

governments. The primary basis for the division is found in Section 2 of the criminal code. The attorney general of a province is given responsibility for proceedings under the criminal code. The attorney general of Canada is given responsibility for criminal proceedings in Northwest Territories and Yukon, and for proceedings under federal statutes other than the criminal code. Provincial statute and municipal bylaw prosecutions are the responsibility of the provincial attorney general.

Prosecutions may be carried out by the police or by lawyers, depending on the practice of the attorney general responsible. If he prosecutes using lawyers, the attorney general may rely on full-time staff lawyers, or he may engage the services of a private practitioner for individual cases.

A breakdown of criminal prosecution expenditures by level of government in 1981-82 shows that 75% was paid by the provinces (excluding Alberta), 24% by the federal government and 1% by the territories.

Quebec, Ontario and British Columbia accounted for 79.7% of provincial/territorial criminal prosecution expenditures on a dollar basis and 78.6% on a person-year basis. A comparable proportion (an estimated 80.6% of the national population (Alberta excluded) lives in these provinces.

Nationally (federal prosecutions included), the per capita cost of criminal prosecutions in 1981-82 was \$3.56. Per capita expenditures on provincial and territorial prosecution systems ranged from \$1.49 in Newfoundland to \$5.37 in British Columbia, \$12.73 in Yukon and \$14.86 in Northwest Territories (Table 20.2).

### 20.2.3 Federal judiciary

**The Supreme Court of Canada** was created in 1875 by an act of Parliament, eight years after Confederation. Despite its creation, cases brought before it could still be further appealed to the judicial committee of the Privy Council in England. Appeals to this committee were abolished in criminal cases in 1933 and in all other cases in 1949, when the Supreme Court Act was amended to establish firmly the court's judicial independence as Canada's ultimate court of appeal.

The court was first composed of a chief justice and five puisne or associate judges. In 1927 the number of judges was increased to seven and in 1949, with the abolition of appeals to the judicial committee of the Privy Council, to nine, the current number. Of these, at least three are to be appointed from Quebec.

The Supreme Court is a general court of appeal for both criminal and civil cases. Its jurisdiction embraces the civil law of Quebec as well as the common law of the nine common law provinces. In most cases, appeals are heard by the court only if permission to appeal is first given. The court will grant such leave if it is of the opinion that a question of public importance is involved, or if there is an

important issue of law that ought to be decided by the court. Leave to appeal may also be given by a provincial appellate court when one of its judgments is sought to be questioned in the Supreme Court of Canada.

The court will review cases coming from the 10 provincial courts of appeal and from the appeal division of the Federal Court of Canada. The court is also required to consider and advise on questions referred to it by the Governor-in-Council. It may also advise the Senate or the House of Commons on private bills referred to the court under any rules or orders of the Senate or of the House of Commons.

The Supreme Court sits only in Ottawa and its sessions are open to the public. A quorum consists of five members, but the full court of nine sits in most cases; however, in a few cases, five are assigned to sit, and sometimes seven, when a member is ill or disqualifies himself. Since most of the cases have been screened through successful applications for leave to appeal, they involve, by and large, important questions of general concern that ought to be heard by the full court of nine. The main categories include constitutional, criminal and administrative law cases. Some cases may raise points of particular concern which do not need the attention of the full court. Unless by special leave of the court, the only persons who may appear before the court to argue, apart from litigants themselves, are lawyers from any Canadian province. The judgment of the Supreme Court of Canada in all cases is final and conclusive.

**Chief Justice and judges** of the Supreme Court of Canada, as at May 30, 1984:

Chief Justice of Canada, Rt. Hon. Mr. Justice Brian Dickson, PC (appointed April 18, 1984; first appointed a judge of the Supreme Court March 28, 1973)  
 Hon. Mr. Justice Roland Almon Ritchie (appointed May 5, 1959)  
 Hon. Mr. Justice Joseph Philemon Jean Marie Beetz (appointed January 22, 1974)  
 Hon. Mr. Justice Willard Zebedee Estey (appointed September 29, 1977)  
 Hon. Mr. Justice William Rogers McIntyre (appointed January 1, 1979)  
 Hon. Mr. Justice Julien Chouinard (appointed September 24, 1979)  
 Hon. Mr. Justice Antonio Lamer (appointed March 28, 1980)  
 Hon. Madam Justice Bertha Wilson (appointed March 4, 1982)  
 Hon. Mr. Justice Gerald Eric Willoughby Le Dain (appointed May 29, 1984).

**The Federal Court of Canada** came into existence in June 1971. It was constituted by an act of Parliament under Section 101 of the British North America Act (Constitution Act, 1867) which, after authorizing the creation of the Supreme Court of Canada, confers on Parliament the authority to constitute other courts for the better administration