



PART 1

Canadian Criminal Justice: Setting the Framework

CHAPTER 1 The Foundations of Criminal Justice

CHAPTER 2 Understanding the Criminal Justice System

CHAPTER 3 Considerations in the Study of Criminal Justice

Introduction to Part 1

- In 2013, a woman was sexually assaulted in her home in a farming community near London, Ontario. The victim provided a description of her assailant as being a Black person in their mid to late 20s, between 5'10" and 6' tall. Officers from the local Ontario Provincial Police detachment subsequently collected DNA samples from 100 migrant farm workers in the area who were from Jamaica and Trinidad and Tobago. One of two men who did not provide a DNA sample was identified as a suspect and his DNA was a match with DNA from the crime scene. The suspect was found guilty at trial and received a seven-year sentence. Fifty-three of the farm workers subsequently received financial compensation from the provincial human rights tribunal (Keung 2023). **At Issue:** Does “canvassing” for DNA as part of a crime investigation (also known as “blooding”) violate the rights of people whose DNA is collected via canvassing? See Chapter 5.
- In October 2017, the Quebec National Assembly passed legislation that forbids Quebec civil



servants in “positions of authority” from wearing religious symbols while at work. This precluded persons in certain religious orders, including Sikhs and Muslims, from working in the public sector as police officers, Crown prosecutors, and public school teachers, among others. **At Issue:** Does this legislation discriminate against religious minorities, and is it a violation of the *Canadian Charter of Rights and Freedoms* (1982), which guarantees Canadian citizens the right to freedom of religious expression? See Chapter 3.

- In 2017, 30-year-old Kale Gabriel, of African Nova Scotian and Mi’kmaq heritage, was sentenced to a life sentence for second-degree murder for the murder of Ryan White. The shooting death was the result of a dispute over drug-selling turf. In the first case of its kind for an adult offender, the defence appealed to the judge to consider the impact of systemic racism toward African Nova Scotians in determining a sentence (Bascardumrty 2018). **At Issue:** Should the race of a convicted person and systemic racism and its impact on a convicted person be considered at sentencing? See Chapter 9.
- In 2023, two Indigenous men convicted in the death of a restaurant worker when they were teenagers were found to have been wrongfully convicted. They were released from incarceration after serving 50 years of a life sentence in prison. **At Issue:** What are the factors that contribute to persons being wrongfully convicted, and how can these be mitigated? See Chapter 8.
- In June 2023, the Correctional Service of Canada (CSC) decided to move serial killer Paul Bernardo from a maximum security prison where he had been confined for nearly 25 years to a

medium security correctional facility. The decision sparked outrage among the victims’ families, and politicians called for the resignation of the Commissioner of the CSC. **At Issue:** What are the implications of politicians criticizing the decisions of criminal justice professionals, and should this practice be allowed to continue? See Chapter 11.

These cases all occurred during the past few years and provide a snapshot of the dynamic nature of the criminal justice system and the complex issues that surround its operation. The three chapters in this part are designed to set the framework for the study of the Canadian criminal justice system. Chapter 1 sets out the foundation of the legal system and discusses the origins and application of criminal law. It is noted that who and what are defined as criminal is ever-changing and that, in a democratic society, tensions often exist between the criminal law and the rights of individuals. Chapter 2 provides information to understand the criminal justice system, including its purpose, the competing models of criminal justice administration, the flow of cases through the system, and a discussion of the effectiveness of the system.

The materials in Chapter 3 are presented to provide a backdrop for the study of Canadian criminal justice. There is a discussion of inequality and equity, racism and discrimination, and the lived experiences of Indigenous peoples, Black people and other racialized groups, and persons in visible/cultural/religious/sexual minorities. Several additional issues that surround the criminal justice system are also identified and discussed.

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The Foundations of Criminal Justice



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LEARNING OBJECTIVES

After reading this chapter, you should be able to:

- Describe what is meant by *critical thinking*.
- Define *crime* and discuss how crime is constructed.
- Discuss the differing perspectives on the origins and application of the criminal law.
- Identify the types of Canadian law.
- Discuss the key principles of the Canadian legal system.
- Identify the functions of the criminal law.
- Describe the origins and importance of the rule of law.
- Discuss the importance and main provisions of the *Canadian Charter of Rights and Freedoms*.
- Discuss the Canadian *Criminal Code*.
- Compare and contrast criminal law and civil law.
- Discuss the issues surrounding the application of criminal law in a diverse society.

Introduction

The criminal justice system is an integral and high-profile component of Canadian society. It is also dynamic, often controversial, and either very effective in achieving “justice” or not, depending upon one’s perspective and the results of research studies on various facets of the criminal justice system. The controversies that surround the criminal justice system, such as whether certain groups or individuals are treated differently than others, are often a reflection of issues in the larger Canadian society. And, as in Canadian society, politics often plays a role in defining what behaviour is a crime and what the response will be.

Daily, there is a continual stream of events, people, and issues related to criminal justice, as well as ongoing debates as to whether the justice system is fair; provides “justice” for victims, offenders, and communities; is afflicted by systemic racism; and discriminates against certain groups on the basis of skin colour, ethnic identification, and/or vulnerability and marginality. This text is designed to stimulate a research-informed discussion that also includes the voices of persons in conflict with the law, crime victims, and justice system personnel.

Thinking Critically About the Criminal Justice System

The criminal justice system is a complex enterprise and there are often no “right” or “wrong” answers to the issues that arise. Rather, there are different perspectives on, and lived experiences in and with, the justice system, its operation, and what action is required to address the issues that are identified. Assuming the role of a *critical thinker* will be very beneficial in reading and reflecting on the materials in this text.

What Is Critical Thinking?

It has been said that “[c]ritical thinkers distinguish between fact and opinion; ask questions; make detailed observations; uncover assumptions and define their terms; and make assertions based on sound logic and sound evidence” (Ellis 2006, p. 218). Call it “healthy skepticism.” A critical thinker considers multiple points of view and is fair and open-minded to all ideas. Conclusions are reached based on thoughtful consideration of the issues. **Critical thinking** has also been called *thorough thinking* (Ellis 2006).

To be a critical thinker, one must engage in the following:

- Ask questions: Engage curiosity and question statements and assertions.
- Consider multiple points of view: Be fair and open-minded to all ideas.
- Draw conclusions: Examine the outcome of your inquiry in a more demanding and critical way.

In reading and thinking about the materials in this text, it is important to maintain a critical eye—that is, to be a critical thinker and to ask the questions that critical thinkers ask. The At Issue boxes that are embedded in the chapters of this book and the Critical Thinking Exercises at the end of each chapter are designed to get you and your fellow students thinking about critical issues in criminal justice, to help you consider various perspectives on these issues, and to assist you in reaching your own conclusions.

critical thinking (thorough thinking)

In examining an issue, distinguishing between fact and opinion, considering multiple points of view, and being open-minded to all ideas

Critical Thinking by Criminal Justice System Personnel

To be effective in carrying out their mandated responsibilities, personnel in the criminal justice system are also required to think critically. This includes ensuring adherence to the provisions of the *Canadian Charter of Rights and Freedoms*, to the rule of law, to the relevant legislation, and to policy. The critical thinking skills of criminal justice system personnel are also a key element in the criminal justice system, including those of police officers (Chapter 5), Crown counsel (Chapter 8), defence lawyers (Chapter 8), jurors (Chapter 8), judges (Chapter 9), probation officers (Chapter 10), parole board members (Chapter 12), and parole officers (Chapter 12).

