

SOC 3395: Criminal Justice and Corrections:
Lecture 4 & 5: Criminal Law & Criminal Justice in Canada

2

Now that we have reviewed the sources of criminal law in Canada and started looking at the legal elements of a criminal offence, today I want to consider a few more aspects of these matters before moving on to finish the chapter.

First, I want to elaborate a bit further on aspects of our legal and constitutional structure that I don't feel have been sufficiently covered in the text. Secondly, I want to discuss several cases to give you a feel for the application of the key elements of a criminal offence in concrete fact situations. Finally, I will move on to finish the chapter by considering the classification of criminal offences, the seriousness of crime, and several areas of criminal law reform.

Further Legal and Constitutional Issues:

I would like to examine further some of the rules, practices and procedures that we utilize to balance between the rights and liberties of individuals, groups and institutions in society. Our governments, courts and police - the makers, interpreters and enforcers of our criminal and civil laws - have to uphold the fundamental values of society while simultaneously addressing the needs of a continually changing country.

The supreme law in Canada enabling us to address this balance is the Constitution. It establishes the basic organizational framework of government and the limits on government powers. As noted before, it overrides all laws that are inconsistent with its principles - either because they violate individual rights and freedoms or because they run afoul of the constitutional division of powers between the federal and provincial governments.

While made up of more than 30 statutes, the most important sources of constitutional law are the Constitution Act 1867 (once known as the BNA Act), and the Constitution Act 1982. The former sets out the division of powers between the federal and provincial governments while the latter, containing the Charter of Rights and Freedoms, sets out limits on the ability of governments to infringe on specific rights and freedoms of Canadians. There are also unwritten constitutional conventions which, for example, set out the status of the prime minister as the operating head of government, and elevate the status of the supreme court beyond its basis in mere statute.

The Canadian Charter of Rights and Freedoms requires further

discussion here. Since its introduction in 1982, it has caused a legal revolution in Canada by giving courts the power to challenge laws made by parliament, provincial legislatures, and their delegates for contravention of fundamental rights and freedoms. Prior to this time, laws could only be challenged when they were outside the jurisdiction of the federal or provincial governments as set out in the division of powers of the BNA Act. Not only could the courts now review government actions and policies in light of enshrined civil rights, the Charter forced all governments across Canada to review their existing laws with an eye to bringing them into conformity with the Charter.

The Charter guarantees our freedom of conscience, religion, thought, expression, assembly, and association. Certain democratic rights are also protected, including the right to vote in regular elections, the right to be eligible to run for elected office, and the right to move between provinces within Canada. It secures equality before the law for all Canadians, affirms the status of both official languages, and specifies a number of minority language education rights. Further, it instructs judges to interpret the Charter in a manner consistent with the preservation and enhancement of the multi-cultural heritage of Canadians, and recognizes any aboriginal treaty or other rights that pertain to the aboriginal peoples of Canada.

But most importantly for our purposes in this class, the Charter protects our right to be free from arbitrary detention and unreasonable search and seizure. When charged with an offence it gives us the right to be presumed innocent until proven guilty, to have counsel, and to have a trial within a reasonable period of time. It also protects our right not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice.

However, it is important for us - as well as lawyers practicing criminal law - to recognize that the legal rights and freedoms enshrined in the Charter are subject to three important limitations. Thus we must consider the mechanics of how courts deal with Charter complaints. First, we have to recognize that complaints under s.24 the Charter apply only to actions taken and laws made by governments (including federal, provincial, territorial and municipal governments). The Charter is not intended to govern purely private activity between citizens, but to act as a bulwark against the abuses of state power. Complaints about violation of one's rights by private organizations (e.g. employers) are to be dealt with either by Federal or Provincial Human Rights Commissions, administrative agencies, or through private lawsuits.

