *R v Ipeelee*⁶) further entrenched the position that the consequences of colonialism for Indigenous offenders must be taken into account by judges when determining appropriate sentences.

Because information on the Indigenous identity of persons accused of homicide was not made available to Statistics Canada until 2015, data gathered through the Homicide Survey and the Integrated Criminal Court Survey cannot reveal any potential impacts of this legislation on the kinds

of sentences passed down to Indigenous persons found guilty of homicide. However, changes within the justice system based on the *Gladue* decision are evident. This includes the incorporation of Gladue reports into the sentencing process, whereby Indigenous individuals' personal histories (including how they, their families and communities were impacted by colonialism, residential schools and forced assimilation) are described. In some jurisdictions, specialized Gladue courts are in operation, and some jurisdictions offer sentencing options that align with Indigenous models of justice, including sentencing circles. While the analysis presented in this report cannot account for the role these and other measures rooted in *Gladue* principles have played in court outcomes of homicides of Indigenous women and girls between 2009 and 2021, it is possible that these principles may have influenced decisions in those outcomes.

It is important to note that the application of *Gladue* and related principles in Canadian courts is not without its critics. For example, it has been noted that *Gladue* principles have not been enacted in a uniform way across jurisdictions in Canada, are applied to individuals in inconsistent ways, and that barriers exist for many Indigenous offenders when it comes to accessing Gladue reports and other measures (April & Orsi 2013; Pfefferle, 2008; Truth and Reconciliation Commission of Canada, 2015). Additionally, some have argued that *Gladue* principles are underpinned with stereotypes that work against Indigenous people, continue to impose colonialist structures onto Indigenous communities, and may actually cause harm to the cause of equality in the justice system (Gevikoglu, 2013). Others, meanwhile, argue that *Gladue* principles should be expanded to include rules around prosecutorial conduct (Manikis, 2016). Finally, *Gladue* principles represent just one attempt to address Indigenous overrepresentation in the Canadian justice system, and further research is required to shed light on the use, prevalence, and efficacy of these and other measures in addressing the issue.

Fewer homicides of Indigenous women and girls considered by police to be first-degree murder

The definitions of both first- and second-degree murder require that the accused person either intended to cause the death of the victim or intended to cause injuries that he or she knew would likely cause the victim to die, in situations where there is culpability (e.g., the death is not accidental or in self-defence; Wilson, 2010). First-degree murder differs from second-degree mainly in that first-degree murder is planned and deliberate, and also applies in specific situations outlined in the Canadian *Criminal Code* (for example, when a murder occurs during a sexual assault).⁷ The definition of manslaughter, meanwhile, is more difficult to pin down: according to the *Criminal Code*, “culpable homicide that is not murder or infanticide is manslaughter.”⁸

Police who investigate homicides determine what the most serious violation (MSV) was in the incident—for example, whether the MSV was first-degree murder, second-degree murder, or manslaughter. Police-reported data show that overall, homicides of Indigenous women and girls tended to be classified by police as having relatively less serious violations (less serious MSVs), compared to homicides of non-Indigenous women and girls. Specifically, first-degree murder—the most serious type of homicide—was considered to be the MSV half as often when the victim was an Indigenous woman or girl (27%) than when she was non-Indigenous (54%) (Table 4). Instead, second-degree murder was the most common MSV when the victim was Indigenous (60%) and less so when she was not (39%). Further, an MSV of manslaughter was also more common in homicides of Indigenous women and girls (13%) compared to non-Indigenous victims (7%).

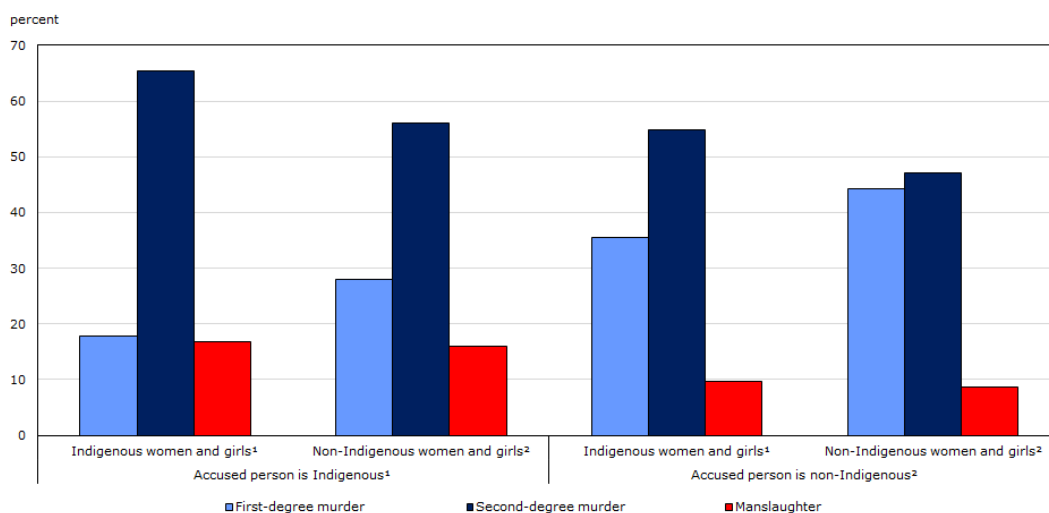
First-degree murder charges least common when victim, accused both Indigenous

The ways in which decisions about charges are made vary across jurisdictions in Canada. Much of this variation is at the local, provincial or territorial level, and has to do with which entity—the police or the Crown prosecution—decides which charges are pursued in homicide cases. In most jurisdictions, varying degrees of input from Crown prosecutors influence what charges are ultimately laid by police.⁹

The severity of charges laid or recommended by police in homicides of Indigenous women and girls appears to correlate with the Indigenous identity of both the victim and the person accused of the crime. Looking at police-reported data covering 2014 to 2021, first-degree murder charges were most common when both the victim and the accused were non-Indigenous (44%) and least common when both were Indigenous (18%) (Chart 1). Notably, first-degree murder charges in homicides of Indigenous women and girls were laid or recommended more often when the accused was a non-Indigenous person (35%, versus 18% when the accused was Indigenous).