BOX 1.1

The Scales of Justice: A Common Symbol of the Justice System

This image originated in ancient Greek mythology in the form of the goddess Dike, the daughter of Zeus and Themis. The scales symbolized weighing the merits of each case. The image was later adopted by the Romans, who were also committed to the notion that justice should be administered impartially. Justitia, a Roman goddess, was depicted blindfolded and holding in one hand the scales of justice, denoting that justice should be fair and impartial, and in the other hand a sword, symbolizing power. The sword is double-edged, denoting the importance of upholding truth, justice, and fairness while also having the power to punish those who disobey the laws of society. The blindfold symbolizes that judgments in the legal system should be made solely based on the evidence and the law without bias or prejudice (Law Legum 2022).



law

A set of formal rules created and enforced by government to regulate behaviour

justice

A concept based on fairness, morality, and the equality of all rights

Law Versus Justice

The words “law” and “justice” appear throughout the text, and it is important to distinguish between the two. **Law** refers to a set of formal rules created and enforced by government to regulate behaviour. **Justice** refers to a concept that is based on fairness, morality, and the equality of all rights (Devadiya 2022). The differences are set out in Table 1.1.

TABLE 1.1 The Differences Between Law and Justice

	LAW	JUSTICE
Definition	Law refers to a set of formal rules created and enforced by government to regulate behaviour.	Justice refers to the quality of being fair, which is based on equality and morality and is focused on equitable outcomes. Ensuring justice may require deviating from strict legal procedures.
Objective	To establish and maintain order and regulate behaviour.	To produce equitable outcomes and address social injustices while considering the attributes of each case.
Nature	Laws are enacted, repealed, and modified.	Justice is a universal value but can be interpreted differently depending upon a number of factors, including cultural norms, societal perspectives, personal values, and the specific circumstances of a case.
Abstract versus Concrete	Law is concrete.	Justice is abstract and a broader concept that includes equity, fairness, and notions of moral rightness. Outcomes that are just may vary from case to case.

Source: Adapted from <https://www.differencebetween.com/difference-between-law-and-vs-justice>.

In the words of one legal scholar:

Laws are intended to achieve justice, but the application of an otherwise just law may yield an injustice in the circumstances of a particular case. This is because laws are framed in terms of general rules which cannot adequately provide in advance for all possible variations in relevant circumstances (Tasioulas 1998, n.p.).

In short, the equal application of the law may result in an injustice, depending upon the circumstance and the person involved. This highlights the importance of the notion of equity, which “modifies the rigid application of the law in such cases in order to secure justice in the light of all the relevant circumstances” (Tasioulas 1998, n.p.). Concerns with equity have become a key feature of the Canadian criminal justice system and are discussed throughout the following chapters.

This text is focused on the administration of justice via the criminal justice system, the decision-making of criminal justice personnel, and the outcomes of these processes.

A key question to be asked in the study of the criminal justice system is: “Is Canadian criminal justice blind?” That is, “Is everyone treated equally under the law?” And what role does equity play in ensuring that persons are treated equally under the law?

The materials in the following chapters reveal that, both historically and in present times, there has not been, nor is there, equal and equitable justice for persons who become involved in the criminal justice system. A challenge is to identify the instances where there is unequal treatment and to implement reforms required to ensure justice exists for all citizens.

A key attribute of the criminal justice system is that it is a *reactive* system; that is, it responds to persons who are alleged to have violated the law or who have been found guilty in court of an offence. It is not a preventive system or a problem-solving system. It is concerned, first and foremost, with the legal guilt or innocence of a person. Less attention is given to addressing the underlying reasons *why* a person is in conflict with the law. It specializes in interventions, and only a small percentage of its activities are directed toward prevention.

This is particularly troublesome given that most persons in conflict with the law experience trauma, poverty, mental illness, addiction, and other life circumstances that place

them at risk and vulnerable. Are there limits to the ability of the criminal justice system to address societal inequalities/inequities? For example, can the challenges experienced by a 45-year-old parole applicant who has been in conflict with the law since age 14 be effectively addressed in an hour-long parole hearing? Similarly, are judges, via their sentencing decisions, able to address the underlying reasons why an Indigenous person is before them?

These features of the criminal justice system assume even greater significance when there are high rates of crime. As of late 2023, crime rates in Canada were trending higher toward pre-pandemic levels (Statistics Canada 2023b). Of concern was the increase in violent crime (Statistics Canada 2023b).

For up-to-date statistics on crime in Canada, check out the Police-Reported Information Hub at <https://www150.statcan.gc.ca/n1/pub/71-607-x/crime-eng.htm>.

A key question is whether the criminal justice system on its own is able to successfully address the causes of crime and the reasons why youth and adults come into conflict with the law and, in some instances, remain involved for many years. For example, as the discussion in Chapter 6 will reveal, the realization that police alone cannot effectively prevent and respond to crime has led to the development of collaborative partnerships with community organizations and agencies to make communities safer and to address the needs of vulnerable and at-risk persons. These multi-agency partnerships are a key feature of the 21st-century criminal justice landscape. Although the COVID-19 pandemic presented challenges to the criminal justice system and spurred innovation, it remains to be seen whether these reforms will be sustainable in the long term.

What Is a Crime and Why?

The obvious answer to this question is that a crime is whatever is against the law. However, it's much more complex than this. Beyond the very serious traditional types of crime, such as murder, what is or is not a crime is not set in stone but has changed over the course of Canadian history.

What Is a Crime?

Without crime there would be no criminal justice system. A **crime** is generally defined as an act or omission that is prohibited by criminal law. Every jurisdiction sets out a limited series of acts (crimes) that are prohibited and punishes the commission of these acts by a fine or imprisonment or some other type of sanction. In exceptional cases, an omission to act can constitute a crime—for example, failing to give assistance to a person in peril or failing to report a case of child abuse.

Two critical ingredients of a crime are the commission of an act (*actus reus*) and the mental intent to commit the act (*mens rea*). A crime occurs when a person

- commits an act or fails to commit an act when under a legal responsibility to do so;
- has the intent, or *mens rea*, to commit the act;
- does not have a legal defence or justification for committing the act; and
- violates a provision in criminal law.

The nature and types of crime are constantly changing, due in part to legislation but also to opportunities. While historically the focus has been on “traditional” crimes such as homicide, break and enter, and fraud, these are often overshadowed by cybercrime, organized crime, white-collar crime, and human trafficking. The police and the justice system are often ill-prepared to prevent and effectively respond to these more sophisticated types of criminality.

crime

An act or omission that is prohibited by criminal law

The Social Construction of Crime

Have you ever thought about why, up until 2018, marijuana use (except for medicinal purposes) was illegal but drinking alcohol has been legal for decades? And why marijuana was then legalized but not cocaine? To say the least, there is not always agreement about what should be against the law. Murder? Yes. Impaired driving? Yes. Bank robbery? Sure. Doctor-assisted death? Somewhat more contentious, even though it is legal (see At Issue 1.1 later in this chapter).

