CHAPTER 1

Learning Objectives

After completing this chapter, you should be able to:

- Outline the major components of the Canadian criminal justice system.
- Explain the importance of social control and its relationship to how crime is regulated.
- Differentiate among the various definitions of crime.
- Summarize the major components of the normative system of the Canadian criminal justice system.
- Differentiate among the models of criminal justice, focusing on the goals of the Canadian criminal justice system.
- Summarize the key decision points of the formal criminal justice system.
- Summarize the major components of the informal criminal justice system.
- Describe the various types of discrimination in the criminal justice system.

An Overview of the Criminal Justice System in Canada

This chapter provides an overview of some of the essential themes and practices found within our criminal justice system. It includes a preliminary examination of how our system of justice operates by discussing what the core components of "criminal justice" are. Our criminal justice system has developed as a response by the state to alleged and actual violations of the criminal law. It contains various agencies, processes, and practices focused upon those individuals who are charged for (or suspected of) breaking the law or who are victims of criminal activity. How our criminal justice system operates is important: we expect our system of justice to follow the rule of law and uphold the legal rights of all individuals.

Changes to our criminal law and new legislative initiatives impact criminal justice policies and processes. In recent years, the federal government has taken a "law and order" approach to criminal justice and as a result many practitioners debate the veracity of these changes. Regardless of the direction of these changes, we expect the criminal justice system to search for truth and uphold justice by, for example, ensuring that the innocent are not wrongfully punished or that the outcomes of decisions are not inaccurate. Our laws, legislation, and practices have to achieve justice, ensure legal rights are upheld, and implement both fairness and equality. A criminal justice system is one that operates according to the rule of law and achieves equal justice for all. The following chapters will elaborate on many of the major issues facing our criminal justice system by placing them within the context of each of the major institutions (the police, the courts, and corrections).

Since our criminal justice system deals with individuals who are suspected of committing a crime, arrested by the police, or convicted of an offence in a court of law, an important task at the outset is to

examine what exactly is meant by "crime." Some people answer this question by stating that it is an act that is in violation of the criminal law. Yet, when asked to give examples, most people think about crimes committed by strangers in public spaces. Alternatively, a more critical analysis recognizes there are many other criminal offences (e.g., domestic violence and corporate crime) that may not be as visible but are just as or more harmful than many street crimes. Another question we could ask is who decides "what is crime"? It is important to recognize that crime is not a fixed, objective entity but rather the result of laws created by changing views of what is acceptable behaviour in society or changes in the enforcement patterns of certain types of behaviour. A key point is the way in which people decide to respond to crime has a profound impact upon the way in which our criminal justice system operates.

What, then, is criminal justice and what is its purpose? The most common answer to this question is to look at the formal response to crime by the state and/or the functions of its various agencies (i.e., the police, courts, and corrections). Criminal justice in this view is

> (t)he process through which the state responds that it deems unacceptable. Criminal justice is delivered through a series of stages: charge, prosecution; trial; sentence; appeal; punishment. These processes and the agencies which carry them out are referred to collectively as the criminal justice system. (Hudson 2006:93–94)

Others prefer to answer the above question by identifying what they feel are the most important forms of our criminal justice system, including:

> *Substantive law*: The content of the criminal law provides the starting point . . .
>
> *Form and process*: Who responds to crime and what procedures must be used?
>
> *Functions*: What are the intended consequences and aims of the system?
>
> *Modes of punishment*: What sentences are available to the courts? (Davies et al. 2005:8)

But what is "justice" in the context of "criminal justice"? We have all probably experienced someone asking us what we understand by criminal justice. Some of us may have responded by identifying the following as essential aspects of justice within our criminal justice system: *fairness*, *personal liberty*, *respect*, *tolerance*, *equality*, *public safety*, *rights*, *due process*, and *appropriate punishment*. You might have also added to your answer that criminal justice serves as a way to enforce a system of rules and laws to protect the well-being of both individuals and communities.

What is the best way for our criminal justice system to achieve justice? When deciding how justice might be achieved, responses usually include the importance of having a criminal justice system that treats everyone equally. This is thought by many to be the way our criminal justice system operates but others disagree. While all of the major institutions in our criminal justice system (the police, the courts, and the correctional system) have differing organizational structures and goals, each states they try to achieve justice. All of these institutions are concerned with who deserves justice, how people should receive justice, and how justice is to be delivered.