Manslaughter charges were more common in homicides of women and girls where the accused was Indigenous, regardless of the Indigenous identity of the victim. In homicides with an Indigenous accused, 17% where the victim was an Indigenous woman or girl and 16% where she was non-Indigenous resulted in a manslaughter charge being laid or recommended. When the accused was not Indigenous, these proportions were 10% and 9%, respectively.

Chart 1
Charges laid or recommended by police in solved homicide incidents, by Indigenous identity of accused person and Indigenous identity and gender of victim, 2014 to 2021



1. Indigenous victims and accused are those identified by police as First Nations (Status or non-Status), Métis, Inuit, or an Indigenous identity where the Indigenous group was not known to police.

2. Non-Indigenous victims and accused includes instances where police have confirmed that a victim is not identified as an Indigenous person.

Note: Indigenous identity is reported by the police and is determined through information found with the victim, such as Status cards, or through information supplied by the victims' families, community members, or other sources (i.e., such as band records, or forensic evidence such as genetic testing). Victims and accused persons for whom Indigenous identity was reported as unknown by police are excluded from this table.

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Homicide Survey.

Indigenous identity of the victim increases the odds of manslaughter charge being laid

To help identify factors which may increase or decrease the odds of an accused person being charged with manslaughter as opposed to first- or second-degree murder, a multivariate analysis was conducted (Table 5).¹⁰ Various characteristics of victims, accused persons and incidents of police-reported homicides occurring between 2014 and 2021 were entered into a model to see if any one factor independently increased or decreased the odds of a manslaughter charge being laid or recommended by police.

The results of this analysis found that the victim's being Indigenous increased the odds of a manslaughter charge being laid by police, as opposed to a charge of murder. Even when other relevant factors related to the homicide were considered—including victims' gender, the Indigenous identity of the accused, and their relationship—the odds that police laid or recommended a manslaughter charge as opposed to first- or second-degree murder increased by 1.5 times when the victim was Indigenous.

Other factors were also identified as having independent associations with higher odds of a manslaughter charge: a cause of death that was anything other than shooting or stabbing (7.3 times the odds), the accused person having committed another, related, offence in conjunction with the homicide (1.5 times), and an argument or quarrel being the reported motive behind the crime (1.3 times). These factors may be related to a lack of premeditation and intention, which are associated with first- and second-degree murder but not with manslaughter.

The Indigenous identity of the accused did not impact the odds of a manslaughter charge versus first- or second-degree murder being laid or recommended by police. The same was true with respect to whether the victim and the accused had a family or intimate relationship, whether the accused was intoxicated at the time of the crime, or whether the accused was involved in illegal activities when the homicide occurred.

It should be noted that police-reported information about some aspects of homicides rely on the perceptions and interpretations of police officers and others involved in the justice system. Critics have suggested that systemic biases pervade the Canadian justice system, including at the policing level, which particularly affect Indigenous people and are rooted in racist stereotypes (Truth and Reconciliation Commission of Canada, 2015).

Homicides cleared through something other than a charge more common with non-Indigenous victims

In some cases, a homicide is considered solved, but no charges are laid against an accused. For instance, the accused may be deceased, whether from suicide or other causes, or may have been committed to a mental health facility and be unable to stand trial. These incidents are considered “cleared otherwise”, and as such will never enter the criminal courts system.

Notably, between 2009 and 2021, homicides that were cleared otherwise were markedly more common when the victim was a non-Indigenous woman or girl than when she was Indigenous. Overall, 19% of all homicides of non-Indigenous women and girls were cleared this way, compared to 7% of homicides of Indigenous women and girls (Table 2). In other words, homicides of Indigenous women and girls were more likely to proceed to court, at least in terms of whether their homicide was cleared by charge or cleared otherwise.

Homicides in which the accused person commits suicide are more common in situations of intimate partner or family violence (Brennan & Boyce, 2013). Overall, 57% of homicides against Indigenous women and girls were committed by a current or former spouse or intimate partner or family member—a lower proportion than among non-Indigenous women and girls (64%; Table 2). Since the death of the accused is more common with intimate partner and family homicide, this difference may help to explain why clearance by means other than a charge is more common when the victim was non-Indigenous. However, homicides being cleared otherwise are less common for Indigenous victims even within these relationship categories: for instance, 18% of homicides where an Indigenous woman was killed by her spouse were cleared otherwise, compared to 34% of spousal homicides where the victim was non-Indigenous (Table 2). This pattern was consistent for homicides committed by a current or former intimate partner (9% for Indigenous victims versus 18% for their non-Indigenous counterparts) and homicides committed by family members (6% versus 17%).

Section 2: Court charges linked to homicides of Indigenous women and girls

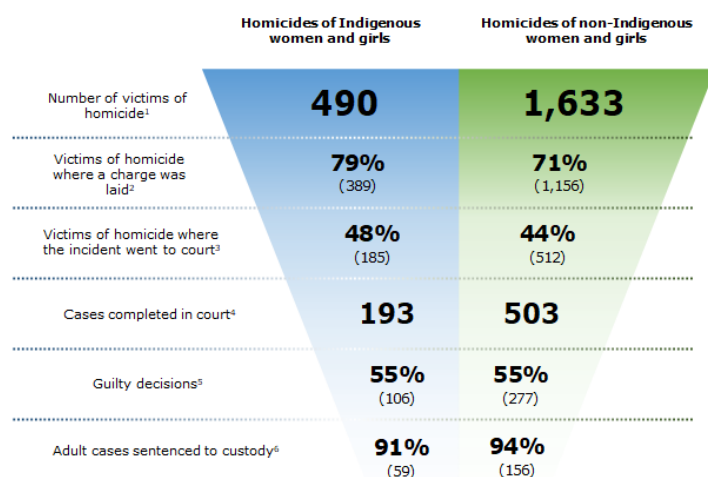
Explaining the linkage and selecting the unit of analysis

To understand how charges related to the homicides of Indigenous women and girls are processed within the Canadian criminal court system, police-reported data from the Homicide Survey were linked with data from the Uniform Crime Reporting Survey and the Integrated Criminal Court Survey (ICCS) to allow for the analysis of how incidents moved through the court system.