It is also important to distinguish between behaviours that may be considered *deviant* by a large portion of society and crimes. While crime is behaviour that breaks the law, deviance is behaviour that is contrary to the norms and values of the larger society. Dressing goth is not against the law but may be viewed as deviant by the average passerby. Deviance includes criminal behaviour and a wide range of other behaviours that are not against the law but may be frowned upon by the larger society. What is viewed as deviant changes over time: until recent years tattoos and piercings would have been considered deviant, but today, they are not generally viewed as unusual.

The criminal law is not static, however, and almost overnight legislative enactments or judicial decisions can render behaviours that were previously illegal merely deviant.

In 2013, the Supreme Court of Canada (SCC) struck down Canada's prostitution laws as unconstitutional: see *Canada (Attorney General) v. Bedford* (2013). At times, the SCC has used the *Charter of Rights and Freedoms* to strike down laws that are inconsistent with the Charter's provisions and protections. Effective January 31, 2023, the government of British Columbia decriminalized the possession of small amounts of drugs.

A key concept that assists in understanding what is or is not a crime is the **social construction of crime**. This is the process by which the "same behavior may be considered criminal in one society and an act of honor in another society or in the same society at a different time" (Rosenfeld 2009, n.p.). Whether a behaviour is defined as a "crime" is not a consequence of the behaviour itself but is the result of the *social response* to the behaviour or to the persons or groups who are engaged in it (Rosenfeld 2009, n.p.).

Criminologists often conduct historical analyses in an attempt to understand (1) the factors involved in the definition of behaviour as criminal, (2) an increase or decrease in the severity of the criminal law, (3) the response of the criminal justice system, and (4) the factors that influenced the repeal of a criminal law, resulting in the decriminalization of certain behaviours. The Canadian criminologist Neil Boyd has pointed out that "[l]aw can be fully comprehended only by documenting and analyzing the social, political, and economic contexts that give it life and continue to influence its existence" (Boyd 2019, p. 49).

Researchers have conducted historical studies of criminal law reform to understand how the social, economic, and political environment may influence legislation. For example, laws against opium use first passed in the early 1900s have been linked to anti-Asian prejudice among Euro-Canadians of the day. Similarly, a review of how marijuana came to be illegal in Canada reveals the prominent role of one Emily Murphy, an Alberta magistrate who was also an anti-drug crusader. Writing under the pen name of Janey Canuck, she wrote a series of articles that were later made into a book titled *The Black Candle*. In the book, Murphy "raged against 'Negro' drug dealers and Chinese opium peddlers 'of fishy blood' out to control and debase the white race" (MacQueen 2013, n.p.).

The shifts in the definition of behaviours as illegal or deviant provide fascinating insights into the dynamic nature of criminal law and the behaviours that are defined as criminal. There may be, for example, massive violation of the criminal law, and yet the behaviour of the individuals involved may not be viewed as criminal.

A historical example is the massive violation of the prohibition laws against drinking alcoholic beverages by Canadians during and after the First World War. An erosion in

social construction of crime

The notion that the legal status of behaviours is not determined by the behaviour itself, but is the result of the social response to the behaviour

public support for anti-drinking laws, however, ultimately resulted in the repeal of prohibition. Similarly, the widespread recreational and medicinal use of marijuana by many Canadians, accompanied by changing attitudes toward the drug and the high costs of enforcement, culminated in its legalization by the federal Liberal government in 2018.

A key role in criminalizing certain activities is often played by **moral entrepreneurs**—individuals, groups, or organizations who seek action against certain groups of people or certain behaviours or advocate for certain policies and changes in legislation. Historically and recently, moral entrepreneurs have tended to be most active with respect to victimless crimes such as drug and alcohol use and prostitution.

As society changes, certain behaviours may be criminalized. The pervasiveness of computer technology led to several additions to the *Criminal Code* (1985), including destroying or altering computer data (s. 430(1.1)), using the Internet to distribute child pornography (s. 163.1), and communicating with a child for the purposes of facilitating the commission of certain sexual offences (s. 172.1). The pervasiveness of cellphones has led to provincial and territorial legislation related to distracted driving.

Conversely, over the years some activities have been decriminalized. That is, the laws against them have been repealed or struck down. For example, laws that were historically applied against same-sex relationships and Chinese immigrants no longer exist (Harris 2017).

moral entrepreneurs

Individuals, groups, or organizations who seek action against certain groups of people or certain behaviours and bring pressure on legislators to enact criminal statutes

The Tensions Among Law, Religion, Ethics, and Professional Practice

The issues that surround medical assistance in dying (MAID) can be used to illustrate the challenges and controversy that often surround the application of the criminal law in Canadian society (At Issue 1.1).

AT ISSUE 1.1

Medical Assistance in Dying (MAID)

Controversy has surrounded what is known as medical assistance in dying (MAID), including the implications for physicians and the scope of the practice.

In 2015, in the case of *Carter v. Canada (Attorney General)* (2015), the SCC ruled that section 14 and paragraph 241(b) of the *Criminal Code* were unconstitutional because they prohibited physicians from assisting in the consensual death of another person. In June 2016, Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, received royal assent and made assisted dying legal for terminally ill patients.

The provinces and territories were responsible for developing the appropriate procedures for medically assisted death. Opponents, which include physicians, have argued that assisted dying violates their oath to care for patients. The Christian Medical and Dental Association of Canada initiated court proceedings against the College of Physicians and Surgeons of Ontario, arguing that the policy that states physicians who are opposed to medically assisted death on moral, religious, or other grounds must refer the patient to another physician who will carry out the practice makes them ethically responsible for the patient's death. This puts physicians who oppose medically assisted death in the position of being between their legal responsibilities and their rights under the Charter. Physicians

DIG DEEPER

The Death Debate: Why Some Welcome MAID and Others Fear It

www.emond.ca/CCJ7/links

who do not refer could be disciplined by the College of Physicians and Surgeons. This raises the ethical issue of “how to balance the rights of individuals to access MAiD with the rights of care providers to exercise conscience-based objections to participation in this process” (Carpenter and Vivas 2020, n.p.).

On the other hand, the British Columbia Civil Liberties Association challenged the constitutionality of the law because it excludes people with long-term disabilities and those with “curable” medical conditions whose only treatment options are those that some people may find unacceptable.

As of mid-2023, there were concerns that eligibility for MAiD would be expanded to include persons living in poverty and those suffering from mental illness and that minors would be approved as candidates for MAiD. Data from the province of Quebec provided in 2023 found that doctor-assisted death was no longer being used as a last resort for persons with incurable illnesses and 7 percent of all deaths in the province were doctor-assisted (Serebin 2023). This was 4.5 times more than in Switzerland, three times more than in Belgium, and two times more than in Ontario.

The reader is encouraged to review the current state of the law and to discuss the issues surrounding it. Given the various perspectives on the practice, the debate surrounding assisted death is likely to continue.

The Origins and Application of the Criminal Law

A key component of the study of the criminal justice system is understanding the origins and application of the criminal law. The differing perspectives on where criminal laws come from and how they are applied via the criminal justice system are reflected in two models. The first, the **value consensus model**, views crime and punishment as reflecting society’s commonly held values as well as its limits of tolerance. This view assumes that there is a consensus on what should be against the law.