Secondly, the rights in the Charter are guaranteed subject in section 1 to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. That is, reasonable limits may be

put on these rights so long as government can satisfy the courts that the objective in limiting them is important and justified. Unlike in the U.S., for example, where civil rights are stated in constitutional documents in absolute terms, and arguments usually swirl around the appropriate definition of the right and whether it applies to the fact situation in question, in Canada there is usually not so much of an issue over whether a specific right has been violated. Much more argument is usually spent on whether the specific infringement of a right by government action, law, or policy is a “reasonable limit” on said right. Much social policy analysis on this question, along with related case precedents, is usually presented to the court by counsel on either side of the issue before a decision is rendered. Indeed, Canadian constitutional appeals frequently deal with this question more than anything else.

Finally, there is the notorious notwithstanding clause (s.33). This can be used by parliament or a provincial legislature to immunize a specific law from Charter scrutiny by specifically declaring it to operate notwithstanding the provisions of the Charter. This has not been done often in Canada (Quebec’s separatist government in the 1980’s being a notable exception). It simply does not look good for governments to, in effect, say “We don’t care if the courts say that our law is an unreasonable violation of civil rights, we’re going to enforce it anyway.” Such a stance certainly doesn’t help one’s chances of being re-elected come election time.

Thus, for a Charter challenge of a particular law or policy to be successful, then, challengers must not only establish that the court has jurisdiction, that a Charter right has been violated, that the violation is unreasonable, and hope that the government in question does not use the notwithstanding clause to override the court’s decision.

Now that we have reviewed the mechanics of Canada’s constitutional structure, it is also necessary for us to consider further distinctions between different types of law in Canada, and how these relate to the criminal law. Most broadly, our Canadian legal system is home to two systems of law: the civil law system operating in Quebec and the common law system operating in the rest of Canada. As noted last class, the common law is guided by the principle of *stare decisis*, which allows judges to set new legal principles but requires them to follow relevant case precedents from superior courts. Quebec’s civil law system requires judges to consult comprehensive lists of laws and regulations known as the civil code, but they are not obliged to follow the previous rulings of superior court judges.

As well, we must be aware of the distinction between *private law* (a.k.a. civil law) and *public law* (of which criminal law is a part). Private law relates to the private interests of, or between, individuals. Generally, it includes the law of contracts, torts, property, business, wills and trusts, and

family law. Many aspects of private law may be governed by public statutes and address subjects with public policy implications. Nevertheless, private law generally relates to matters that do not, in any way, involve public benefits or government responsibilities except to help coordinate private interests.

Public law generally consists of a loose amalgam of constitutional, criminal, taxation and public international law. Again, this distinction is not always watertight. For example, an assault can result in public law sanctions (in the form of a criminal sanction for the accused) and private law remedies (in the form of a civil award of monetary damages for the victim). One type of public law is that enacted and enforced by quasi-judicial administrative tribunals who are delegated authority by legislatures to formulate detailed policies and regulations flowing from the legislation they pass (e.g. federal and provincial human rights tribunals; provincial criminal injuries compensation programs).

But, for our purposes, it is the criminal law that is the most important form of public law in Canada. The federal government has the exclusive jurisdiction to create national criminal law in Canada, while the provinces must administer this within their own territories. The provinces may also create limited provincial offences for certain matters within their jurisdiction (e.g. hunting regulations). The federal Criminal Code is the principle source of criminal law in Canada, which prohibits a range of activities related to interference with property, violation of the safety and dignity of persons and community values. Most federal and provincial statutes are enforced by the threat of fines or imprisonment.

Legal Defences and the Law:

Legal defences fall into two broad groups: excuses and justifications. Under the former, because certain conditions exist the accused is excused from criminal liability. In the latter, the conduct is not wrong on the context in which it occurs.