Who *deserves* justice? Almost everyone would agree that people who experience harm or suffer an injury at the hands of someone who has been charged with a criminal offence deserve justice. And most would support the idea that people who have allegedly broken the law also deserve justice while they are investigated and tried in a court of law, as they are presumed to be innocent. We could also add that justice also means that there is an impartial and deliberate process that provides each individual with the same access to justice as everyone else. That is, people deserve justice by being treated equally, having the same rights, privileges, and opportunities. But are there limits as to who deserves justice? Some people would argue that once a person is convicted of a crime, they don't deserve the same extent of justice as law-abiding citizens. This distinction has led to debates about whether or not, at some point, individuals convicted of certain types of crimes could be treated differently from others.

Another question is how should people *receive* justice? To facilitate an impartial and deliberate process in which people are treated impartially and equally, a number of institutions and procedures have emerged and evolved in Canada. We could point out that people in our society receive justice through the operation of the criminal justice system; that is, through the practices of such agencies as the police and the courts, as well as the various individuals who work within these agencies, such as lawyers. When someone is convicted of a crime they enter into the correctional system, and here, too, they should receive justice.

Who makes sure that the system of criminal justice *delivers* justice in a fair and impartial manner? In our society, it is usually the federal or provincial governments that take on the responsibility of making sure justice is achieved and maintained. But what are the best policies that will allow a society to attain social control as well as to manage risk? What approach is best when it comes to protecting law-abiding citizens and ensuring that those who are charged and found guilty of a crime are treated fairly?

In summary, in our society when most people speak of justice they are referring to an expectation that the law, relevant institutions, and the criminal justice system apply

to all individuals equally and all are entitled to equal protection of the law. Before we can explore in detail various issues related to the Canadian criminal justice system, we need to ask broader questions, such as "What are the essential characteristics of our criminal justice system?" and "How are cases processed through our criminal justice system?" In order to do so, we need to look at a number of questions pertaining to our criminal justice system. It is these questions that are the focus of this chapter.

The Canadian Criminal Justice System

The police, courts, and corrections are the major elements of what most people think of as the criminal justice system. The police play the major role up to arrest—their role is to investigate crimes, arrest any suspects, and collect evidence. The courts are involved in adjudication, which determines whether or not any person charged is guilty of a crime as well as setting the type and amount of punishment for the guilty. Corrections, which comprises many different forms, takes over after a person is found guilty of a crime.

While we generally think of these elements as distinct, these simple categories don't accurately present the realities of our criminal justice system. This is because the police work with other criminal justice officials such as probation officers or justice officials to investigate offenders who may be on probation or to develop official criminal justice policies. And pretrial court programs oftentimes use probation officers to supervise those individuals who have been charged but not been found guilty. Each of these elements has become the typical way of describing the criminal justice system, and this text arranges the chapters in order to be consistent with the flowchart found later in this chapter in Figure 1.6 (see p. 17).

The Major Components of the Canadian Criminal Justice System

In order to understand the structure of the Canadian criminal justice system, we need to first look at its three major agencies: the police, the courts, and corrections.

The Police

Three main levels of police agencies exist in Canada: municipal, provincial, and federal. Although police agencies vary in their organizational structures and mandates, they usually cooperate with one another should the need arise. The most common type of police agency is found at the municipal level. Some municipalities establish their own police force and hire their own police personnel; others contract with the RCMP to provide police services. In 2017, at the municipal level, there were 141 stand-alone police services and 36 First Nations self-administered services. Just over 56 percent of sworn police personnel in Canada were employed by municipal police services and First Nations self-administered police services (Conor 2018). Municipal police services are found in almost every major Canadian city, including Vancouver, Calgary, Edmonton, Winnipeg, Toronto, Montreal, and Halifax. The 10 regional police services in southern Ontario (including the Halton Regional Police and the Peel Regional Police) are classified as municipal police services. Some larger municipalities (including Burnaby and North Vancouver, B.C.) contract out with the RCMP, but most municipalities that do so have a population between 50,000 and 100,000. Most jurisdictions in Canada have some municipal police services; the exceptions are Newfoundland and Labrador, Yukon, the Northwest Territories, and Nunavut.