Through the application of laws, a society reaffirms the acceptable boundaries of behaviour and maintains social cohesion. Indeed, there probably *is* consensus that murder should be against the law. Incest is another act that is widely condemned. Such offences, called *mala in se* (wrong in themselves), are perceived as so inherently evil as to constitute a violation of “natural law.”

The **conflict model**, the second theory of the origins and application of criminal law, draws our attention to the fact that some groups are better able than others to influence which behaviours and persons are criminalized. In particular, conflict theorists see the rich and privileged as having an advantage in influencing law reform and in what happens to persons who become involved in the criminal justice system.

Scholars who conduct research using a conflict perspective might ask the following questions:

- Why does a person who steals less than \$100 from a convenience store often receive a much more severe sentence than a stockbroker who defrauds investors of millions of dollars?
- Why are crimes committed by corporations (such as banks that engage in money laundering, companies that fail to create and maintain healthy and safe working environments, and companies that illegally dispose of hazardous wastes) most often dealt with through civil court and often involve paying fines rather than being prosecuted under the criminal law and its sanctions?

value consensus model

The view that what behaviours are defined as criminal and the punishment imposed on offenders reflect commonly held opinions and limits of tolerance

conflict model

The view that crime and punishment reflect the power some groups have to influence the formulation and application of criminal law

- Why are Canadian correctional institutions populated by a disproportionate number of Indigenous persons, Black people, persons with mental health and addiction issues (many of whom are unhoused in the outside community), and persons from dysfunctional family backgrounds? Are these groups more criminally inclined than other groups in society?
- What role do interest groups play in influencing the enactment of criminal legislation or in decriminalizing certain behaviour?
- What is the impact of a majority of decision-makers in the criminal justice system being white, male, and from higher socio-economic levels than the people they are making decisions about?

Conflict theorists highlight some of the inequities and paradoxes in the system. If someone takes money from a bank at gunpoint, it is called robbery. A business decision that causes a bank collapse, thus depriving thousands of account holders of their money, is called a bad day on the stock market. Conflict theorists believe that our attention is wrongly focused on street crime when the greater risk to most people lies in the actions of elites, including corporations that dump toxic waste, fix prices, condone unsafe workplaces, and evade taxes.

The Types of Canadian Law

The two basic types of law in Canada are **substantive law** and **procedural law**. Substantive law sets out the rights and obligations of each person in society. This includes the *Criminal Code* and other legislation that defines criminal offences and the penalties for persons found guilty of committing criminal offences. Procedural laws are the legal processes that protect and enforce the rights set out in substantive law. Examples of procedural law are the procedures for arresting a person or selecting a jury in a criminal trial (Department of Justice Canada n.d.). See Figure 1.1.

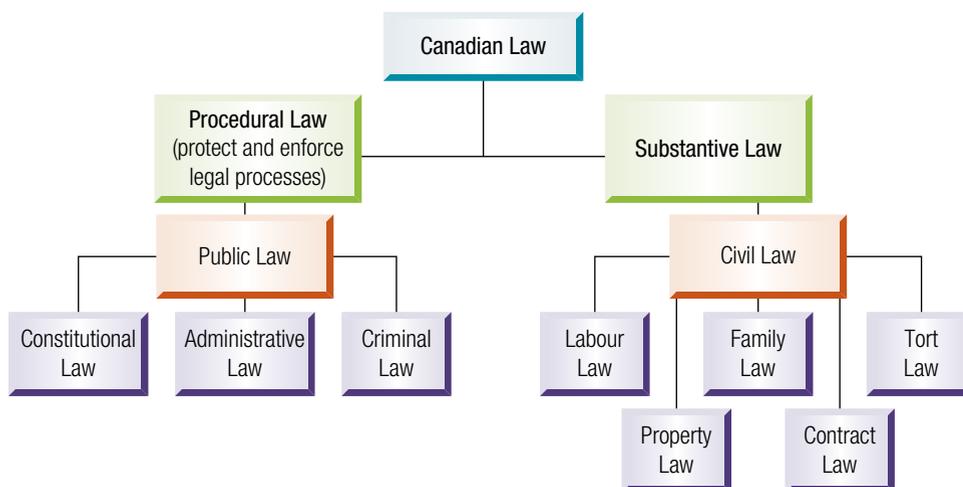
substantive law

Law that sets out the rights and obligations of each person in society; includes the *Criminal Code*

procedural law

The legal processes that protect and enforce the rights set out in substantive law

FIGURE 1.1 The Divisions of Law



The Canadian Legal System

The Canadian legal system is a **common law** system with the exception of Quebec, which has a civil law system. Judges in a common law system are guided by past decisions. The

common law

Law that is based on custom, tradition, and practice and is generally unwritten

precedent

A judicial decision that may be used as a standard in subsequent similar cases

stare decisis

The principle by which the higher courts set precedents that the lower courts must follow

statute law

Written laws that have been enacted by a legislative body such as the Parliament of Canada

case law

Law that is established by previous court decisions and is based upon the rule of precedent

criminal law

The body of law that deals with conduct considered so harmful to society as a whole it is prohibited by statute and prosecuted and punished by the government

common law system originated in Europe and was imported to Canada in the 17th and 18th centuries. The common law emerged from decisions made by judges in the royal courts and was based on the notion of **precedent**: “Whenever a judge makes a decision that is said to be legally enforced, this decision becomes a precedent: a rule that will guide judges in making subsequent decisions in similar cases” (Department of Justice Canada n.d.). A unique feature of the common law is that it exists in past decisions of judges rather than being embodied in legal codes or legislation.

In contrast, the civil law system in Quebec is based on the French *Code Napoléon*. It is composed of civil codes, which are comprehensive statement of rules to be followed by judges. Judges first refer to the codes and then to previous court decisions (Department of Justice Canada n.d.).

Canadian courts are organized in a hierarchy, with the Supreme Court of Canada at the top (see Chapter 7). The principle whereby higher courts set precedents that lower courts must follow is known as **stare decisis** (Latin for “to stand by what was decided”). Underlying this principle is the idea that like cases should be treated alike. Especially when the law is not precise, judicial interpretation can add clarification so that all courts are playing by the same rule book, so to speak. Once the SCC rules on a thorny legal issue, all courts below it are bound to apply that ruling in subsequent cases.

Consequently, our **statute law**—both civil (except in Quebec) and criminal—is found both in statutes and in judicial precedents (the latter is referred to as **case law**). In other words, many laws—such as those in the *Criminal Code*—are written down or codified. But through their decisions in cases, judges can interpret, modify, extend, restrict, or strike down statutory laws.

The Criminal Law

The criminal law is one type of public law, the others being constitutional law, administrative law, and taxation law. **Criminal law** has been defined as “[a] body of rules and statutes that defines conduct prohibited by the government because it threatens and harms public safety and welfare and that establishes punishment to be imposed for the commission of such acts” (“Criminal Law” n.d.). The criminal law defines which acts (or omissions) are against the law and sets out the available penalties. It also sets out the rules that police and judges must follow in criminal matters, including procedures for making arrests, gathering evidence, and presenting evidence in court. Private law, by contrast, regulates relationships among individuals other than the state and is used to resolve disputes between private citizens.

The functions of the criminal law are set out in Box 1.2.

BOX 1.2

The Functions of the Criminal Law

The criminal law is designed to:

- act as a mechanism of social control,
- maintain order,
- define the parameters of acceptable behaviour,
- reduce the risk of personal retaliation (vigilantism, or people taking the law into their own hands),
- assist in general and specific deterrence,
- prosecute criminalized behaviour, and
- protect group interests.

