

Introduction to the Canadian Criminal Law

CRM 2300

- **Canadian Criminal Justice System**

- Based on the common law developed in England
 - Criminal law is created based on liberal philosophy
 - Free will, individualism, separation from church and state, market is separate from the government, election of the governmental process

- **The assumptions of this philosophy are:**

- Human as rational being. The work of Beccaria. We choose how to act and to be perceived by. Criminal offence must have an acts reus or mens rea.
- Individuals should give up the right to use force to the state: the law.. We give up a part of our rights for the law. Also our social contract. Pleasure vs Pain
- State (Criminal Law) should punish those who make rational decisions to transgress the law (blameworthy) and to take away the transgressor freedom or property. Fine the individual.
- What is the state abuses this power?
- The role of criminal law is to maximize individual freedom, provide protection for all in the society and provide protection from the overwhelming power of the state.

Nature of Law

- Adversarial system (court system) (CANADA)
 - Innocent until proven guilty, on relevant evidence, beyond reasonable doubt
 - 2 parties involved, one representing the state (accused) and the crown prosecutor
 - The accused decides whether they want a jury and judge or just the judge
 - Misdemeanour
 - Mens rea: planned and deliberate
 - Actus reus: what caused the death? objects? weapons?
 - Judges just listen
- **Inquisitorial System (EUROPE AND ASIA)**
 - Judiciary bring out the facts of the case and ascertain the truth

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- Once a person is charge with an indictable offence. All evidence goes to the judge. Judges can also dig in to find more evidence, they are the truth finders.
- See whether the criminal was guilty or not
- Preliminary inquiry... then trial court
- Judges active in the court

The Sources of Canadian Law

- where does the Canadian Criminal Law come from?
 - 1. Legislation: statute law, from england to canada, some laws were changed
 - 2. Judicial Decisions (Common Law): body of judge made laws that evolved in areas that were not covered by legislation, interpretation of legislation

If there is a conflict between statute law and common law, which one will overrule the other?

- Statute law overrules the common law

Canadian Court System

- **Provincial and territorial courts: federal and provincial cases**
 - Follow criminal code of Canada
 - Courts dedicated to particular offence or offenders
- **Superior court of criminal jurisdiction:**
 - Deal with most serious criminal cases
 - May hear appeal from summary conviction from provincial courts
- **Court of Appeal**
 - Hear appeals from the decisions of the courts of appeal that have tried indictable offences
- **The Supreme Court of Canada**
 - Interpret decisions with very important cases
 - Appeals from various provincial and territorial courts of appeal

Substantive Criminal Law

- Generally the CCC deals with Substantive Law and Procedural Law
- Substantive law:
 - Defines the nature of various criminal offences such as murder

- Specifies various legal elements to be present before a conviction can be entered against an accused person
- It defines some of the nature and scope of various defence (provocation, duress)

Procedural Criminal Law

- Outlines the procedures to be followed in the prosecution of a criminal case
 - The categorization of offences
 - Procedures as to whether the cases to be treated as summary or indictable or dual
 - the police decide
 - Defines the nature and scope of the powers of criminal justice officials

Categories of Crime

1. Summary conviction offences

- offences are tried rapidly and within the provincial/territorial court
- tried before a provincial/territorial court judge
- Penalty: maximum penalty is a fine of \$2000 or 6 months prison, or both
- Examples: falsifying employment record, willful indecent act in public, causing disturbance

2. Indictable Offences

- the most serious criminal offences
- tried: more than one court preferences
- preliminary inquiry: a provincial/territorial court judge decides whether there is "sufficient evidence" to put the accused on trial
- Ex: murder, manslaughter, sexual assault with weapon, robbery, theft over \$5000

3. Hybrid offences:

- crown prosecutor has the power of discretion to proceed by the way of indictment or summary conviction
- are tried by summary convictions
- ex: sexual assault, assault and etc.