Let's start with excuses. In these, the accused admits the conduct but asserts s/he cannot be held criminally responsible for it as there was no criminal intent (e.g. age, mental disorder or mistake of fact). Thus, if we consider *age*, children are seen as different from adults. Thus, kids under 12 lack criminal responsibility, teens between 12-18 have diminished responsibility under the YCJA, while individuals over 18 face full criminal responsibility for their actions. *Mental disorder* as a defence is codified in s. 16(1) of the *Criminal Code* whereby no person can be found responsible for actions committed while suffering from a mental disorder that render them incapable of appreciating the nature and quality of the act or omission or of knowing that it is wrong. In *automatism*, people who are in a dissociative

state and not in conscious control of their bodily movements cannot be held criminally responsible for their actions (e.g. sleepwalking, following a concussion or after taking a drug without knowing its effect). In *mistake of fact*, someone who commits an illegal act while believing that certain circumstances exist may be excused if the mistake was an honest one and no criminal offence would have existed if the circumstances had been as the accused believed them to be. Finally, an old defence, *mistake of law* (e.g. ignorance of the law) has been done away with by the SCC.

Let's now turn to justifications. These involve an accused admitting what s/he has done, but arguing it was justified in the circumstances. All result in acquittal of the accused except provocation (which reduces a murder charge to manslaughter) and entrapment (for which a stay of proceedings is entered, rather than acquittal). The first justification, *duress*, involves the idea that the wrongful threat of one person makes another commit an offence s/he would not have otherwise, especially when (1) there is an immanent threat of death or other bodily harm; or (2) no realistic alternative course of action. A defense speaking to the *mens rea* of the accused, this exists both in s.17 of the *Criminal Code* and at common law. Next, the defence of *necessity* is related to, but distinguished from duress as the latter involves intentional threats of bodily harm while the former involves danger caused by forces of nature or human conduct other than intentional threats. Generally, there has to be immediate danger or peril, the accused had no reasonable alternative to the course of action taken, and there was proportionality between the harm inflicted and the harm avoided. Third, *self-defence* justifies the use of force against another person to prevent the commission of certain offences likely to cause severe harm to a person or property (e.g. to protect oneself against assault). Sections 26 and 27 talk about using only as much force as is reasonably necessary. In s.34(2), which deals specifically with causing bodily harm or death in this regard, there must be an unlawful assault, the accused must have been under a reasonable fear of death or serious bodily harm, and the accused must have believed on reasonable grounds that there was no other way to survive. This has been controversial in battered women cases. Fourth, *provocation* involves the argument that a wrongful act or insult by the victim so enrages an otherwise ordinary person that s/he is deprived of the power of self-control and kills the victim. Only used in murder cases, it involves: (1) a wrongful act or insult; (2) sufficient to deprive an ordinary person of the power of self-control; (3) that actually provoked the offender, who acted in response to it; and (4) it was on the sudden, before there was time for his or her passion to cool. Finally, *entrapment* is a defense imported from the U.S. It can be used when a police officer or other government agent deceives a person into committing a wrongful act. While able to use legitimate means to gain information and arrest a suspect, this is different from offering them an opportunity to commit a crime without reasonable grounds to suspect that s/he was involved in criminal activity. It also occurs

when the person is actually induced or set up to commit a crime. This defence arises after guilt has already been determined and must be proven on a balance of probabilities. If the judge so rules, a permanent stay of proceedings is entered rather than an acquittal.

Mens Rea and Actus Reus: Case Illustrations

In the last class we elaborated some of the specific qualifications of *mens rea* and *actus reus*. We must reiterate that concurrence between these two elements is generally required for a conviction. While not an "official" element of a crime, concurrence requires, for example, that "intent both precede and be related to the specific prohibited action or inaction that was or was not taken." Concurrence is usually not considered a controversial issue since in most instances the connection between act and intent is obvious.

So how would a court go about finding a concurrence of *mens rea* and *actus reus* in murder cases? Consider the case of R. v. Cooper. In this case the accused and his former girlfriend had been out with friends at a bar, drank a considerable amount, and left to go parking. At one point, they began to argue and she struck him. He became angry, hit her, and grabbed her by the throat with both hands. He then blacked out, and, the next thing he remembers is waking up in the back seat finding her strangled body beside him. The defense argued that, since he blacked out before killing her, he did not have the required intent to commit murder. Alternatively, he did not foresee that holding someone by the throat was likely to cause her death.