Note that the criminal law is designed to accomplish these objectives. The extent to which it is successful in doing so is often in question. As previously noted, the success of the criminal law depends to some degree on how the criminal law is administered by the criminal justice system. The discussions in the following chapters reveal significant issues surrounding the administration of justice and the application of criminal laws.

The Sources of Criminal Law

In Canada, there are two primary sources of criminal law: legislation and judicial decisions. Merely denoting the sources of criminal law, however, tells us very little about the *process* of law-making or the factors that influence the creation of criminal law. A variety of explanations have been used by scholars studying the phenomena of crime and the societal response to it.

Historically, researchers focused on the individual offender and attempted to determine what factors distinguish criminals from non-criminals. The nearly exclusive focus on the criminal offender overshadowed the process through which behaviours and individuals came to be defined as criminal. In recent years, however, attention has increasingly focused on the process through which laws are formulated and applied to the activities of legislators, special-interest groups, and criminal justice decision-makers. The activities of criminal justice decision-makers will be discussed throughout the text, including police officers, judges, and parole board members.

The Principles of Canadian Law

Several principles provide the foundation for Canadian law. These are set out in Table 1.2.

TABLE 1.2 The Principles of Canadian Law

PRINCIPLE	MEANING
<i>actus non facit reum nisi mens sit rea</i> (an act does not make a person guilty unless they have a guilty mind)	Each crime has two components. The first is <i>actus reus</i> , or the act of doing something. The second is <i>mens rea</i> , or the guilty intent. To be convicted of most crimes (but not all), a person must have done something criminal, and usually (but not always) must have intended to do it. Children under the age of 12 and persons with some severe mental disorders who are deemed unable to form <i>mens rea</i> are not held criminally responsible for their actions.
<i>nullum crimen sine lege, nulla poena sine lege</i> (no crime without a law, no punishment without a law)	The rules cannot be changed in the middle of the game. Laws cannot be applied retroactively.
<i>ignorantia juris non excusat</i> (ignorance of the law is no excuse)	An expectation exists that every citizen be familiar with all laws and therefore able to distinguish between legal and illegal behaviour. This expectation is a fiction, because the law is constantly changing and at any given point in time is subject to debate and differing interpretations. However, the legal system would grind to a halt if defendants were able to claim that they had no idea their alleged offences were illegal.
<i>nemo tenetur seipsum accusare</i> (no one is compelled to incriminate themselves)	Criminal suspects and defendants have the right to remain silent during the police investigation. If they are forced or threatened to make a confession, that statement will be inadmissible in court. In addition, a criminal defendant may choose not to testify in their own defence. This principle is enshrined in the Charter.
<i>nemo debet bis vexari pro eadem causa</i> (no one should be twice troubled by the same cause)	This principle is more commonly known as “double jeopardy.” An alleged offender cannot, under most circumstances, be tried twice for the same offence. In contrast to the American criminal justice system, however, an alleged offender in Canada can be retried after being acquitted if the Crown successfully appeals the decision by claiming problems with the correct application of the law at the trial.

The Rule of Law



King John signs the *Magna Carta* at Runnymede, near London, in June 1215.

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rule of law

The requirement that governments, as well as individuals, be subjected to and abide by the law

A key component of the foundation of the criminal justice system is the **rule of law**. The rule of law can be traced back to the English *Magna Carta*, which was originally issued by King John near Windsor Castle in England in June 1215. Several passages in the document spoke to judicial procedure, including the creation of a permanent court at Westminster and the imposition of fines on commoners and peers alike “only according to the degree of the offense” (Stoner 2009, p. 4). Perhaps the most famous, and enduring, was this statement:

No Free-man shall be taken, or imprisoned, or dispossessed, of his free tenement, or liberties, or free customs, or be outlawed, or exiled, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the law of the land. To none will we sell, to none will we deny, to none will we delay right or justice (Stoner 2009, p. 4).

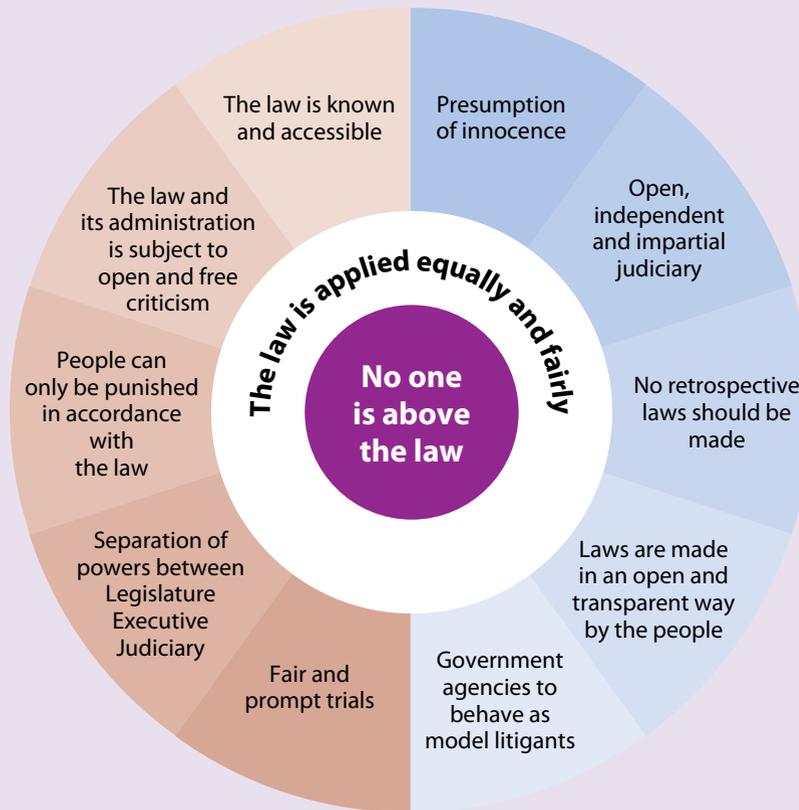
The document set out the principle that the King and his government were not above the law.

Barons (large landowners of the time) and even King John himself opposed the *Magna Carta* since it restricted their powers and authority. However, the principles in the document survived and established the law as a power in itself.

The key principles of the rule of law are set out in Criminal Justice File 1.1.

CRIMINAL JUSTICE FILE 1.1

Key Principles of the Rule of Law



Source: Rule of Law Education Centre. Retrieved from <https://www.ruleoflaw.org.au/principles>.

The *Magna Carta* and other documents provided the basis for the emergence of the rule of law, which became the foundation of English law and, subsequently, the Canadian (English-speaking) legal system.

The essence of the rule of law is that no one person is above the law, all persons are bound by the law and are entitled to protection by the law, and the law should be observed and enforced equally. The rule of law provides the standard to which criminal justice officials must adhere and will be held accountable. While an admirable principle, the materials presented in the following chapters will reveal that this ideal is often not achieved.

