**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.