Homicides reported by police between 2009 and 2021, where there was at least one accused person identified, and charges were laid or recommended by police, were considered in scope and were linked to the ICCS data files for the fiscal years 2009/2010 through to 2020/21.¹¹ Homicides that were uncleared (unsolved) and homicides where an accused was identified but no charges were laid (cleared otherwise) were excluded from the study as these incidents did not move to court.

Using these criteria, there were 389 Indigenous women and girls who were victims of homicide between 2009 and 2021 where police laid or recommended charges against at least one accused person included in this analysis. Of these, 185 victims of homicide incidents (48%) successfully linked to at least one charge in court. This linkage rate is comparable to what was seen for non-Indigenous women and girls (512 of 1,156, or 44%) (Figure 1). Some incidents that did not successfully link to a completed charge may still be before the courts, particularly in recent years where the linkage rates were noticeably lower.¹²

Figure 1
Progression of homicides of women and girls through the criminal justice system, by Indigenous identity, Canada, 2009 to 2021



1. Represents victims of homicides reported by police between 2009 and 2021. One incident can have multiple victims. Victims of homicide whose Indigenous identity was not known or reported by police are excluded.

2. Represents in-scope police-reported victims of homicide where a charge was laid or recommended by police in the incident, out of all police-reported homicide victims.

3. Represents victims where there was a charge laid or charge recommended by police in the incident, that subsequently linked to a court case completed in adult or youth court between 2009/2010 and 2020/2021. Incidents may not have linked to courts data for multiple reasons, including survey coverage and time required to complete a case. Notably, the absence of data from superior courts in Ontario, Manitoba, and Saskatchewan means that data for some serious cases (e.g., homicides) in these jurisdictions is underrepresented. See "Data sources and methodology" for more details about the linkage and methodology.

4. Represents linked cases completed in adult or youth court that had at least one completed charge. One court case can include multiple charges. The number of cases completed in court is higher than the number of incidents that linked to court in part because incidents may have had more than one accused person, each of whom would have their own court case.

5. Represents linked cases completed in adult or youth court that received a guilty decision for the most serious offence in the case.

6. Represents linked guilty court cases (adults only) sentenced to custody as the most serious sentence. Excludes youth sentences due to the fundamental differences between adult and youth sentencing principles.

Note: Indigenous identity is reported by the police and is determined through information found with the victim, such as Status cards, or through information supplied by the victims' families, community members, or other sources (i.e., such as band records, or forensic evidence such as genetic testing).

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Homicide Survey and Integrated Criminal Court Survey (linked file).

Given that the focus of analysis is on the processing and outcomes criminal court cases associated with incidents of homicide, the primary units of analyses in the next two sections focus on **charges** (Section 2) and **cases** (Section 3) linked to homicides.^{13 14} Cases and charges can link to multiple incidents or victims if they are processed by the courts within a single case. This means that in some instances, particularly when there were multiple accused persons, the same victim or incident may be counted more than once in this analysis if there was more than one case associated with their homicide.¹⁵ However, this approach emphasizes the characteristics and contexts of each case to provide an overview of the decisions and sentencing outcomes related to the homicides of Indigenous women and girls in Canada.

Manslaughter charges in Canadian criminal courts more common when victim was Indigenous

Between 2009 and 2021, there were 193 completed court cases in Canada that were linked to the homicide of an Indigenous woman or girl, including 601 individual criminal charges. These charges ranged from first degree murder to

property crimes and crimes against the administration of justice. Among these, 221 or 37% were homicide charges; specifically, 22% were charges of first- or second-degree murder and 15% were manslaughter. There were no charges of infanticide (Table 6). There were more homicide charges than there were individual victims as some homicides involved multiple accused persons, each of whom would have been charged individually; additionally, Crown prosecutors can elect to lay multiple, different homicide charges (e.g., second-degree murder and manslaughter) in relation to the same one homicide victim.

Notably, charges of first- or second-degree murder were less common in cases linked to homicides of Indigenous women and girls than in cases where the victim was not Indigenous (Table 6). Of homicide charges specifically, 59% of charges in cases linked to homicides of Indigenous women and girls were for first- or second-degree murder—a considerably smaller proportion than when the victim was non-Indigenous (80%). Instead, manslaughter charges were twice as common the court level when the victims were Indigenous women and girls (41%), compared to when they were not (20%).

In a general way, the distribution of first-degree murder, second-degree murder and manslaughter charges seen at the courts level mirrors that of charges laid or recommended by police (see Section 1): at both the police-reported and court charge level, more serious homicide charges were more common when the victim was a non-Indigenous woman or girl. As discussed in Section 1, police and Crown prosecution take various factors into account when deciding on the specific type of homicide charge to pursue.

Interestingly, the proportion of manslaughter charges increased between the police and courts stages of data, relative to first- and second-degree murder charges. This may be indicative of plea arrangements, where accused persons originally charged with second degree murder by police agree to plead guilty to the lesser charge of manslaughter. Observers have pointed out that there

may be a tendency among Indigenous accused persons in particular to accept guilty pleas, for reasons including mistrust in the justice process or to access supports that are contingent on doing so (Bressan & Coady, 2017; Clark, 2016; Rudin, 2009). According to police-reported data, 86% of those accused of killing an Indigenous woman or girl between 2014 and 2021 were themselves Indigenous (Table 3).