The Canadian Charter of Rights and Freedoms

The principles of the rule of law and the influence of the *Magna Carta* can be seen in the **Canadian Charter of Rights and Freedoms**, which is the primary law of the land and guarantees fundamental freedoms, legal rights, and quality rights for all citizens of Canada, including those accused of crimes, "subject only to such reasonable limits prescribed by law

Canadian Charter of Rights and Freedoms

The primary law of the land; guarantees fundamental freedoms, legal rights, and quality rights for all citizens of Canada, including those accused of crimes

as can be demonstrably justified in a free and democratic society” (s. 1). Among the fundamental freedoms given to all Canadian citizens are the following:

- freedom of conscience and religion;
- freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication;
- freedom of peaceful assembly; and
- freedom of association.

With respect to “legal rights,” the Charter states, “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice” (s. 7). More specific rights granted to Canadians have implications for the powers of the police (see Chapter 5) and the prosecution of criminal cases (see Chapter 8) and are discussed in those chapters.

The Charter provides a number of “equality rights” for citizens (s. 15):

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Section (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

With respect to “enforcement,” the Charter states (s. 24):

(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under section (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute (Department of Canadian Heritage 2017).

The *Charter of Rights and Freedoms* provides protection for individuals and ensures fairness during legal proceedings. All of the components of the criminal justice system must operate in such a way as not to violate the rights guaranteed to Canadians in the Charter. Canadian courts have restricted, extended, or better defined the Charter rights of citizens. Unfortunately, as we’ll see throughout the text, the criminal justice system does not always act in a manner that respects and protects the Charter rights of Canadian citizens.

The Criminal Code of Canada (1892)

Criminal Code
Federal legislation that sets out criminal laws, procedures for prosecuting federal offences, and sentences and procedures for the administration of justice

Canadian criminal law is enshrined in the **Criminal Code** of Canada, federal legislation that sets out criminal laws, procedures for prosecuting federal offences, and sentences and procedures for the administration of justice. In the early days of Canada, each province had its own criminal law. This was a result of British influence, Canada being part of the Dominion. Attempts to create a unified criminal law in England in 1878 had failed. At Confederation in Canada in 1867, then Prime Minister Sir John A. Macdonald insisted that Canada should have a single criminal law for the entire country and not replicate the English model (Mewett 2009).

The first complete *Criminal Code* was produced in 1892 under the leadership of Sir John Thompson who was minister of justice at the time and would later become Canada's fourth prime minister (1892–1894). The legislation established a uniform system of criminal law across the country and included among its provisions:

- specific criminal offences and associated punishments;
- the state as being responsible for proving the guilt of an accused beyond a reasonable doubt, a cornerstone of the criminal justice process to this day;
- abolishment of the death penalty for most offences; and
- the practices of probation and parole, the latter of which provided an opportunity for early release from a correctional institution (Mewett 1993).



Sir John Thompson.
Paul Fearn/Alamy Stock Photo

The creation of the *Criminal Code* was significantly influenced by several factors, including:

1. **The need to standardize Canadian criminal law.** Prior to the creation of the *Criminal Code*, different provinces had different criminal laws and sentencing guidelines. Historians have noted that there were radical differences in the manner in which justice was administered in different regions of the country (Kasirer 1990, p. 847). A national criminal code would ensure consistency in the application of criminal law across the country.
2. **The influence of British common law.** Canada inherited much of its legal system from British common law, and the first *Criminal Code* was strongly influenced by this tradition. The Code drew heavily on British legal principles and reflected many of the values and social norms of the time.
3. **Shaping the Canadian identity and unifying the country.** There was a view that a national criminal code would serve to unite the country. John A. Macdonald's theory was that a national criminal code applied to all Canadians would enhance Canada's nationhood (Kasirer 1990, p. 847). The creation of a national criminal code helped to establish Canada as a distinct and independent country. It also served to promote nationalism and a sense of belonging among Canadians.
4. **Addressing social issues of the time.** The *Criminal Code* was created at a time when there were growing concerns about social issues such as poverty, urbanization, and alcohol abuse. The Code sought to address these issues by introducing new criminal offences and penalties.
5. **Making the law more accessible.** The *Criminal Code* was written in clear and accessible language, making it easier for people to understand their rights and obligations under Canadian law. This helped to promote a more democratic and transparent legal system (Kasirer 1990, p. 847).

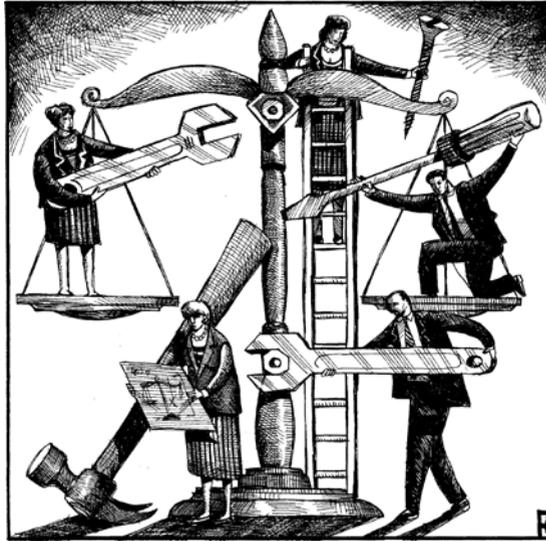
The *Criminal Code* is a “living” document in that it has been revised many times since 1892 to reflect changes in what behaviours are viewed as criminal and in philosophies of punishment. The current version of the Code is three times longer than the original version.

Although there is a separate youth justice system in Canada, persons ages 12 to 17 are subject to the *Criminal Code*. The youth justice system is discussed in Chapter 13.

Criminal Law and Civil Law: What's the Difference?

As one among several legal systems that exist in Canada, the criminal justice system concerns itself only with offenders who are criminally liable for wrongdoing. The government assumes the responsibility for prosecuting the alleged offender who, on conviction, is placed under the supervision of corrections authorities. In contrast, civil law cases are disputes between individuals. The person who feels wronged brings the legal action, and the “loser” may be required to pay damages. In contrast to criminal cases, no potential for loss of liberty exists in a civil suit.

A key difference between criminal law and civil law relates to the standard of proof required to convict a person of wrongdoing. In a criminal trial, the prosecutor must prove that the defendant is guilty “beyond a reasonable doubt.” In a civil trial, liability is determined by using the standard of “the balance of probabilities.” The standard is one of reasonable probability or reasonable belief rather than proof beyond a reasonable doubt. Because this reasonable probability is a much lower standard of proof, a defendant might be found not guilty in criminal court but liable in a civil suit.



