

**PERSONS CHARGED WITH, AND PERSONS CONVICTED
OF, AN IMPAIRED DRIVING OFFENCE, BY
JURISDICTION: CANADA, 2012-2015/16**

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Introduction

The following Chart provides information on federal impaired driving charges and related convictions. The statistics include both adults and youth, and cases involving motor vehicles, vessels and aircraft. However, the impaired driving charge and conviction data do not capture the role of impairment in other *Criminal Code* traffic offences. For example, there were more than 35,400 criminal “incidents” of failing to remain at the scene of a crash in 2016,¹ a significant percentage of which are generally believed to involve impaired drivers. Similarly, given the well-documented problems in processing impaired driving cases,² the police may charge an impaired driver with the criminal offence of dangerous driving.³ Rather than laying any criminal charge, the police may suspend an impaired driver’s licence and impound his or her vehicle pursuant to the provincial or territorial highway traffic legislation.⁴

(a) The Canadian Charge and Conviction Data

The charge data are reported by calendar year and are based on one Statistics Canada CANSIM Table.⁵ The conviction data are reported by fiscal year and are based on two Statistics Canada CANSIM Tables.⁶ There are three major problems with the conviction data.

First, given the different reporting periods and the time lag between the laying of a charge and its disposition, the conviction data cannot be aligned with the charge data. While some accused may plead guilty on first appearance or be tried within several months, other cases can take years to resolve, particularly those involving serious charges. For example, assume that a person is charged with impaired driving causing death in November 2013 and is convicted in April 2016 following various *Charter* challenges, a preliminary hearing, a jury trial, sentencing, and appeals. The impaired driving causing death charge would be reported in the 2013 “persons charged” data in *CANSIM Table 252-0051*⁷ and the conviction would likely be reported in the 2015/16 “guilty

¹ Statistics Canada, *CANSIM Table 252-0051: Incident-based crime statistics, by detailed violations annual (number unless otherwise noted)* (Ottawa: Statistics Canada, 2017) [Table 252-0051].

² R. Solomon & E. Chamberlain, “The Road to Traffic Safety: Mandatory Breath Screening and Bill C-46” (2018) *Canadian Criminal Law Review* (in press); and R. Solomon & E. Chamberlain, “Canada’s New Drug-Impaired Driving Law: The Need to Consider Other Approaches” (2014) 15(7) *Traffic Injury Prevention* 685.

³ *Table 252-0051, supra* note 1. In addition to the over 11,000 incidents of dangerous driving in 2016, there were more than 6,500 incidents of driving while prohibited or suspended for a federal impaired driving offence.

⁴ In a national survey of Canadian police, 30% of officers reported that they sometimes or frequently let impaired drivers off with an administrative licence suspension, rather than lay a criminal charge. Moreover, 29% of officers reported that they sometimes or frequently took no legal action against impaired drivers, but rather arranged for them to be taken home by a sober licensed passenger, taxi or other similar means. B. Jonah *et al.*, “Front-line police officers’ practices, perceptions and attitudes about the enforcement of impaired driving laws in Canada” (1999) 31 *Accident Analysis and Prevention* 421 at 426.

While the police survey is somewhat dated, the number of criminal charges has continued to fall as the number of provincial administrative licence suspensions has increased. See M. Asbridge, *An Overview of Short-term Suspensions and Criminal Code Charges for Alcohol and Drug-Impaired Driving in Canada: 2010-14* (Oakville, Ont.: Mothers Against Drunk Driving (MADD) Canada, 2016) at 8.

⁵ *Table 252-0051, supra* note 1.

⁶ Statistics Canada, *CANSIM Table 252-0053, Adult criminal courts, number of cases and charges by type of decision annual (number)* (Ottawa: Statistics Canada, 2016) [Table 252-0053]; and Statistics Canada, *Table 252-0064, Youth courts, number of cases and charges by type of decision* (Ottawa: Statistics Canada, 2016).

⁷ *Table 252-0051, supra* note 1.

dispositions” data in *CANSIM Table 252-0053*.⁸

Second, the conviction data, when first reported, may significantly understate the total convictions in that fiscal year. For example, it was first reported that there were 26,296 impaired driving convictions in the 2014/15 fiscal year. However, this was subsequently revised to 32,025, presumably due to the failure of the courts to report all of the 2014/15 convictions in a timely manner. Consequently, care must be taken in interpreting the decrease in convictions from 2014/15 to 2015/16, reported in the following Chart. This decline is likely due, in large part, to the fact that the 2015/16 convictions have not yet been revised upwards to reflect the late reporting of the remaining 2015/16 convictions.

Third, the conviction data typically contain numerous endnotes that qualify the data or alert the reader to omissions or other problems. *CANSIM Table 252-0053* contains 48 endnotes, most of which are relevant to impaired driving. Some of the relevant endnotes are not particularly consequential, while others address major deficiencies in the data. For example, the endnotes indicate that: the Manitoba provincial courts did not report from 1994/95 to 2004/05; the British Columbia provincial and superior courts only began reporting in 2000/01; and the Prince Edward Island, Québec, Ontario, Manitoba, and Saskatchewan superior courts do not provide any case and disposition data.⁹ Given this patchwork of reporting, it is difficult to determine the extent to which impaired driving convictions are understated. The superior courts’ failure to report is particularly concerning because they tend to hear the most serious impaired driving cases.