In terms of charges seen in court, the difference in the proportions of murder versus manslaughter charges was the most notable difference between charges seen in homicides of Indigenous women and girls and those involving non-Indigenous victims. Other marked differences included aggravated physical assault (present in 6% of cases linked to Indigenous victims and 2% of cases linked to non-Indigenous victims), breach of probation (8% and 2%) and failure to comply with an order (8% and 5%). Conversely, weapon possession charges were more common when the homicide victim was a non-Indigenous woman or girl (9%) than when she was Indigenous (4%).

Guilty findings most common when charge is manslaughter

Looking at the totality of all charges laid in cases linked to homicides of Indigenous women and girls, the proportion of charges for which a guilty finding was pronounced was similar when the victim was an Indigenous woman or girl and when she was not. Under a third (31%) of all charges (homicide and other charges) in cases linked to homicides of Indigenous women and girls resulted in a guilty finding for the accused, along with 29% of cases where the victim was non-Indigenous (Table 7).

Guilty findings specific to the homicide charges associated with the cases were also similar. Of the 221 homicide charges present in the cases linked to homicides of Indigenous women and girls, 45% returned a guilty finding. Acquittals were rare: about one in one hundred (1.6%) homicide charges in cases where the victim was an Indigenous woman or girl resulted in an acquittal; in cases where the victim was non-Indigenous, the proportion was

0.4%. Instead, stays, and withdrawals and dismissals, were much more common, accounting for 49% of homicide charges linked to cases involving the homicides of Indigenous women and girls and 45% of charges where the victim was non-Indigenous.

Notably, the similarity in rates of guilty findings between homicide charges linked to Indigenous woman and girl victims and those that did not involve an Indigenous victim rests on manslaughter charges. Manslaughter charges—which were considerably more common when the victim was Indigenous—had the highest rate of guilty findings of any criminal charge, in cases where the victim was an Indigenous woman or girl (66%) and when she was not (72%). Guilty rates for manslaughter were somewhat lower among Indigenous victims, as they were for first- and second-degree murder (30% versus 36%); however, the larger proportion of manslaughter charges—and their high rates of guilty findings—found in cases linked to Indigenous victims inflated the overall rate of guilty findings among charges linked to Indigenous victims, making it comparable to that of non-Indigenous victims.

Pre-trial negotiations may explain some of the difference in rates of guilty findings. Guilty pleas are counted as convictions in the courts data; thus, charges with a higher proportion of guilty pleas may also have a higher rate of conviction. In this way, the high rate of guilty findings for manslaughter charges may reflect pre-trial negotiations in which an accused pleads guilty to manslaughter instead of standing trial for first- or second-degree murder. As discussed, manslaughter charges are more common among Indigenous accused persons and when linked to homicides of Indigenous women and girls.

Section 3: Court cases linked to homicides of Indigenous women and girls

The 601 individual charges linked to homicides of Indigenous women and girls that were completed in court between 2009 and 2021 are distributed among 193 individual court cases. Case-level analysis provides the opportunity to examine different aspects of how homicides of Indigenous women and girls are treated by the criminal courts. It is fundamentally different from charge-level analysis, presented in Section 2: while analysis at the charge level provides details about individual charges (of which there may be several in a single case), case-level analysis provides information about the totality of the case. For this reason, percentages seen at the charge level (for example, percentage of charges with a guilty finding) may be different than those seen at the case level. For more information on charges and cases, see Data sources and methodology.

Though all 193 cases included in this study were linked to a homicide of an Indigenous woman or girl, in some cases no charge of homicide was completed in the case. Specifically, 150 of the 193 cases that linked to homicide victims included a charge of homicide, while 43 did not. Different factors may account for the fact that there were fewer cases with a homicide charge completed in court than there were cases that linked to police-reported incidents of homicide, including prosecutorial or judicial discretion to downgrade charges, pre-trial proceedings or data quality issues associated with the linkage. Of note, the rate of retention of homicide charges in these cases was 78% when the victim was an Indigenous woman or girl and 88% when she was non-Indigenous. Unless otherwise noted, the remainder of the analysis in this study will include those 150 cases that included a homicide charge. These 150 cases that linked to homicides of Indigenous women and girls involved the homicides of 169 individual victims.¹⁶

Almost 7 in 10 cases linked to a homicide of an Indigenous woman or girl result in a guilty finding

Police collect a variety of information about victims of homicide, including demographics, the relationship between the victim and the offender, and the method used to cause the victim's death. Among Indigenous women and girls who were killed, 62% were First Nations, 7% were Inuit, 5% were Métis, and 23% were of an Indigenous identity group that was either unknown or unreported by police (Table 8). The overall proportion of Indigenous victims for whom cases resulted in a finding of guilt was 65%.¹⁷ ¹⁸ In comparison, in cases linked to homicides of non-Indigenous women and girls, 57% returned a guilty finding.

The rate of findings of guilt in cases linked to homicides of Indigenous women and girls were higher when the accused person was not Indigenous. In a subset of cases completed between 2014 and 2021,¹⁹ almost nine in ten (88%) cases with a non-Indigenous accused linked to a homicide of an Indigenous woman or girl resulted in a guilty finding (Table 9). When the accused was an Indigenous person, 59% of cases returned a finding of guilt.

High rate of guilty findings in cases linked to Indigenous women killed by a spouses or strangers

Similar proportions of homicide cases involved women who were killed by a spouse or intimate partner, whether they were Indigenous (33%) or not (37%) (Table 8). Interestingly, guilty findings in cases linked to Indigenous victims were returned considerably more often when the accused was a spouse (82%) than when they were a non-spousal intimate partner (57%); this was not the case when victim was non-Indigenous (63% versus 70%, respectively).

About one-quarter of cases linked to homicides of both Indigenous and non-Indigenous women and girls involved a family member other than a spouse as the accused (24%, respectively). Conviction rates were also similar (59% and

54%) in cases linked to familial homicides of Indigenous and non-Indigenous women and girls.