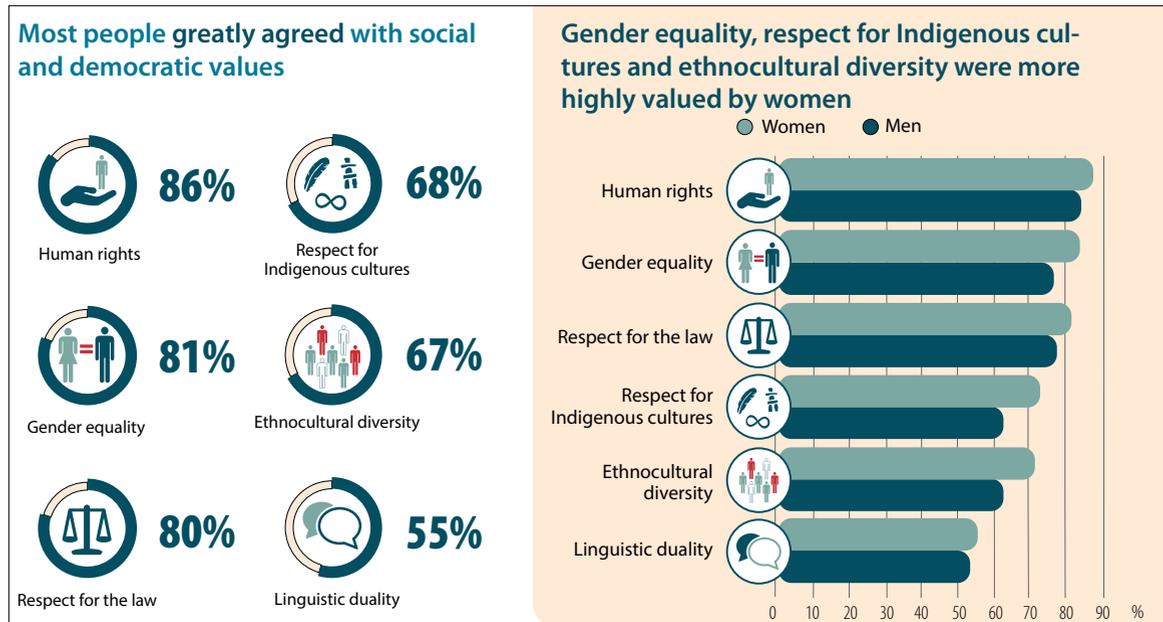
The Canadian *Criminal Code*, continually under construction.

Courtesy of Paul Lachine/Illustrator

The Criminal Law in a Diverse Society

The application of the criminal law can be challenging in a diverse society such as Canada. Surveys reveal that the majority of Canadians agree on social and democratic values (Statistics Canada 2023a). See Figure 1.2.

The challenges of application of the criminal law in a diverse society are highlighted in At Issue 1.2.

FIGURE 1.2 Agreement with Social and Democratic Values in Canada**QUESTIONS:**

1. What do you consider to be the most significant findings in the infographic?
2. What initiatives would you propose to address the issues that you have identified?

Source: Statistics Canada. 2023a. "Agreement with Social and Democratic Values in Canada." May 30. Ottawa: Author. Retrieved from <https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2023037-eng.htm>.

AT ISSUE 1.2**Should the Criminal Law Be Applied to Religious Practices?**

In 2017, the Quebec National Assembly passed Bill 62 (2017, c. 19), *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for religious accommodation requests in certain bodies*. This legislation requires citizens to uncover their faces while giving and receiving government services (Peritz 2017). The "religious neutrality law" requires a woman to have her face uncovered to check out a book from the library, while riding on transit, when accessing health services, or when working in a daycare centre, among other scenarios. The law does provide for a person to ask for religious accommodation on a case-by-case basis, and the final decision is left with front-line public employees. A poll conducted in Quebec ($N = 609$) found that 87 percent of Quebecers supported the legislation (Peritz 2017).

The provincial justice minister stated that this requirement was not directed toward any one religious group: "Having your face uncovered is a legitimate question of communication, identification and security" (Hamilton 2017, n.p.).

A representative of a women's rights group warned that the law would "have a discriminatory effect on religious groups who are targeted, in particular women" (Hamilton 2017, n.p.).

Legal experts said that the law would most likely be challenged in court, with one lawyer stating, "I have never seen a more flagrantly unconstitutional law" (Peritz 2017, n.p.). The

executive director of the National Council of Canadian Muslims stated, “It’s not the business of the state to be in the wardrobes of the nation” (Peritz 2017, n.p.). In his initial response to the legislation, the prime minister stated, “I think we have to respect that this is a debate that’s ongoing in society and we respect that the National Assembly in Quebec has taken a position on this” (Bryden 2017, n.p.). Among the online comments in response to the legislation were the following two distinct opinions:

Ban the burka in public, period. Believe it or not, we are entitled to be offended by something that represents the subjugation and oppression of women and is a barbaric throw-back to the 8th century.

Governments should not legislate how people dress or worship. The ban won’t stand against the Charter’s enshrined freedom of religion (Hamilton 2017, n.p.).

Questions:

1. What is your view of this legislation?
2. In your view, does the legislation violate the fundamental rights of citizens as guaranteed by the *Charter of Rights and Freedoms*?
3. In your view, is this an instance in which the law is being used as an instrument of social policy? If yes, should it be?

Cultural Practices and Canadian Law

The tension between cultural practices in persons’ countries of origin and accepted behaviour in Canadian society is often acute.

A key issue is the extent to which the criminal law can be effective in modifying those practices that are viewed as contravening the values of Canadian society.

The crime of honour killings (which, critics point out, is inappropriately named because there is no “honour” in honour killings; perhaps “culturally centred crimes” is a more appropriate term) illustrates the challenges of diversity. Culturally centred crimes are most commonly defined as the premeditated killing of a family member, most often a woman, who has engaged in certain behaviour, such as a premarital or extramarital relationship, that is believed to have brought shame and dishonour to the family (Department of Justice Canada 2021). These killings are often planned and may involve a number of family members (Department of Justice Canada 2021). The Human Rights Commission of the UN General Assembly and the Council of Europe’s Committee of Ministers and other international organizations have taken a stance against these killings and have urged countries to take action against this practice.

There is no official record of the number of these types of killings in Canada. Two cases illustrate the dynamics of these cases—and, in one, an Appeal Court judge’s statements on this practice:

In June 2010, Kamikar Singh Dhillon pled guilty to second-degree murder in the killing of his daughter-in-law, Amandeep Kaur Dhillon. On January 1, 2009, 22-year-old Amandeep was fatally stabbed in the basement of a Mississauga grocery store. Her father-in-law was also found at the scene of the crime with stab wounds which he claimed were caused by the victim. These were later found to have been self-inflicted and he was charged with first-degree murder. He was sentenced to life imprisonment with no chance of parole for 15 years. He told investigators he was justified in killing Amandeep because she was going to dishonour their family by leaving his son for another man (Department of Justice Canada 2021).

In November 2006, the Supreme Court of Canada refused an appeal from Adi Abdul Humaid of his conviction for first degree murder in the death of his wife in 1999. Mr. Humaid claimed that his wife's insinuations of infidelity caused him to lose control because of the significance of female infidelity in Islamic religion and culture.

The Appeal court stated that:

The difficult problem, as I see it, is that the alleged beliefs which give the insult added gravity are premised on the notion that women are inferior to men and that violence against women is in some circumstances accepted, if not encouraged. These beliefs are antithetical to fundamental Canadian values, including gender equality. It is arguable that as a matter of criminal law policy, the “ordinary person” cannot be fixed with beliefs that are irreconcilable with fundamental Canadian values. Criminal law may simply not accept that a belief system which is contrary to those fundamental values should somehow provide the basis for a partial defence to murder (Department of Justice Canada 2021).