At issue in this appeal case was not only whether *mens rea* was present, but whether it must exist *concurrently* with the guilty act. The majority, led by Justice Cory, argued that this must coincide at some point, but need not overlap entirely. "It could be reasonably inferred by the jury that when the accused grabbed the victim by the neck and shook her that there was, at that moment, the necessary coincidence of the wrongful act of strangulation and the requisite attempt to do bodily harm that the accused knew was likely to cause her death. Cooper was aware of these acts before he blacked out...It was sufficient that the intent and the act of strangulation coincided at some point. It was not necessary that the requisite intent continue throughout the entire two minutes required to cause the death of the victim." However, one judge, Justice Lamer, disagreed with this. He argued that "there may be a point at the outset when there is no intention to cause death and no knowledge that the action is likely to cause death. But there comes a point in time when the wrongful conduct becomes likely to cause death. It is, in my view, at that moment or thereafter that the accused must have a conscious awareness of the likelihood of death. This awareness need not, however, continue until death ensues." In the end, the

majority of the court sided with Mr. Justice Cory, and Cooper's conviction was restored.

The difference between the positions of these two judges hinges on the inferences that one is willing to draw with respect to intention. Justice Lamer asserts that any conviction for murder requires proof of subjective knowledge of the likelihood of death. Justice Cory thinks it is sufficient to base a criminal conviction upon an inference of reasonable knowledge of the likelihood of death given the nature of the acknowledged actions in question. This question of whether criminal conviction for murder should be premised upon objective or subjective intention is one that will continue to be debated in criminal law. In essence, the distinction is between what a reasonable person would be expected to intend, and what the accused actually did intend.

The situation is even more complicated in the case of other crimes. There are many criminal offences for which the required *mens rea* is a subjective intention to commit the given act, but is founded on "recklessness" or "advertent negligence" rather than a direct intent. For example, in the offence of dangerous driving causing death, we can look at the case of R. v. Hundal. There the judge looked at the text of s.233 (1), the provision against dangerous driving, and argued: "Depending on the provisions of the particular section and the context in which it appears, the constitutional requirement of *mens rea* may be satisfied in different ways. The offence can require proof of a positive state of mind such as intent, recklessness or wilful blindness. Alternatively, the *mens rea* or element of fault can be satisfied by proof of negligence whereby the conduct of the accused is measured on the basis of an objective standard without establishing the subjective mental state of the particular accused. In the appropriate context, negligence can be an acceptable basis of liability which meets the fault requirement...The wording of the section itself which refers to the operation of a motor vehicle 'in a manner that is dangerous to the public, having regard to all the circumstances' suggests that an objective standard is required. The 'manner of driving' can only be compared to a standard of reasonable conduct. That standard can be readily judged and assessed by all who would be members of juries. Thus, it is clear that the basis of liability for dangerous driving is negligence. The question to be asked is not what the accused subjectively intended, but rather whether, viewed objectively, the accused exercised the appropriate standard of care."

Thus, it is fair to conclude that the very nature of *mens rea* changes as one moves from offence to offence.

The final issue we must consider with regard to *mens rea* is that of parties to an offence. Under s.21 of the Criminal Code, parties to an offence may be held just as criminally responsible as the persons who actually

commit the crime. If you do or refrain from doing something that aids the offender committing the crime, or form a common intention to carry out an unlawful purpose, you are a party to the crime and may be held responsible. In most cases the operation of this section is pretty straightforward. If you provide a gun, drive the getaway car, or keep a lookout for police, you can be convicted of the offence just as readily as the person who pulls the trigger or robs the bank. However, there are awkward situations that are not quite so simple. What if you walk by a fight where someone you dislike is being badly beaten up by a friend? What if you simply walk by and do nothing? What if you smile or shout encouragement? What if you volunteer to hold the victim down? The answer to these various situations is always somewhat unclear, but a general framework goes something like this. Simple presence is not sufficient to show intent to encourage the fight. However, any evidence of encouragement toward the offender (or, for example, betting at prize fights) would likely render you culpable as a party to the offence.