It was somewhat more common for an acquaintance to be accused in cases linked to homicides of Indigenous women and girls (35%) than in those linked to non-Indigenous victims (28%). Meanwhile, strangers were more common when the victim was non-Indigenous (12%, versus 8% when the victim was Indigenous). However, findings of guilt were fairly high in cases of stranger homicides of Indigenous women or girls (79%) and fairly low when victims were non-Indigenous (46%).

Prior convictions more common for accused in homicide cases linked to Indigenous women and girls

Guilty findings in cases linked to the homicides of Indigenous women and girls were somewhat less likely if the accused had previously been convicted of a crime (63%) than if they had not (70%) (Table 10). The opposite was true when the victim was a non-Indigenous woman or girl (65% versus 50%). Almost three-quarters (72%) of those accused in cases linked to the homicides of Indigenous women and girls had a previous criminal conviction, according to police. In cases linked to non-Indigenous victims, this proportion was considerably lower (44%).

Interestingly, current involvement in illegal activity such as gangs or drug dealing appeared to have the opposite association. Those with criminal involvement were found guilty less often, regardless of if the case was linked to an Indigenous (57%) or non-Indigenous (44%) woman or girl, than those without criminal involvement (67% and 58%) (Table 10). Accused persons linked to homicides of Indigenous women and girls were also somewhat more likely to be described by police as having involvement in criminal activity (for example, gangs, drug dealing or human trafficking; 13%) compared to those linked to homicides of non-Indigenous victims (9.5%).

Accused in cases linked to homicides of Indigenous women and girls were more often using intoxicants

A notable difference was found between accused in cases linked to homicides of Indigenous women and girls and those linked to cases with non-Indigenous women and girls when it came to the use of alcohol, drugs, and other intoxicating substances (for example, inhalants). Seven in ten (69%) persons accused in cases where the homicide victim was an Indigenous woman or girl were reported by police as having consumed alcohol or another intoxicating substance at the time of the incident; among those accused in cases linked to non-Indigenous victims, the proportion was 41%.²⁰ Intoxication can be taken into consideration by Crown counsel when deciding to accept a guilty plea to manslaughter by an accused initially charged with murder (Wilson, 2010).

When an accused was reported to have used alcohol or another intoxicant, 68% of cases linked to the homicide of an Indigenous woman or girl resulted in a finding of guilt. This was very similar to the proportion of guilty findings in cases linked to non-Indigenous women and girls who were killed (65%).

Argument or quarrel more common as motive in cases linked to homicides of Indigenous women and girls

When it came to motives for homicide, notable differences were seen when it came to the two most common motives reported by police: argument or quarrel, and frustration, anger or despair (Table 11). In cases linked to Indigenous women and girls who were killed, an argument or quarrel was the most common motive reported by police (49%); this motive type was substantially less common when the homicide involved a non-Indigenous victim (25%). Conversely, frustration, anger or despair—the second-most common motive in cases linked to homicides of Indigenous women and girls (19%)—was more common when the victim was non-Indigenous (28%).

According to the *Criminal Code*, acts that would otherwise be considered murder can be reduced to manslaughter if the accused acted in the heat of passion caused by sudden provocation; provocation, in turn, exists if the victim's action amounted to an indictable offence punishable by five years or more of imprisonment and that would have caused an ordinary person to lose self-control (*Criminal Code*, s. 232 (1), s. 232 (2), s. 232 (3)(a)(b)). An argument that took the form of a physical altercation, in which the victim committed a fairly serious assault on the accused, could represent such a situation.

Average sentence for homicide is shorter when the victim is an Indigenous woman or girl

Where a charge of homicide processed in adult court returned a finding of guilt, the majority of cases linked to a homicide of an Indigenous woman or girl concluded with the accused being sentenced to custody (91%) (Table 12). This was slightly lower than guilty cases involving a non-Indigenous victim, of which 94% produced a custodial sentence. It should be noted that this excludes cases for which sentencing information was not available: 18% of cases with guilty findings which linked to homicides of Indigenous women and girls, and 30% of such cases where the victim was not Indigenous.

In cases with a guilty finding on a homicide charge where an accused was sentenced to custody and the length of the custody was known and greater than 0 days,²¹ the average length of custody when the victim was an Indigenous woman or girl was 11.4 years (Table 13).²² This was three years shorter, on average, than when she was non-Indigenous (14.4 years). The median length of sentence, which attempts to take into account the "outlier" sentences that were either exceptionally long or exceptionally short, was 5.6 years in cases linked to Indigenous victims—somewhat shorter than the 7.9 years in cases linked to their non-Indigenous counterparts.

Cases linked to homicides of Indigenous women and girls completed in average of 531 days

Homicide cases seen in court are often complex and can take many weeks from start to finish, and have a longer duration than other offences processed in criminal court (Karam et al., 2020). Various factors contribute to the length of a court process, including complexity of the evidence and trial procedures, number of witnesses and justice system resources.

When it came to the 193 court cases completed between 2009 and 2021 that linked to a homicide of an Indigenous woman or girl, the average length of time that it took for a case to be completed was 531 days (Table 13).²³ The median duration was 433 days. Cases that resulted in a guilty finding took longer to complete (average 607 days, median 530 days) than not guilty cases (437 and 353), likely due to the additional time it takes for the sentencing portion to be completed (applicable to guilty cases only).

Compared to homicides of non-Indigenous women and girls, cases linked to Indigenous victims took slightly less time to complete. On average, this was a difference of 54 days, with a median difference of 56 days.

Observers have noted that lengthy court processes pose a burden for those with a vested interest in the proceedings, such as victims' family and community members (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019). This burden is felt particularly strongly by Indigenous community members, as trials often take place away from where they live and the monetary and time costs associated with travel to attend proceedings can be significant.