Each province is responsible for developing its own municipal and provincial policing services (ibid.). This means a province may require all cities within its jurisdiction that reach a certain population size (e.g., any city with more than 10,000 people) to form and maintain their own municipal police service. Provincial police services enforce all relevant laws in those parts of the province that are not under the control of a municipal police service. Besides the RCMP, which operates at the provincial level in most provinces, there are currently three provincial police services: the Ontario Provincial Police, the Sûreté du Québec, and the Royal Newfoundland Constabulary.

The federal government, through the RCMP, is responsible for enforcing laws created by Parliament. The RCMP is organized under the authority of the RCMP Act and is part of the portfolio held by the Ministry of Public Safety and Emergency Preparedness. The RCMP, while involved in municipal and provincial policing across Canada, is also charged with other duties such as enforcing federal statutes, carrying out executive orders of the federal government, and providing protective services for visiting dignitaries. In

Onfokus/iStock

The RCMP are responsible for all federal policing across Canada.

addition, it operates forensic facilities and an educational facility in Ottawa (the Canadian Police College), as well as the Canadian Police Information Centre (CPIC), the automated national computer system used by all Canadian police services.

The Courts

All provincial/territorial court systems in Canada with the exception of Nunavut have three levels, though their formal titles differ by province (Russell 1987). The **lower courts** are called the provincial courts in most jurisdictions, although in Ontario they are referred to as the Court of Justice and in Quebec as the Court of Quebec. Higher than the lower courts are the **superior courts**, usually known as the Court of Queen's Bench or Supreme Court (Trial Division). In Ontario, these courts are called the Superior Court of Justice, and in Quebec, the Superior Court. The highest level of criminal court in any province or territory is the appeal court. The court with the greatest authority in any criminal matter is the Supreme Court of Canada. The Nunavut Court is unique in Canada in that it consists of a single-level trial court. Superior court judges hear all criminal, family, and civil matters. This system was introduced in order to simplify the structure of the courts, improve accessibility to the court, and reduce the travel of judges.

The provincial courts are the first courts most Canadians encounter when they are charged with a criminal offence. These courts are typically organized into specialized divisions that deal with different areas of the law. For example, a province may decide to divide its provincial court into a criminal court, a family court, a small claims court, a youth court, and a family violence court. These courts deal with the majority of criminal cases, including disorderly conduct, common assaults, property offences, traffic violations, municipal bylaws, and provincial offences (Figure 1.1).

Corrections

An accused, having been found guilty, may be sentenced to a term in the federal or provincial/territorial correctional system. In Canada, the correctional system involves a vast array of facilities, agencies, and programs. The responsibility for adult corrections is divided between the provincial/territorial governments and the federal government. Provincial and territorial governments are responsible for any individual serving a term of incarceration under two years and for all non-custodial sentences (e.g., probation). The federal government, through the Correctional Service of Canada, is responsible for any adult sentenced to a prison term of two years or more. A person sentenced to a term of two years or more who decides to appeal the conviction