Now that we have discussed the general elements of an offence, how subjective an objective standards of *mens rea* vary by offence, and the issue of parties to an offence, we must move on to consider defenses and mitigations to criminal offences. In addition to violations of an accused's constitutional rights under the Charter, there are many circumstances in which people charged with criminal offences are able to escape responsibility - or some degree of responsibility - for their crime. Many of these are related to the requisite *mens rea* for the crime in question. For example, an accused may have inflicted harm in self defense; they may have been enticed by police to commit a crime (usually in drug or prostitution cases); they may have been forced at gunpoint to help rob a bank (duress); they may have been mistaken about a woman's consent to sexual relations (mistake of fact); or they may have been too intoxicated or mentally disturbed to understand or appreciate the alleged offence (drunkenness/insanity). Of course, these "excuses" for crime are highly controversial and are often criticized for supporting unjust societal assumptions. Today we will consider cases in relation to two of these defenses: drunkenness and mistake of fact.

We will first consider the defense of drunkenness by looking at the case of Randy Tom. Police officers had been called to a reservation by an ambulance crew after a report of Mr Tom causing a disturbance. He was soon observed by police officers being chased by a man with a baseball bat. When he saw the police the man with the bat backed off and Mr. Tom kept running. The police caught up with him shortly afterward and noted he was very drunk. The officer advised him he was being arrested for public drunkenness, given his rights, but there was no response. He just stared at the officer glassy eyed and mute. He was helped toward the road to wait for the police cruiser. While waiting, Tom asked the officer (whom he knew) for

his gun to “shoot” those who had been pursuing him. When the officer tried to calm him down, Mr. Tom picked up a rock and swung it at the officer’s head. After a short chase, both fell and passed out. He was arrested by the other officer and charged with assault causing bodily harm and assaulting a police officer.

At trial the defense argued the defense of drunkenness, basically that Mr. Tom’s intoxication was so extreme that it involved a lack of awareness akin to a state of insanity or automatism - raising a reasonable doubt as to the existence of the minimal intent required for the offence. The trial judge did not feel that there was such an absence of awareness in this case since the accused appeared oriented to time and place, recognized the officer (whom he knew for some time), and carried on a conversation with him. The fact that Tom does not remember anything later was irrelevant to the trial judge, who convicted Mr. Tom on both charges. However, on appeal to the B.C. Court of Appeal the outcome was reversed. The appeal judges felt that the conversations between the parties only established that they could understand Mr. Tom’s words, not that he was making any sense or was in any way coherent. In their view, many people who are very drunk can speak, but the more important question is whether what is spoken can support a reasonable inference - one way or the other - as to their cognitive awareness. Here, moreover, the evidence indicated that when the officer spoke to Mr. Tom at the scene, he did not respond but simply stared incomprehensively. Not only did he not seem to understand what was being said, but his behavior both before and after arrest was sufficiently bizarre to lead to the conclusion that there was something at least abnormal about his cognitive function. Mr. Tom’s convictions were thus overturned.

So how do you feel about this? Should drunkenness continue to be a defense to criminal charges of general intent? Should the circumstances be restricted? Or should drunkenness be irrelevant to determination of guilt and simply be considered when sentence is being imposed (in exacerbation or mitigation)?

While we are not able to discuss all of the defenses noted earlier (e.g. insanity, self-defense, duress, and entrapment being some), we will look at one more controversial example before we close. The defense of mistake of fact traditionally maintained, for example, that if a man has an honest but mistaken belief that a woman has consented to sexual activity, he may avoid conviction for sexual assault as he lacks the requisite *mens rea*. We will consider two cases on this issue.