(b) Canada’s Charge and Conviction Rates in Perspective

It is important to provide a broader context for Canada’s impaired driving charge and conviction data. Although per capita rates of alcohol consumption and patterns of impaired driving are similar in Canada and the United States,¹⁰ Canada’s 2015 charge rate for impaired driving offences per 100,000 licensed drivers¹¹ was about 40% of the American rate.¹² Moreover, in recent years, roughly 60% of those charged with an impaired driving offence in Canada were convicted, whereas the American conviction rate is approximately 80%.¹³

⁸ *Table 252-0053, supra* note 6.

⁹ *Ibid.* There are numerous other gaps in the conviction data. For example, information on municipal court cases are, for unexplained reasons, “excluded from the information that Québec transmits to Statistics Canada.”

¹⁰ See Organization for Economic Co-Operation and Development (OECD), OECD.Stat, Health Status, Non-Medical Determinants of Health: Alcohol Consumption, online: OECD <http://stats.oecd.org/Index.aspx?DataSetCode=HEALTH_STAT>; and E. Sauber-Schatz *et al.*, “Vital Signs: Motor Vehicle Injury Prevention – United States and 19 Comparison Countries” (2016) 65 (26) *Morbidity and Mortality Weekly Reports* 672 at 674-75.

¹¹ For the number of persons charged (50,931) and number of licensed drivers (25,273,000) in Canada, see respectively: *Table 252-0051, supra* note 1; and Transport Canada, *Canadian Motor Vehicle Traffic Collision Statistics: 2015* (Ottawa: Transport Canada, 2017) at 8.

¹² For the number of persons charged (1,089,171) and number of licensed drivers (218,084,465) in the United States, see respectively: US Department of Justice, Federal Bureau of Investigation (FBI), *Crime in the United States 2015*, online: FBI <<https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-29>>; and US Department of Transportation, Office of Highway Policy Information, *Highway Statistics 2015* (Washington, DC: US Department of Transportation, 2017) at DL-1C.

¹³ J. Ringel *et al.*, *Project Report and User Guide* (Atlanta: Centers for Disease Control and Prevention (CDC), 2015) at “Chapter Three, Court Data, Estimates and Analysis,” online: CDC <<https://www.cdc.gov/motorvehiclesafety/calculator/doc/3.html>>. While acknowledging that the data was limited and dated, the authors assumed that 88% of those arrested for an impaired driving offence were convicted. According to a leading American traffic safety researcher, the current conviction rate in the United States is approximately 80%. Phone communication with J. Fell, Senior Research Scientist, Pacific Institute for Research and Evaluation, Calverton, MD, on August 4, 2017. We have used the more recent estimate provided by J. Fell.

Based on the currently available charge and conviction data, only 1 in 880 licensed drivers are convicted of an impaired driving offence in Canada each year, compared to 1 in 250 licensed drivers in the United States. Canada's relatively low charge and conviction rates help explain the limited deterrent impact of the current federal impaired driving legislation.

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DRIVING OFFENCE, BY JURISDICTION: CANADA, 2012-2015/16**

Prov./ Terr.	2012		2013		2014		2015		2016	
	Persons Charged 2012	Persons Convicted 2012/13	Persons Charged 2013	Persons Convicted 2013/14	Persons Charged 2014	Persons Convicted 2014/15	Persons Charged 2015	Persons Convicted 2015/16	Persons Charged 2016	Persons Convicted 2016/17
AB	10,313	6,168	9,273	6,240	9,089	5,117	8,521	4,627	7,522	N/A
BC	5,846	2,720	3,681	1,373	3,500	835	3,399	862	3,303	N/A
MB	2,454	1,328	2,394	1,669	2,200	1,540	2,140	1,406	2,096	N/A
NB	1,436	960	1,364	937	1,285	890	1,252	834	1,282	N/A
NL	956	590	869	558	801	486	735	422	773	N/A
NT	216	132	247	157	280	170	292	141	310	N/A
NS	1,827	1,309	1,768	1,256	1,836	1,246	1,779	1,269	1,687	N/A
NU	109	61	98	67	109	74	103	65	91	N/A
ON	16,066	11,039	14,622	10,146	14,171	9,398	14,242	9,283	13,915	N/A
PE	352	268	333	239	279	223	289	215	301	N/A
QC	15,531	7,415	14,403	10,414	13,539	9,125	13,604	6,665	13,717	N/A
SK	5,005	2,899	4,897	2,888	4,514	2,806	4,351	2,763	3,768	N/A
YK	150	105	158	101	181	115	224	143	201	N/A
CAN	60,261	34,994	54,107	36,045	51,784	32,025	50,931	28,695*	48,966	N/A

* The conviction total for 2015/16 will inevitably be revised upwards to reflect the late reporting of the remaining 2015/16 convictions.