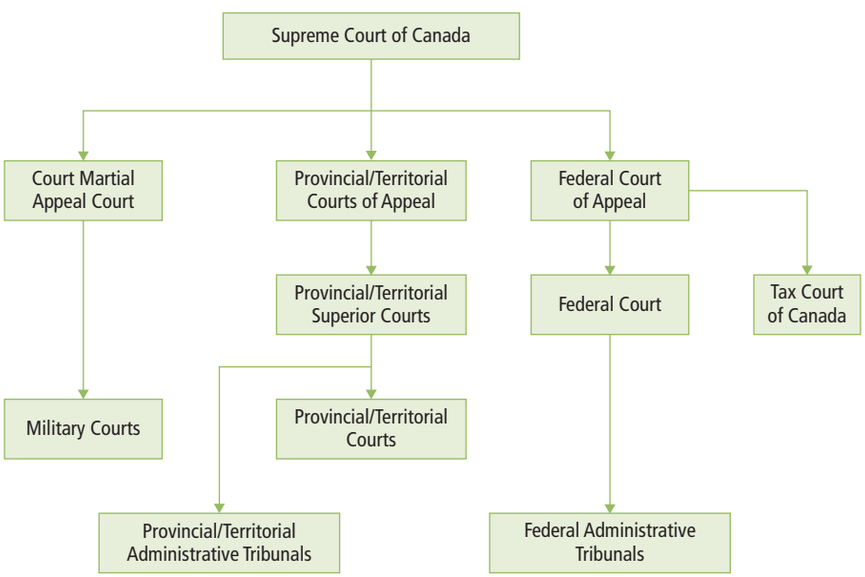


FIGURE 1.1 Canada's Court System: How the Courts Are Organized

The highest level of court in a province or territory—the appeal court—hears appeals from the superior courts and occasionally from provincial courts. These courts do not try criminal court cases; rather, they deal with issues concerning sentence lengths and the possibility of procedural errors. Defendants rarely appear in cases heard in appeal courts. Instead, lawyers representing the Crown and the defendant argue the case before a panel of appeal court judges.

Source: Canada's Court System, http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/pdf/courten.pdf, Outline of Canada's Court System. Department of Justice Canada, 2015. Reproduced with the permission of the Department of Justice Canada, 2018.

or sentence will first be incarcerated in a provincial facility. Those who waive the right to an appeal are sent directly to a federal institution to start serving the sentence.

What Is Crime and How Is It Regulated in Canada?

In order to understand our criminal justice system, we need to ask the question, "What is crime and how is it regulated?" To answer this question, we need to look first at the meaning of social control, and then at some of the different ways to define crime.

It is important to recognize that behavioural patterns of a society are shaped by common ways of thinking, feeling, and acting. Since some individuals engage in activities that are inconsistent with the welfare of society, systems have been developed that indicate the disapproval of those who break with approved ways of thinking and acting. In Western societies, an important function of governments has been to develop mechanisms of social control. Various formal and informal social control systems have emerged over time—in Canada our formal system of social control has developed, and this system includes the police, the courts, and the correctional system.

What Is Crime?

How does a society define crime? And how should we deal with issues such as equality, justice, privacy, and security? There are no easy answers to these questions, as people hold different opinions on how we should define crime and achieve justice.

Criminal law is reserved for wrongful acts that seriously threaten the social values of Canadians. These wrongful acts are reflected in the various categories of crime found in the Criminal Code, such as violent and property crime. According to Bowal and Lau (2005:10), it is important to understand crime as it "largely defines a society because it mediates the powerful forces of security, morality, and control." They also point out that criminal law is not static, because as social attitudes change, "our definitions of crime are constantly refashioned in response."

There are two commonly used definitions of crime. The first focuses on the violation of a criminal law, the second on the determination of guilt in a criminal court. According to the first definition, an act can be called a crime only when it violates the existing legal code of the jurisdiction in which it occurs. The second approach—sometimes referred to as the *"black letter" approach*—stipulates that no act can be considered criminal until a duly appointed representative of the criminal court (e.g., a judge or a jury) has established the guilt of an offender.

These two definitions have two important consequences. First, without the criminal law there would be no crime. In other words, no behaviour can be considered criminal "unless a formal action exists to prohibit it." Second, no behaviour or individual "can be considered criminal until formally decided upon by the criminal justice system" (Muncie 2002:10). In essence, then, a criminal act can be established only once it is determined that it violates the criminal law and/or when an accused person is found guilty in a court of criminal law.

A number of criticisms have been directed toward the use of these two definitions in determining crime. According to Muncie (2002), these criticisms include the fact that not every individual who violates the criminal law is caught and prosecuted. Another is the fact that many criminal acts are not prosecuted even after the authorities have discovered them. Muncie also raises the issue that these two definitions neglect "the basic issue of why and how some acts are legislated as criminal, while others remain subject only to informal control" (ibid.:12). Further, he points out that these definitions separate the criminal process from its social context—that is, they only look at how the courts treat people and ignore looking at the significance of society and how changing social norms influence the decisions made in our criminal justice system.