DIG DEEPER

Honour Killings in the Shafia Family
www.emond.ca/CCJ7/links

SUMMARY

The discussion in this chapter has set out the foundations of the Canadian criminal justice system. *Crime* was defined, and it was noted that there is a social construction of crime, a reflection of changing times and mores. It was noted that the criminal law is not static and that what behaviour is legislatively defined as criminal can change overnight. There are instances in which controversy arises when the criminal law is applied to issues of law, religion, ethics, and professional practice. The criminal law was identified as one type of public

law and the functions of the criminal law were set out. The rule of law and the *Canadian Charter of Rights and Freedoms* are two key parts of the foundation of the criminal justice system. Several principles also provide the foundation for Canadian law. The role, principles, origins, and application of the criminal law were examined, and a number of case studies were presented to illustrate the dynamic nature of the criminal law as well as the challenges of applying the criminal law in a diverse society.

KEY POINTS REVIEW

1. A critical thinker considers multiple points of view and is fair and open-minded to all ideas.
2. It can be said that crime is a social construction in that what is considered criminal behaviour changes based on the social response to the behaviour rather than the behaviour itself.
3. There are differing views on the origins and application of the criminal law, one that considers the law and its application as reflection of societal consensus and the other that emphasizes the role of the criminal law as an instrument of the powerful.
4. The criminal law is one type of public law.
5. The two primary sources of the criminal law are legislation and judicial decisions.
6. The Canadian legal system is a common law system with the exception of Quebec, which has a civil law system (although the *Criminal Code* applies to the entire country).
7. The criminal law has several functions, including maintaining order, defining the parameters of acceptable behaviour, and assisting in general and specific deterrence, among others.
8. Several principles provide the foundation for Canadian law, including the two components of a crime: *actus reus* (the act of doing something) and *mens rea* (guilty intent).

9. A key component of the criminal justice system is the rule of law, which was first established in the *Magna Carta* in England in 1215 and is composed of a number of key principles, including that the government, individuals, and private entities are accountable under the law and that laws must be evenly applied and must protect the fundamental rights of citizens.
10. The creation of the first *Criminal Code* of Canada in 1872 assisted in unifying the country.
11. Another key component of the foundation of the criminal justice system is the *Charter of Rights and Freedoms*.
12. Canadian criminal law is enshrined in the *Criminal Code*.
13. There are key differences between the criminal law and civil law.
14. The application of the criminal law is challenging in a diverse society such as Canada.

KEY TERM QUESTIONS

1. What is **critical thinking (thorough thinking)** and how can it assist in the study of the criminal justice system?
2. Compare and contrast **law** and **justice**.
3. What is a **crime**, and what are the two essential requirements for a behaviour to be considered criminal?
4. What is meant by the **social construction of crime**?
5. What are **moral entrepreneurs**, and what role do they play in relation to the criminal law?
6. Contrast the **value consensus model** and the **conflict model** as explanations for the origins and application of criminal law.
7. How do **substantive law** and **procedural law** differ?
8. What is meant by Canada as having a **common law** legal system?
9. What role do the following play in the Canadian system of criminal law: (a) **precedent**, (b) **stare decisis**, (c) **statute law**, and (d) **case law**.
10. Define **criminal law** and note its functions.
11. What are the origins and key principles of the **rule of law**?
12. Describe the fundamental freedoms, equality rights, and enforcement provisions of the **Canadian Charter of Rights and Freedoms**.
13. Describe the origins and content of the **Criminal Code**.

CRITICAL THINKING EXERCISE

CRITICAL THINKING EXERCISE 1.1

The Ever-Changing Criminal Code

The discussion in this chapter has revealed that what behaviour is a crime has changed over time and continues to change.

YOUR THOUGHTS?

1. Can you think of a behaviour that is currently against the law that may become legal in the future?
2. If so, what factors might come into play that contribute to the change?
3. In your view, should a particular drug that is currently illegal be legalized if it is used widely?

CLASS/GROUP DISCUSSION EXERCISES

CLASS/GROUP DISCUSSION EXERCISE 1.1

Mass Law Violating and the De Facto Legalization of Criminal Behaviour

Throughout Canadian history are examples of behaviours that, while against the law, were nevertheless engaged in

by a substantial number of persons. This is illustrated by the path to legalization that was followed by alcohol and marijuana. These substances, although illegal at the time, were widely used. In both cases, and particularly in the case of marijuana, people convicted of marijuana possession were given criminal records and even sent to jail. This continued

through 2017, prior to the federal government legalizing the substance. For both alcohol and marijuana, there were *tipping points* that ultimately led to their legalization. One contributor was mass violation of the law.

YOUR THOUGHTS?

1. Should mass violation of the law play a role in changing the law? Or should this be the responsibility of governments?
2. If so, should mass violation be the only determinant?

CLASS/GROUP DISCUSSION EXERCISE 1.2

Medical Assistance in Dying (MAID)

With respect to the eligibility criteria, the initial legislation enacted in 2016 was designed for persons with terminal illnesses such as cancer. In 2021, the law was amended to allow persons with non-terminal conditions such as chronic pain to apply for MAID. Even with procedural safeguards in place to ensure that the person is competent to make the decision, shows “grievous and irremediable” illness, and a review of the request by two medical assessors, there are concerns MAID is being used by persons who are unable to access treatment. Across the country, long waits exist for access to mental health care. Nearly two-thirds of Canadians are uncertain or don’t support assisted death for persons with mental illness who are waiting for care. Between November 1, 2016, when the first MAID legislation was enacted, and March 31, 2022, nine Indigenous inmates used the MAID program to get out of prison and return to their communities and families—even though, in the words of a Canadian senator, “they could have lived longer.”

Proponents argue that the new provisions give the control over life to patients where it belongs and that patients should be able to end their pain and suffering. A survey of Canadians ($N = 2,271$) in 2016 found that nearly 72 percent of respondents were strongly in support of physician-assisted death, and 74 percent supported allowing persons to request suicide before they became too ill to do so.

Opponents include physicians who have argued that assisted dying violates their oath to care for patients. The Christian Medical and Dental Association of Canada initiated court proceedings against the College of Physicians

and Surgeons of Ontario, arguing that the policy that states physicians who are opposed to medically assisted death on moral, religious, or other grounds must refer the patient to another physician who will carry out the practice makes them ethically responsible for the patient’s death. This puts physicians who oppose medically assisted death in the position of being between their legal responsibilities and their rights under the Charter. Physicians who do not refer could be disciplined by the College of Physicians and Surgeons.

On the other hand, the British Columbia Civil Liberties Association challenged the constitutionality of the law because it excludes people with long-term disabilities and those with “curable” medical conditions whose only treatment options are those that some people may find unacceptable.

A 2023 survey found nearly three-fourths of Canadians support MAID under the original guidelines, which include having a grievous and irremediable medical condition. One-half of Canadians would support persons who are unable to access medical treatment to seek MAID or who have a disability, while 28 percent would expand the guidelines to include homelessness and 27 percent would allow persons in poverty access to MAID (Canseco 2023).

DIG DEEPER

MAID in Prison: Inmates are “Dying to Get Out”
www.emond.ca/CCJ7/links

YOUR THOUGHTS?

1. What are the current criteria for MAID eligibility?
2. What is your view of the legislation?
3. What concerns, if any, do you have regarding this procedure?
4. Should there be limits placed on who is eligible for assisted death (e.g., youth or people in poverty)?
5. How does one balance the legal and ethical issues surrounding assisted dying?
6. In your view, should medically assisted dying be a legal issue?
7. Should all physicians be required to abide by the law?
8. What does this issue illustrate about the interplay among the law, religious views, ethics, and professional ethics?

