**SOC 3395: Criminal Justice & Corrections**

**Overheads Class 11: Pretrial Criminal Procedures**

\* Pre-trial criminal procedures generally occur between arrest & trial:

\* Most cases don’t go to trial, so these affect most cases

\* Example: search & seizure:

- police have been subject to court challenges (e.g. Feeney case:

illegal search & seizure when officer entered trailer on “hunch”

without a warrant or “reasonable grounds”)

- competing court decisions reflect justice model vs. crime control

philosophies

- parliament has stepped in by passing law enabling officer to enter

dwelling to prevent loss of evidence, personal harm or if there is

urgent call for help

- evidence collected will not necessarily be excluded (e.g. Godoy,

Caslake cases)

**Investigative Detention:**

\* Even before arrest, police may detain, interrogate & search a person

\* Investigative detention = reactive power dependent upon a reasonable belief that the detainee is implicated in a prior criminal act.

\* Runs up against s.9 of Charter: no arbitrary detention or imprisonment

\* Bilodeau case: investigative detention allowed when there are clear safety concerns (e.g. weapons). If evidence found, arrest OK & evidence admissible. Questions usually surrounds whether safety concerns reasonable, & intrusiveness of search

\* Investigative detention is an invaluable tool for police (stopping, confronting, questioning, & possibly detaining suspects)

\* Yet, if enough evidence found to arrest detainee(s), must read them their rights under Charter

**Arrest:**

\* Arrest=power of police to restrain an individual:

-suspect must be verbally informed

-acknowledge acquiescence (or be forced)

-police must inform suspect of reasons for arrest

-police must read suspect his/her rights (e.g. to counsel, to silence)

**Arrest Without a Warrant**:

\* s.495(1) of the Criminal Code authorizes arrest without a warrant when:

- a person is found committing a criminal offence

- is about to commit an indictable offence on the basis of

reasonable & probable grounds

- if the officer, on reasonable & probable grounds, believes there is

an outstanding warrant for the suspect; or

- the suspect is someone the officer knows has committed an

indictable offence

\* s. 495(2) also authorizes arrest without a warrant of:

- anyone found committing a criminal offence

- anyone who has committed an indictable offence

- anyone police believe, on reasonable grounds, has committed or

is about to commit an indictable offence, and

- anyone they believe has an outstanding arrest warrant in force in

that jurisdiction

\* S. 495(2) no warrantless arrest can be made if

- no reasonable grounds to believe suspect will not show in court

- suspect’s identity is clear

- evidence is secured

- continuation/commission of another offence is prevented

\* In effect, this restricts warrantless searches in summary conviction, provincial statute & hybrid offences (where other methods, like appearance notices, will apply)

**Arrest with a Warrant**:

\* In this case, police must suspect:

- on the basis of reasonable grounds

- that suspect committed a crime &

- his/her appearance cannot be compelled by summons

\* Police must go before a JP & “lay an information” that an offence has been committed. Arrest/search warrant may then be issued

**Custodial Interrogation:**

\* When taken into custody, Charter requires suspect be informed of right to counsel & right to remain silent before questioning begins

\* Before Charter, the major issue was voluntariness of statements

\* Now, s.7 imposes broader limits on police questioning (statements only admissible if police respect “principles of fundamental justice”)

\* Police use various psychological strategies to break down suspects:

- the “conditioning strategy”: act like their best buddy

- the “de-emphasizing strategy” : minimize focus on rights in favor

of what victim went through

- the “persuasion strategy”: tell your side or only the victim will

have input

\* Some experts thus argue that it is a myth that videotaped confessions put the truth before the court

\* Many of these approaches are at least potentially problematic, but suspects often don’t appreciate their rights & statements slip by

**Jailhouse Interrogations:**

\* Jailhouse informants have long been used to provide evidence against an accused.

\* Questions have been raised about their credibility and motivations

\* SCC in *Vetrovex* urged trial judges to give “clear a sharp warning” about such evidence

\* Morin and Sophanow inquiries criticized their use as leading to wrongful convictions

\* Some provinces have introduced reforms

**Right to Counsel:**

\* s.10 of Charter: right to be informed promptly of reason for detention

right to retain & instruct counsel without delay

right to be informed of rights

right to have validity of detention determined

\* Generally, suspect must be given reasonable opportunity to consult lawyer & confer privately:

- accused can’t drag things out

- burden on suspect to show impossible to contact lawyer

- right doesn’t apply when accused agrees to accompany police

without being formally detained

\* Police can’t question suspect about case until s/he speaks to counsel (otherwise evidence excluded)

\* Waiver of rights possible, but suspect must appreciate consequences

\* Length of time given to call depends on seriousness of charge

**Compelling Appearance, Interim Release, & Pretrial Detention:**

\* This depends on the charge:

- summary conviction offences: offender usually released on

“promise to appear”

- hybrid or indictable offences: police must have reasonable &

probable grounds to swear “information” before JP (who has

decision re: summons or warrant)

- indictable offences: if police believe suspect won’t show in court,

may detain & await bail hearing (a.k.a. “show cause hearing”)

- if charged with s.469 offence (e.g. murder), reverse onus applies

- in most other cases, accused released, with or without conditions

\* Continued detention of accused must be justified. Generally, this only happens if:

- necessary to ensure attendance in court

- necessary for protection & safety of the public

- there is substantial probability accused will commit offence/

interfere with administration of justice

- detention necessary to maintain confidence in administration of

justice

**Bail Reform:**

\* Bail Reform Act (1972) created above system due to fear traditional bail practices discriminated against poor (despite studies showing better attendance rates at trial for those released on own recognizance)

\* Several levels of screening included to prevent unnecessary/unjustified detentions (e.g. senior officers, JP’s).

\* Also, several graded options institute degrees of control over suspects (e.g. appearance notices, recognizances, unsecured bail, fully secured bail)

\* This “ladder effect” is said to be fairer to poor/ helps them better prepare legal defense

\* Still, criticisms persist that, despite above reforms, system is still in effect racist