Criminologists have forwarded alternative definitions of crime for many decades. For example, some view crime as a violation of social norms (see Exhibit 1.1). This definition was first used by the criminologist Edwin Sutherland, whose research into corporate crime led him to argue that crime shouldn't be defined on the basis of criminal law, but rather on the basis of two more abstract notions: "social injury" and "social harm." He felt that the essential characteristic of crime is that it is "behaviour which is prohibited by the State as an injury to the state" (1949:31). He also noted that there are two abstract criteria that are necessary elements in a definition of a crime—the "legal descriptions of an act as socially harmful and legal provision of a penalty of an act." According to him, some sort of social normative criteria must be applied before any definition of crime can

EXHIBIT 1.1 Differing Definitions of Crime

Legal: Crime is that behaviour prohibited by the Criminal Code.

Social norms: Crime is that behaviour that violates social norms.

Social constructionist: Crime is that behaviour so defined by those who have the power to do so.

Source: Walklate, S. 2005. *Criminology: The Basics.* London, Routledge.

be developed. In part, this means that we need to consider how crime, law, and social norms are linked. We can do this by asking, "What behaviours should be regulated?" Today, this type of approach is visible in attempts to classify behaviour as "criminal" on the basis of normative decision making. For example, some Canadian cities now equate crime with disorderly conduct (such as panhandling), arguing that such conduct undermines public safety and security.

Crime has also been called a "constructed reality" or "social construction" as it is created by the definitions and perceptions of legislators, perpetrators, victims, and other legal actors (such as the police and prosecutors). This perspective views crime as a result of social interaction that involves the alleged offender, victim(s), the police, court personnel, and even lawmakers. According to this definition, the actions of alleged offenders are important, but so are those factors that affect the decision to prosecute, including the wishes of the victim, the prior record of the alleged offender, the resources of the prosecutor's office, the nature of the evidence, and perhaps the race, gender, and ethnicity of the offender.

All of these definitions can be used to describe and analyze the nature of crime in our society. Since the three major institutions of social control in our society—the police, the courts, and the correctional system—are all involved with the control of crime and criminals, many questions can be raised about how we respond to crime and about the role of the criminal justice system. For example, is the criminal law applied equally to all, or unequally toward some? How does the use of discretion in our criminal justice system influence the processes and outcomes of that system? Can that system simultaneously promote liberty and security? Many people would agree that it is easy to declare that the planned and deliberate killing of one individual by another is a homicide and that the perpetrator of this act should be given a lengthy punishment. However, there may be other issues involved in the case that some people feel should be considered before guilt or punishment is determined. The *Investigating* feature highlights how a type of activity once considered to be criminal can be altered as perceptions change, with the result that how that behaviour is regulated is revised.

Investigating: Definitions of Crime Can Change: Assisted Suicide in Canada

Some of the criminal laws in Canada are *mala in se* (e.g., murder); that is, they are immoral and inherently wrong by nature. *Mala prohibita* laws (e.g., assisted suicide) describe behaviour that is prohibited by law. But what constitutes *mala prohibita* has changed over time. Some laws in Canada once considered appropriate are no longer thought to be applicable. Usually what happens is that debates emerge about whether or not an act should remain in the Criminal Code. Then an individual challenges a law, and if the Supreme Court hears the case and subsequently agrees with the defence by finding the law unconstitutional the federal government will have to draft new legislation.

Dying with Dignity

This is what happened during the past 25 years over the issue of whether or not individuals should have the "right to die"—that is, are people legally entitled to have assistance to end their own life? This is known as assisted suicide, which was the intentional act of providing a person with the medical knowledge to commit suicide (s. 241 [b] of the Criminal Code). While suicide had been decriminalized in 1972, helping someone else die remained a crime. If an individual who violated this law was found guilty of an indictable offence they could be sentenced to prison for up to 14 years. However, criminal cases involving charges of assisted suicide were not common in Canada. A report published in 2007 found only 40 cases where there had been a charge of assisted suicide, but it also said that "there are thousands of cases in Canada in which doctors have illegally helped patients die" (Eckstein 2007:1). A later study found three persons who, after performing an assisted suicide, had been convicted and sentenced to a period of incarceration. They also reported that at least 18 other cases had come to the attention of the authorities in which the defendants were acquitted, the charges were stayed or dropped, or a charge was not laid (Royal Society of Canada 2011:35).

