**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 delecti”: 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 serious of crime and criminal law reform.