Summary

Despite ongoing efforts to identify and address the root causes of violence against Indigenous peoples, Indigenous women and girls in Canada continue to be overrepresented as victims of homicide. Between 2009 and 2021, 490

Indigenous women and girls were killed, at rate that was six times higher than among non-Indigenous women and girls (4.27 per 100,000 population, compared to 0.73).

The eventual outcome of a court case rests on several factors, beginning with the police investigation of the homicide. Whether a homicide is solved and how it is cleared by police determines whether it proceeds to the court stage. Between 2009 and 2021, most homicides of Indigenous women and girls were solved by police—that is, an accused person was identified in relation to the homicide. The proportion solved when the victim was non-Indigenous was similar.

Police also investigate and document various characteristics of each incident, including the relationship between the victim and the accused and possible motives, and these characteristics can influence what kind of charge is laid in the homicide. For most Indigenous women and girls who were killed, the accused was a family member or a current or former partner. Intoxication of the accused sometimes played a role in the homicide, and many were motivated by an argument or quarrel. In most homicides of Indigenous women and girls, the person accused was also Indigenous.

Differences in the types of charges associated with the homicides of Indigenous women and girls versus their non-Indigenous counterparts persist once a case proceeds to court. Again, first-degree murder charges were less common when the victim was an Indigenous woman or girl. Instead, many more homicides of Indigenous women and girls were processed in court as manslaughter, and manslaughter charges had the highest conviction rate of any charge. The frequency of manslaughter charges in homicides of Indigenous women and girls processed in court meant that the overall rate of guilty findings for all charges related to these homicides of Indigenous women and girls were similar to those that involved non-Indigenous victims.

Two-thirds of cases linked to homicides of Indigenous women and girls between 2009 and 2021 returned a finding of guilt, a proportion that was higher than among non-Indigenous victims. Guilty findings were less common among Indigenous accused persons. When it came to sentencing, nine in ten cases linked to homicides of Indigenous women and girls with a finding of guilt resulted in a custody sentence, which was lower than in homicides of non-Indigenous victims.

On average, accused persons who were sentenced to custody in cases linked to the homicides of Indigenous women and girls were sentenced to just over eleven years in prison. When the victim was a non-Indigenous woman or girl, the sentence length was longer (just over fourteen years). The lengths of sentences given in homicides of Indigenous and non-Indigenous women and girls ultimately reflect the types of charges on which they are based. Cases linked to homicides of non-Indigenous women and girls are more likely to see convictions for the types of charges that carry the longest sentences, while the types of homicide charges that most often bring shorter sentences are more often seen in cases linked to Indigenous victims.

Detailed data tables

Table 1 Homicides, by gender and Indigenous identity, Canada, 2009 to 2021

Table 2 Homicides of women and girls, by Indigenous identity, clearance status, and selected victim characteristics, Canada, 2009 to 2021

Table 3 Indigenous identity of victims and persons accused of homicide, Canada, 2014 to 2021

Table 4 Homicides of women and girls, by Indigenous identity, clearance status, and selected incident characteristics, Canada, 2009 to 2021

Table 5 Logistic regression model: Odds of manslaughter versus murder charges being laid or recommended in relation to an incident of homicide, by select characteristics of the incident, the victim and the accused, 2014 to 2021

Table 6 Completed charges linked to police-reported homicides, by type of charge completed in adult criminal or youth court and Indigenous identity and gender of victim, Canada, 2009/10 to 2020/21

Table 7 Completed charges linked to police-reported homicides, by type of charge completed in adult criminal or youth court and Indigenous identity and gender of victim and final decision, Canada, 2009/10 to 2020/21

Table 8 Characteristics of victims associated with completed court cases involving a homicide charge, by Indigenous identity, final decision in the case, and selected victim characteristics, Canada, 2009/10 to 2020/21

Table 9 Decisions in completed court cases involving a completed homicide charge, by Indigenous identity of victim and accused and gender of victim, Canada, 2014/15 to 2020/21

Table 10 Characteristics of accused persons associated with completed court cases involving a homicide charge and final decision in the case, by Indigenous identity and gender of victim, Canada, 2009/10 to 2020/21

Table 11 Characteristics of incidents associated with completed court cases involving a homicide charge and final decision in the case, by Indigenous identity and gender of victim, Canada, 2009/10 to 2020/21

Table 12 Level of court and final decision in cases linked to police-reported homicides of Indigenous women and girls, Canada, 2009/10 to 2020/21

Table 13 Length of time to complete a case linked to a police-reported homicide incident, by Indigenous identity and gender of victim and type of decision, Canada, 2009/10 to 2020/21

Data sources and methodology

Homicide Survey

The Homicide Survey collects police-reported data on the characteristics of all homicide incidents, victims and accused persons in Canada. The Homicide Survey began collecting information on all murders in 1961 and was expanded in 1974 to include all incidents of manslaughter and infanticide. Although details on these incidents are not available prior to 1974, counts are available from the Uniform Crime Reporting Survey (UCR) and are included in the historical aggregate totals.

When a homicide becomes known to police, the investigating police service completes the survey questionnaires, which are then sent to Statistics Canada. There are cases where homicides become known to police months or years after they occurred. These incidents are counted in the year they become known to police (based on the report date). Information on persons accused of homicide is only available for solved incidents (i.e., where at least one accused has been identified). Accused characteristics are updated as homicide cases are solved, and new information is submitted to the Homicide Survey. Information collected through the victim and incident questionnaires is also updated accordingly when a case is solved. For incidents involving more than one accused, only the relationship between the victim and the closest accused is recorded.

Indigenous identity is reported by police to the Homicide Survey and is determined through information found with the victim or accused person, such as Status cards, or through information supplied by victims' or accused persons' families, the accused persons themselves, community members, or other sources (i.e., such as band records). Forensic evidence such as genetic testing results may also be an acceptable means of determining the Indigenous identity of victims.