How did this law change? The constitutionality of the law on assisted suicide was first raised in 1993 by Sue Rodriguez. She suffered from amyotrophic lateral sclerosis (ALS) and, when informed she had 14 months to live, requested assistance to commit suicide. She argued that the section on assisted suicide in the Criminal Code violated her rights under ss. 7, 12, and 15(1) of the Charter of Rights and Freedoms. But the Supreme Court, in a 5–4 decision, held that a "Charter violation was present, but that the violation was necessary in order to protect society's weak, vulnerable and disabled." Ms. Rodriguez committed suicide in 1994 with the assistance of an anonymous physician.

Over the next two decades, however, public support in favour of physician-assisted death increased significantly. During this time a number of other jurisdictions, including the Netherlands and the U.S. state of Oregon, had legalized the process. In Canada, a number of private members in the House of Commons tabled assisted-dying legislation, but they had not succeeded as the federal government did not support these initiatives.

In 2009, the Quebec College of Physicians surveyed more than 2,000 of its members and found that

Continued on next page

Investigating: Definitions of Crime Can Change: Assisted Suicide in Canada (*Continued*)

75 percent favoured euthanasia as long as it occurred within clear legal guidelines. Eighty-one percent informed the pollsters that they had seen euthanasia practised in Quebec, with most of the cases involving the suspension of medical treatment accompanied by sedation (Peritz 2009). One month later, it was reported that Quebec doctors had "issued a cautiously worded policy . . . suggesting Criminal Code changes to protect doctors who follow an 'appropriate care logic' to end the life of suffering patients facing 'imminent and inevitable death'" (Perraux 2009:A5). In June 2014, Quebec became the first jurisdiction in Canada to legalize physician-assisted death by placing the new law into the provincial health legislation.

The next constitutional challenge occurred in 2011 when Gloria Taylor, who was also suffering from ALS, was informed that she would die within a year. In December 2011 the British Columbia Supreme Court agreed to expedite her case for assisted suicide (Hume 2011). The Court granted Ms. Taylor the right to assisted suicide, and she became the first Canadian to win the legal right to receive a doctor's help to die. The federal government appealed this ruling, and in October 2013 the B.C. Court of Appeal overturned the lower court's ruling. The Supreme Court agreed to hear an appeal of this and other similar cases, and in 2015 unanimously held in *Carter v. Canada (Attorney General)* that adults facing "enduring an intolerable suffering" had the right to end their life with a doctor's assistance. This decision was suspended for a year to give the federal government time to enact legislation. The federal government then developed new legislation, and in June 2016 the Medical Assistance in Dying law was passed. It is estimated that in the first 18 months between 2,000 and 2,500 people ended their lives with the assistance of a doctor.

Questions

1. What was the Criminal Code definition of assisted suicide when Sue Rodriquez challenged the constitutionality of the law? What happened in her case?
2. What led to the change in assisted suicide? What was the Supreme Court of Canada's decision in *Carter v. Canada*?

Social Control

The primary function of criminal justice is **social control**. Social control refers to the various types of organized reaction to behaviour that violates our criminal law and thus protects law-abiding citizens. We can measure and judge our criminal justice system as an institution of formal social control—the police, courts, and corrections all have the function of controlling crime in some way. As societies develop, they adjust the ways in which criminal behaviour is defined as well as how the social control systems respond to such behaviour. Historically speaking, criminal behaviour has been attributed to immorality, wickedness, and poverty (among other things). At the same time, the mechanisms for maintaining social control have also changed. For example, societies have attempted to socially control criminals through death (i.e., capital punishment) as well as rehabilitation. Whatever approaches are developed, the objective has always been to control behaviour viewed as criminal in some way.

In our contemporary society, the most typical way of trying to control both crime and criminals has been to establish a formal system of criminal justice that will enable the major institutions of social control—the police, the courts, and the correctional system—to investigate, prosecute, and punish offenders. Remember, though, these institutions do not enjoy a totally free hand—limits are always placed on them by various laws, such as the Charter of Rights and Freedoms.

