

**SOC 3395: Criminal Justice & Corrections**  
**Lecture 3: Criminal Law & Criminal Justice in**  
**Canada 1**

\* Today we begin considering the role of law in society. This includes such issues as:

- what is an offence
- the rights of accused
- how assessed
- law's source, nature purpose & content

\* Distinction between substantive & procedural law is important here:

- substantive law defines crimes in individual cases
- procedural law defines rights & duties of accused & CJS

personnel as case moves through system (e.g. evidence, search & seizure, right to counsel, etc

\* Many procedural laws emphasize priority of *legal* rather than *factual* guilt (s.7-14 of the Charter of Rights).

\* The constitutionality of laws have been ruled on in many cases since the 1983 introduction of the Charter. Example: sexual assault laws:

- prior to 1983 offence called "rape" (offender had to be male, the victim female, & man couldn't be found guilty of "raping" "his" wife). Much criticism about patriarchal

assumptions

- government introduced new offence of “sexual assault” in 1983
  - changing these elements. Also, introduced “rape shield law”
    - banning cross examination on prior sexual history
  - “rape shield law” repeatedly challenged by defense counsel
  - 1991: Seaboyer case: ruling that rape shield law violated
    - accused’s right to a fair trial
  - 1992: parliament amended law to remove outright ban, set up
    - “screening” procedure whereby defense must show why
      - necessary/ have judge rule before proceeding (has survived challenges since)
  - 1994: Daviault case: drunkenness defense extended to general intent crimes, including sexual assault. Uproar followed
  - 1995: parliament stepped in to eliminate this defense for general intent offences
  - 1995: O’Connor case ruled woman’s counseling records could be
    - handed over to defense counsel to help prepare accused’s defense
  - 1997: parliament restricted disclosure: introduced 2 stage
    - “screening” process before such records could be disclosed
  - 2000: Darrach case: 1992 amendments to rape

shield law upheld  
unanimously. Mixed outcomes since  
- all of this shows interaction between substantive  
law &  
procedural rights in a contentious area of the law

### **Sources of Criminal Law in Canada:**

\* Canadian criminal law is rooted in British Common Law:

- originating during reign of Henry II: goal = strong central government. Courts tried cases on basis of laws passed by government  
- judges appointed to specific territories  
- judges began to share information on rulings: growing corpus of information became influential (i.e. precedent: *stare decisis*)  
- instead of personal wrongs, crimes seen as wrongs against the state itself  
- written sources of criminal law soon emerged (e.g. case reports)

\* In Canada, written sources of criminal law include:

(1) the Constitution Act: sets out federal-provincial division of powers & accused's civil rights in criminal cases

(2) Statute law: systematic codifications of offences,

like the

Criminal Code. Override case law

(3) Case law: published examples of judicial decisions: superior courts must be followed by inferior courts

(4) Administrative law: written by regulatory agencies given power to develop/enforce rules in specific areas (e.g. pollution, securities)

\* Questions of fair/ equal application of such laws arise. The rule of law is meant to ensure laws are created, administered & enforced fairly. 3 elements:

(1) Scope: everybody covered by law & treated equally

(2) Character: law should be public, understandable & clear

(3) Institution: legal institutions must include an independent judiciary, written laws & right to a fair hearing

\* The Charter of Rights:

- protects the legal rights of offenders
- limits the powers of CJS agencies
- governs criminal procedure
- has had an enormous impact since 1983. Key sections:

S.7: life liberty & security of the person

- S.8: no unreasonable search & seizure
- s. 9: no arbitrary detention or imprisonment
- s.10: rights of accused when detained by police
- s.11: rights of accused when being tried, etc.
- s.12: no cruel & unusual punishment
- s. 13: no self-incrimination
- s. 14: right to an interpreter
- s. 15: equality rights
- s. 24: remedies available

\* Note: s.7 has been added to by the courts: the “rights of fundamental justice” are broader than the specific rights listed

### **The Nature of Crime:**

\* Crime can be defined as any action (or omission):

- (1) that is harmful
- (2) prohibited by the criminal law
- (3) that can be prosecuted by the state
- (4) in a formal courtroom, and
- (5) for which punishment may be imposed

\* The “corpus delicti”: 7 items must exist in every criminal act:

- (1) *Legality*: No crime exists without a law
- (2) *Mens rea*: The mental element or “guilty mind.”

Distinct from

motive. 3 levels of culpability: General vs. specific intent,

knowledge & recklessness

- (3) *Actus reus*: The prohibited act or omission

- (4) *Concurrence*: Mens rea & actus rea must intersect
- (5) *Harm*: injury to someone or the public (physical/psychological)
- (6) *Causation*: Actus reus was the cause of harm
- (7) *Punishment*: Sanctions must be stated in law

\* Next 2 classes: criminal defenses, case illustrations of *mens rea*, classification of defenses, the seriousness of crime and criminal law reform