For the purposes of the Homicide Survey, Indigenous identity includes those identified as First Nations persons (either Status or non-Status), Métis, Inuit, or an Indigenous identity where the Indigenous group is not known to police. Non-Indigenous identity refers to instances where the police have confirmed that a victim or accused person is not identified as an Indigenous person.

Indigenous identity reported as 'unknown' by police includes instances where police are unable to determine the Indigenous identity of the victim or accused person, where Indigenous identity is not collected by the police service, or where the accused person has refused to disclose their Indigenous identity to police.

The Homicide Survey collects information about homicides that occurred both on and off reserves.

The year 2019 marked the first cycle of collection of the Homicide Survey data for which information on gender identity was reported for victims and persons accused of homicide. Given the small counts of victims and accused persons reported or were identified as being non-binary, their data cannot be presented to protect privacy and confidentiality.

Integrated Criminal Court Survey

The Integrated Criminal Court Survey (ICCS) collects statistical information on adult and youth court cases involving *Criminal Code* and other federal statute offences. Data contained in this article represent both the adult criminal court portion as well as the youth court portion of the survey.

All youth courts in Canada have reported data to the youth component of the survey since the 1991/1992 fiscal year. As of 2005/2006, all provincial and territorial (adult criminal) courts in 10 provinces and 3 territories report to the survey. However, information from superior courts in Ontario, Manitoba and Saskatchewan as well as municipal courts in Quebec are not available for

extraction from their electronic reporting systems and are therefore not reported to the survey. Superior court information for Prince Edward Island was also unavailable until 2018/2019.

The primary unit of analysis is a case. A case is defined as one or more charges against an accused person or company that were processed by the courts at the same time and received a final decision. A case combines all charges against the same person having one or more key overlapping dates (date of offence, date of initiation, date of first appearance, date of decision, or date of sentencing) into a single case.

A case that has more than one charge is represented by the charge with the "most serious offence" (MSO). The most serious offence is selected using the following rules. First, court decisions are considered and the charge with the "most serious decision" (MSD) is selected. Court decisions for each charge in a case are ranked from most to least serious as follows: 1) guilty, 2) guilty of a lesser offence, 3) acquitted, 4) stay of proceeding, 5) withdrawn, dismissed and discharged, 6) not criminally responsible, 7) other, and 8) transfer of court jurisdiction.

Second, in cases where two or more charges result in the same MSD (e.g., guilty), *Criminal Code* sentences are considered. The charge with the most serious offence type is selected according to an offence seriousness scale, based on actual sentences handed down by courts in Canada. Each offence type is ranked by looking at (a) the proportion of guilty charges where custody was imposed and (b) the average (mean) length of custody for the specific type of offence. These values are multiplied together to arrive at the final seriousness ranking for each type of offence. If, after looking at the offence seriousness scale, two or more charges remain tied then information about the sentence type and duration of the sentence are considered (e.g., custody and length of custody, then probation and length of probation, etc.).

Linkage file: Overview and limitations

Sections 2 and 3 in this *Juristat* article are based on a data file which linked police-reported data from the Homicide Survey and the Uniform Crime Reporting (UCR) Survey with administrative data from the Integrated Criminal Court Survey (ICCS).

Homicides reported by police between 2009 and 2021, where there was at least one accused person identified, and charges were laid or recommended by police, were considered in scope. While the focus of this analysis is on the homicides of Indigenous women and girls, all homicide incidents were included in the linkage to permit comparisons with homicides of non-Indigenous women and girls and, in some cases, homicides of men and boys.

The linkage was conducted in multiple steps using key information about the accused persons in the homicide incidents. First, information about the persons, such as province, sex, age or birthdate, and soundex (an algorithm that encodes names) were considered. Next, any matches were further linked based on the incident date, the date it was reported to police, the date charges were laid.

According to the Homicide Survey, there were 389 Indigenous women and girls who were victims of a homicide between 2009 and 2021 where police laid or recommended charges against at least one accused person in the incident. Of these, 48% were successfully linked to at least one charge in court. This linkage rate was comparable to homicides of non-Indigenous women and girls (44%) and homicides of men and boys (49%) over the same period.

Limitations

The linkage allows for a greater examination of outcomes depending on characteristics of the victim, accused, and incident as captured by the Homicide Survey. That said, the linkage rate of Homicide Survey data, while comparable across groups, is lower than is typically seen when linking police-

reported data and courts data. As such, there are limitations that should be considered when interpreting the findings, namely data coverage, which has a particularly notable impact on homicide data, and elapsed time between an incident and the completion of a court case.

In terms of data coverage, not all jurisdictions in Canada currently report data to the ICCS: information from superior courts in Ontario, Manitoba and Saskatchewan as well as municipal courts in Quebec are not reported, while superior court information for Prince Edward Island was also unavailable until 2018/2019. This absence of data from superior courts in these jurisdictions is particularly notable for this analysis, as more serious cases (e.g., homicides) are processed in superior court.

In terms of time, some homicide incidents that did not successfully link to a completed charge may still be before the courts, particularly in recent years where the linkage rates were noticeably lower. Further, the most recent years included in the linkage were impacted by delays, closures, or modifications to criminal court processes associated with the COVID-19 pandemic and related measures. As the ICCS data reflects only completed charges, those which are still active in the court system are not reflected in this linkage.

It is also possible that incidents do not successfully link due to missing or incomplete information in one or more of the files. Despite these limitations, however, the linked file affords the opportunity to examine quantitative and contextual factors, such as Indigenous identity, relationship, motive, and other characteristics that may be associated with court case characteristics and outcomes in greater detail than would be possible if using the ICCS data on its own.

Incidents may have involved multiple victims of different genders and different Indigenous identities. To avoid counting the same incident multiple times, incidents were classified according to the following hierarchy: if the incident involved a victim who was an Indigenous woman or girl, all victims

and accused persons associated with the event are included in the category “homicides of Indigenous women and girls”. For that reason, a small number of men and non-Indigenous women may also be included as victims in a homicide of an Indigenous woman or girl.