SUMMING UP AND LOOKING FORWARD

The very concept of "justice" is challenging as it raises questions about how it should be received and delivered. The way in which we conceive of justice in our society is important, as how we interpret it raises questions about the best way to approach social control. Despite the fact that we may agree on how we interpret justice, differing definitions of crime have emerged. As a result, we can consider a variety of ways to be the best approach to study and understand crime in our society. Many people prefer the "black letter" definition as it focuses upon those convicted in a court of criminal law; others prefer to identify more with the social constructionist approach, as they feel by studying the actions of the various agencies within our criminal justice system we gain a better understanding of crime in our society. The legal response to certain types of behaviours (e.g., assisted suicide) can change over time, from one in which there is a blanket prohibition to one in which there are now legal options.

So, what are the essential elements we have developed in the hopes our criminal justice system operates as a just system? This question is the subject of the following section.

Review Questions:

1. What is justice and how should it be delivered and received?

2. What is social control and what is its relationship to our understanding of crime?
3. What are the differing definitions of crime and how do they influence our understanding of what "crime" is?
4. Summarize how legal change can occur by discussing assisted suicide.

The Normative Framework of Our Criminal Justice System

Our criminal justice system is not a series of unrelated ideas and decisions that are placed together in a haphazard fashion. A number of key elements form the basis of our criminal justice system, and while some of these may be more recognizable than others each one impacts the decisions made throughout the entire system. These elements establish our normative approach to criminal justice: this includes discovering the truth, the rule of law, protecting the legal rights of individuals, ensuring that everyone can access justice, and guaranteeing that citizens are treated with fairness and equality.

The Adversarial System

An **adversarial system** of justice has a number of components. Both parties involved hope to win the case and have the right to argue about what evidence the court will consider. A feature of this system is that a prosecutor (representing the state) is concerned initially that justice is to be done (e.g., that charges are laid only where enough evidence exists to support them) and later on with the successful prosecution of the case. Another is for the trial to be heard by an impartial fact finder—the judge—who is trained in the law and who is not involved in presenting evidence or questioning witnesses. This guarantees that the defendant receives a fair trial. The judge ensures that the appropriate questions are asked and that the rules of a criminal court case are followed.

In theory, all levels of our court system operate in an adversarial manner. The purpose of the adversarial system is to search for the truth—specifically, to determine the guilt or innocence of the accused. This system has been designed to ensure that the accused's fundamental legal rights are protected, that the trial is fair, and that the final decision is impartial. A number of issues have been raised about the benefits and limitations of the adversarial system of justice, and some of these are outlined in Exhibit 1.2.

Substantive and Procedural Justice

How does our criminal justice system operate to make sure that its decisions are fair and equal and do not discriminate? The answer to this question is found in part by looking at what our society considers the most important components of justice. The first component is **substantive justice**—specifically, the accuracy or correctness of the *outcome* of a case and the appropriateness of a judgment, an order, or an award. If a criminal suspect is in fact guilty, a verdict of "guilty" is a just decision. However, if the suspect is in fact innocent of the charge, then the verdict of "not guilty" is just. Substantive justice is primarily concerned with the truthfulness of the allegation, the accuracy of the verdict, and the appropriateness of the sentence. The high expectations we have of our criminal justice agencies to make correct decisions are the result of our concern with substantive justice.

The second component is **procedural justice**, which refers to the decisions made by courts and the government impacting "the rights and interests of individuals" and, as such, it "seeks to preserve, above all else, the fundamental fairness of the process" and is the "main method by which we enforce and observe the fundamentals of fair trials and other proceedings" (Davison 2006:17, 19). If fair procedures aren't used the trial cannot be just, whether or not substantive justice was attained. For example, a person who is found

EXHIBIT 1.2 Benefits and Limitations of the Adversarial System of Justice

Benefits

- A clear division exists among the various actors and agencies.
- As much evidence as possible is looked at in each case, particularly as it benefits each side, since each is committed to winning.
- The legitimacy of the criminal justice system is promoted through the appearance of fairness operating throughout the criminal justice system.