In the first, the Pappajohn case, a female real estate agent and her male client had a long business lunch, consumed large amounts of alcohol, and returned to his residence around suppertime where they engaged in sexual relations. Afterwards their recollections of this encounter varied

significantly. He argued that what occurred was consensual with no more than a bit of coy objection on her part, while she related a story of rape completely against her will and over her protests and struggles. The police were called later that evening and Mr. Pappajohn was charged with sexual assault. He argued the defense of mistake of fact. Here the judge noted circumstantial evidence supportive of his claims, including: (1) the fact that her necklace and car keys were found in the living room; (2) the complainant confirmed his testimony that her blouse was neatly hung in the clothes closet; (3) other items of folded clothing were found at the foot of the bed; (4) none of her clothes were damaged in the slightest way; (5) she was in the house for a number of hours; (6) by her version, when she entered the house Mr. Pappajohn said he was going to 'break her,' but she made no attempt to leave; (7) she did not leave while he undressed; (8) there was no evidence of struggle; and (9) she suffered no physical injuries other than 3 scratches. Nevertheless, despite this circumstantial evidence, Mr. Pappajohn was convicted by the jury. The appeal court simply didn't want to interfere with the trier of fact which was in a better position to observe the accused and assess the evidence in person (rather than secondhand from appeal transcripts). In somewhat tortured reasoning, the supreme court argued that "it does not follow that, by simply disbelieving the appellant on consent, in fact the jury found there was no belief in consent and that the jury could not reasonably be believed in consent." In other words, Mr. Pappajohn may not have been believed by the jury, but the jury may have been mistaken. In short, this precedent holds out the possibility of a defense of mistake of fact in other cases, even though it was not successful here.

A second, and clearer, case on this issue involved a Mr. Sansregret who had lived with a woman for about a year in a turbulent relationship. After what she recounted as recurring physical abuse on his part, she decided to end the relationship and asked Mr. Sansregret to leave - which he did. Not surprisingly in such relationships, Mr. Sansregret did not stay away for long. He broke into her house in the middle of the night, terrorized her with a file like instrument, and, in order to calm him down, she held out some hope of reconciliation and had sexual relations. Later she reported this to police and Mr. Sansregret's probation officer intervened. Then, three weeks later, Mr. Sansregret broke in again. He accused her of having another boyfriend, pulled the phone out of the wall, struck her hard across the mouth, and repeatedly terrorized her with a kitchen knife. Again, to calm him down, she pretended there was some hope for reconciliation and had sexual relations. Later that morning she dropped him off, went to her mother's and called the police. The judge here concluded that there was no consent, but rather submission as a result of a very real and justifiable fear. "No one in his right mind could have believed that the complainant's dramatic about face stemmed from anything other than fear. But the accused did. He saw what he wanted to see, heard what he wanted to hear,

believed what he wanted to believe.”

As noted, both of these cases, with widely differing fact situations, ended in a conviction. The defense of honest mistake of fact remains as a legal possibility, but it is clear that it cannot be simply a subjective test of the accused’s intention. Wholly unreasonable beliefs, however honestly held, are not likely to be viewed by the courts as negating the *mens rea* required for conviction.

Now that we have reviewed these supplemental matters, we move on to conclude Chapter 2 by considering the classification of offences, the seriousness of crime, and two recent examples of criminal law reform.

The Classification of Criminal Offences:

In Canada the federal government classifies crimes and sets penalties. Crimes are classified legally as indictable offences (most serious), summary conviction offences (less serious), and hybrid offences (where the crown has a choice to proceed either way). More general classifications refer to categories used by police and others such as violent vs. property crimes.

Summary conviction offences are generally punishable by a period of incarceration of up to 6 months and a maximum fine of \$2000 (though for some crimes, such as sexual assault, the SCC has increased the maximum incarceration to 18 months). Summary conviction trials are always heard by a provincial court judge. Charges must be laid within 6 months of occurrence. Time is served provincially.