Next, if the incident involved a victim who was a non-Indigenous woman or girl, it was classified as a “homicide of non-Indigenous women and girls”. Finally, all other homicides that did not involve any women or girls as victims were classified as “Homicide of men and boys”. Victims whose gender was reported by police as unknown are excluded from the analysis, as are women and girls who were victims and whose Indigenous identity was reported as unknown (2% of all women and girls who were victims of homicide between 2009 and 2021).

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Notes

- 1 Reliable information on the Indigenous identity of men and boys who are victims of homicide is only available beginning in 2014. For that reason, all men and boys are included in one category here.
- 2 Includes homicides reported by police between 2015 and 2021, as information on whether the victim was considered to be a missing person at the time of their homicide was first collected beginning in 2015.

- 3 Percent calculation includes unsolved homicides (for which no accused person was identified; 13.3%) and solved homicides for which the identity of the accused was unknown or not reported (0.8%).
- 4 Includes homicides reported by police between 2014 and 2021, as information on the Indigenous identity of persons accused of homicide was first collected beginning in 2015.
- 5 *R. v. Gladue*, [1999] 1 S.C.R. 688.
- 6 *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433
- 7 *Criminal Code*, s. 231.
- 8 *Ibid.*, s. 234.
- 9 At the time of writing, three jurisdictions (British Columbia, Quebec and New Brunswick) employed a pre-charge screening or charge approval process that requires the Crown Prosecutor to review and approve charges before police can lay charges. In other jurisdictions (for example, Saskatchewan), Crown Prosecution may advise police on which charges to lay in a homicide. In this paper, the charging process is referred to as charges “laid or recommended by police”, to represent the fact that Crown Prosecutors can influence which charges are ultimately laid.
- 10 See Table 5 for a complete list of variables included in the model.
- 11 All homicide incidents were linked to permit comparisons between court outcomes for homicides involving Indigenous women and girls and homicides of non-Indigenous women and girls or men and boys.

12 For instance, between 2009 and 2018, 58% of homicides of Indigenous women and girls where the incident was cleared by the laying or recommendation of charges were linked to a completed court case. The proportion varied by year, from a low of 44% (2011) to a high of 77% (2014). The proportions for homicides in 2019 (26%), 2020 (17%), and 2021 (0%) were much lower. Therefore, a higher linkage rate is to be expected as data are updated. Similar patterns were seen among non-Indigenous women and girls: between 2009 and 2018, 53% of homicides cleared by laying or recommendation of charges were linked to a completed court case, dropping considerably in 2019 (35%), 2020 (8%), and 2021 (0%). In this analysis, the median time to complete a case associated with the homicide of an Indigenous woman or girl was 433 days. In addition, the most recent years included in the linkage were impacted by delays, closures, or modifications to criminal court processes associated with the COVID-19 pandemic and related measures. As the ICCS data reflects only completed charges, those which are still active in the court system are not reflected in this linkage.

13 A completed case is one or more charges against an accused person or company, which were processed by the courts at the same time and received a final decision.

14 Analyses which make use of data from the Integrated Criminal Court Survey are often based on the most serious decision (MSD) approach, in which the charge with the most serious decision (e.g., a guilty finding) is taken to represent the case, even if a more serious charge had been present in the case. In the present analysis, the approach taken has been to look at all charges when analyzing offences (i.e., homicides), so that characteristics such as types of charges associated with homicides can be looked at (even if they were not the most serious charge in the case).

15 Of the 193 completed cases linked to a homicide of an Indigenous woman or girl, 20% involved the same victim in multiple cases. This compares with 13% of cases linked to a homicide of a non-Indigenous woman or girl, and 42% of cases linked to a homicide of a man or boy.

16 Of the 169 victims in cases linked to homicides of Indigenous women and girls, 14 were men and 6 were non-Indigenous. This is because homicides with multiple victims were included in the linkage if at least one (but not necessarily all) victims were Indigenous women or girls. Because of the nature of the linked data, these additional victims are included where victim characteristics are presented.

17 It should be noted that for a case to be noted as having a finding of guilt, only one of its charges—and not necessarily the homicide charge—need result in a finding of guilt. For more information, see Data sources and methodology. The proportion of cases with a guilty finding is considerably higher than the proportion of individual charges with a guilty finding. This is largely due to the analytical approach, where cases with multiple charges are represented by a single charge, the most serious decision (MSD). The MSD takes into account the severity of the offence, but also the final decision, with findings of guilt taking precedence over other types of decision.

18 In cases with First Nations women and girls who were killed, the proportion where an accused was found guilty was 62%. When the victim was an Inuit woman or girl, the proportion was 82%; when she was Métis, 38% resulted in a finding of guilt. However, it should be noted that distinctions-based percentages are based on small sample size, resulting in large variability in the percentages.

19 See footnote 4.

20 It should be noted that whether an accused did or did not use alcohol or other intoxicants at the time of the incident was reported by police as unknown for 18% of accused in cases linked to a homicide of an Indigenous woman or girl, and 24% where the victim was non-Indigenous.

21 Notably, the proportion of cases with a custodial sentence of zero days was considerably higher when the victim was a non-Indigenous woman or girl (49%) compared to when she was Indigenous (10%). This may reflect credit given for time served by the accused before the commencement of the trial; additionally, judges may grant additional credit for time served after a finding has been reached but before sentencing. However, it may also represent sentences that are indeterminate or of unknown length. Due to inconsistencies in the way jurisdictions report sentencing data to the Integrated Criminal Court Survey, further analysis of these sentences is not possible.

22 Based on cases with a guilty decision in adult court, where the most serious sentence was custody, and the length of the custody was known. Indeterminate sentences are excluded (considered unknown length).

23 Includes all cases linked to the homicide of an Indigenous woman or girl, including those with no homicide charge in the case.

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