For indictable offences, there are 3 methods of trial. The less serious ones (e.g. most gaming offences) are required to be tried by provincial court judge. The most serious crimes are exclusively to be tried by a federally appointed judge in a provincial supreme court (e.g. murder). For all other indictable offences, the accused may elect to have the case heard by judge alone or by judge and jury, either at the provincial or superior court level. If convicted of an indictable offence, the accused may receive a variety of sentences. Some bring automatic sentences, while in others punishments depend on the degree of harm inflicted, among other things. Few minimum sentences are stipulated, so in most cases it’s up to the judge to select the appropriate sentence within the “range” set by statute, fact situation, and case law.

Hybrid offences give prosecutors the discretion to decide if they wish to proceed with a case as a summary conviction offence or an indictable offence. The prosecutor usually weighs the offender’s record, mitigating or aggravating factors, and the police report. Yet, however this decision is reached, it will have a major impact on appeals, length of sentence, fine vs.

imprisonment, and whether the offender can serve the sentence in the community.

The Seriousness of Crime:

Criminal statutes set out punishments that reflect the seriousness of the crime committed. Some offences in the Criminal Code recognize different levels of violence, together with differences in the maximum punishments applicable to each (e.g. homicide, assault, sexual assault). For example, level 1 sexual assault is a hybrid offence (with maximum punishment being 10 years or 18 months, depending on how the prosecutor proceeds). The other two levels of sexual assault are indictable, with maximum sentences of 14 years and life respectively. Similarly, homicide is divided into first and second degree, manslaughter and infanticide. First degree murder - generally planned and deliberate or taking place in certain circumstances - is the most serious. Second degree murder is basically culpable homicide where the elements of first degree cannot be established. Manslaughter is basically accidental death that occurs during the commission of another offence or through criminal negligence. Infanticide is a rare offence committed by "a female person" who causes the death of a newly born child. First and second degree murder carry automatic life sentences (though the parole eligibility period differs). In theory, the person spends the rest of his life in prison; in reality, even those serving life with no parole for 25 years can apply after 15 years to have their parole eligibility period reduced under the so-called "faint hope clause." Of the first 103 applicants, 84 were successful in obtaining a parole board hearing and 25 were informed that they could apply for parole immediately.

In addition, the seriousness of crime may be discussed in terms of its social functions. A criminal act is referred to by criminologists as *mala in se* when it is illegal because most lawmakers and the public agree that the actions are wrong and should be criminalized (i.e. "Natural crimes" such as murder). Even if criminal sanctions were removed, moral/social sanction would remain powerful crime prevention forces. In contrast, *mala prohibita* refers to those actions that are wrong only because they have been made illegal through the creation of a statute. Such "human made laws" do not refer to actions considered to be an inherent wrong, but rather actions that are made wrong because they violate somebody's moral principles. Hence, because there may be less of a moral sanction in such offences, the threat of legal sanction may be more important in keeping them in check. There are many debates in this area as to what should be sanctioned and by how much, and, since our values and norms change over time, certain things become public issues (e.g. whether pot should be decriminalized).

Criminal Law Reform:

During the past few decades the federal government has introduced and revised various substantive laws and countless procedural issues have been ruled on by the courts in order to deal with current social issues. Simultaneously, new concerns have been raised that change the way we have traditionally granted legal rights in our society. Some things that were legal 25 years ago are now offences, while other previous offences are now considered the products of archaic times. To consider these matters, let us quickly examine the new criminal conspiracy legislation and laws against panhandling.

In attempts to deal with gangs and appease the public, the federal government introduced anti-gang legislation in 1997. Any or all members of a gang which engage in, or have within the preceding 5 years, engaged in the commission of a series of offences may, if found guilty, receive up to 14 years in jail. Basically, anyone guilty of a criminal act performed for the benefit of or in association with a criminal organization may be subject to tougher penalties. There are special provisions with regard to using explosives to commit murder, placing strict limits in peace bonds as to whom one can associate with or go to jail, enhanced powers of electronic surveillance, enabling the crown to seize assets as "proceeds of crime," reversing the onus on bail, making evidence of involvement in a criminal organization an aggravating factor in sentencing, and empowering national and regional coordinating committees on organized crime to share information and assist in enforcement.

While this law has been successfully applied on occasion, many argue that this is bad law that was unlikely to solve the problem of organized crime. Moreover, some argue that strong laws were already on the books in this regard, making the new provisions redundant. Most critics, however, argued that the legislation was difficult to apply in practice. As a result, new anti-gang legislation was tabled in 2001. This addressed some of the earlier concerns and included sweeping new powers to CJS officials. The most important changes involve tightening the definition of criminal organization, the criminalization of actual participation in a criminal organization irrespective of committing a crime, the criminalization of benefitting from a criminal organization, and the criminalization of directing others to commit crimes. New wiretapping powers were also given to police, who were also granted immunity for actions taken during investigation. Police were given the power to authorize their own actions and immunity from committing many crimes in their pursuit of charges. The bill became law in 2002. While a section of it was struck down by the B.C. Supreme Court in 2004 ("knowingly directing" the actions of another), a significant conviction of two men who had committed extortion in association with the Hell's Angels occurred in 2005.

Police and those working in crime control are happy with these moves

since they streamline investigations and prosecution. Yet, critics fear the new law has created expansive powers for the state: “police authorizing police to break the law is a perversion of the rule of law.” Other point out that instead of being effective in controlling gang-related activities, this merely erodes Canadians’ civil rights.

A second major development has been public concern over the relationship between disorder and crime. As a result, municipalities and the Province of Ontario have passed laws prohibiting activities believed to contribute to disorder (e.g. “Aggressive panhandling” involving threats, obstructing someone’s path, using abusive language or continuing to persistently solicit funds after being denied. These are singled out especially around payphones, ATM’s, public transit and in parking lots). Punishments vary from \$1000 -5000, some also containing short jail terms for subsequent convictions. Such laws have been controversial and has led to court challenges. It has been argued that such laws discriminate against the poor and essentially continue outmoded ‘vagrancy’ legislation. Moreover, it is asserted that these laws are vague and have so many prohibitions that they have the effect of controlling the places the homeless pursue their activities. These laws focus on those least able to defend themselves or pay fines, so many end up locked up. Critics suggest that instead of criminalizing the poor, we should be dealing with the root causes of the problem in the first place (e.g. cutbacks, no affordable housing, etc.) Supporters, in contrast, argue that citizens want such laws and consider that street crime increases as the result of such activities. They argue that controlling certain actions in certain places and times is not a blanket prohibition and the law only controls certain undesirable actions in specific locations. Safer streets and reduced fear are the result, they argue. Challenges to such laws are ongoing, though in 2001 an Ontario Provincial Court Judge ruled the legislation to be constitutional.

Summary and Conclusion:

Our CJS is founded on the protection of law-abiding citizens through the operation of the law. The CJS develops, administers and enforced the criminal law. The federal government defines crimes while the actual administration of justice is in the hands of provincial governments - enabling some variations in the operation of our legal system. Across the board, however, crimes are classified as indictable, summary conviction or hybrid offences, depending on their seriousness.

Our understanding of criminal conduct changes over time. The current Criminal Code is so complex because our knowledge of criminal behavior has increased dramatically (e.g. the new anti-gang and anti-panhandling laws). These legal changes can be either procedural or substantive.

Under our system, all accused are considered innocent until proven guilty beyond a reasonable doubt. No matter what standards our CJS has to employ in this, the perception of our legal system held by the public differs from that of our legal professionals. In general, the public consider violent actions to be more serious than property crimes (while sentencing in many cases would suggest the reverse).