Limitations

- The opposing sides often cooperate in order to reach a desired result, thereby undermining procedural justice in favour of efficiency.
- The length of a trial becomes a concern, since each side has to present as much information as possible in the hope that they will be able to win the case.
- Relevant evidence may be excluded if the judge considers that its use will violate the Charter of Rights and Freedoms.

guilty could in fact have violated the law (substantive justice), but if unfair procedures were used at some point during the investigation and/or trial, the conviction will be considered unjust according to procedural justice. This situation is sometimes brought to our attention when a higher court in this country such as a provincial appeal court or the Supreme Court of Canada rules that there was a problem with the procedural fairness in a case (e.g., the interrogation of the suspect by the police did not follow appropriate procedures). In Canada today, issues involving procedural justice are more common than those involving substantive justice. The importance of procedural justice is clear in those situations when it has not been followed. For example, the Anti-terrorism Act, when it was introduced, gave the federal government powers allowing them to ignore certain aspects of procedural justice when national security was considered to be at stake (see the *Critical Issues in Canadian Criminal Justice* feature at the end of this chapter).

The Rule of Law

According to the rule of law, in our system of justice there is a "sense of orderliness, of subjection to known legal rules and of executive accountability to legal authority" (*Resolution to Amend the Constitution* [1981]). In other words, society must be governed by clear legal rules rather than by arbitrary personal wishes and desires. Central to this is that no one individual or group has a privileged exemption from the law unless an exception is identified. Everyone is subject to the laws that have been introduced by the government. To protect society from the self-interest of individuals or groups, the rule of law ensures that laws are created, administered, and enforced on the basis of acceptable procedures that promote fairness and equality. The **rule of law** plays a central role in our society as it "forms part of the supreme law of our country, binding on all levels of government and enforceable by the courts" (Billingsley 2002:29). Davison (2006:11) points out that the rule of law means that "all members of society must follow and obey the law no matter what their area of activity or endeavour . . ." and that it "provides certainty and stability in our dealings with one another."

The basic elements of the rule of law include the following:

- *Scope of the law*. This means that there should be no privileged exemptions to the law. All people come under the rule of law. There are political and social aspects to this statement. Government under law is the political component. Both the government and public officials are subject to the existing law. The social aspect is equality before the law.
- *Character of the law*. This means that the law should be public, clear enough that most people can understand it, and relatively clear and determinate in its requirements.
- *Institution of the law*. In the Anglo legal system, this means that there are certain rules that the institutions of the law must produce in order for the law to be fair and just. These include an independent judiciary, written laws, and the right to a fair hearing.

Access to Justice

One component of the rule of law is **access to justice**, which involves the idea of legal equality, found in s. 15 (the equality section) of the Charter of Rights and Freedoms. This section sets out that each individual is equal under the law and is entitled to be treated without discrimination based on, for example, age, sexual orientation, sex, race, religion, and mental or physical disability.

The Supreme Court of Canada has held that the right of access to our courts is an essential aspect of the rule of law. In *B.C.G.E.U. v. B.C. (A.G.)* (1988), the Supreme Court ruled on an issue involving the right of unionized civil servants to picket in front of their place of work, in this case the courts in British Columbia, with the rights of other people to access the courts. They upheld a lower court's injunction against picketing in front of courts, stating that although the injunction infringed on the right to peaceful assembly under s. 2(b) of the Charter, the infringement was a justifiable limit based on s. 1 of the Charter. The decision was based on the fact that the assertion of one right could not be at the expense of another important right, in this case access to justice (Seaman 2006). In their judgment, the Supreme Court held that "there cannot be a rule of law without access, otherwise the rule of law is replaced by a rule of men and women who decide who shall and who shall not have access to justice."

Parker (1999:31) points out that the "history of access to justice movement can be read as an ongoing struggle to overcome the discrepancy between the claims of substantive justice and the formal legal system." Since a key aspect of access to justice in our criminal justice system involves the provision of legal services, "much access to justice policy relies either directly or indirectly on reorganizing institutions of legal professionalism and legal service delivery" (ibid.). The three components of the access to justice movement are (1) legal aid; (2) public interest law; and (3) informal justice.

Starting in the mid-1960s, demands for better access to justice began to increase with demands for improved systems of legal aid. While the state has had a responsibility to provide effective, efficient, and accessible courts since the time of the Magna Carta (1215), historically the ideal of equal justice has oftentimes favoured the socio-economic elite since it was they who possessed the resources to access and enjoy the benefits of individual rights and liberty. In the mid-1960s the obligation to ensure legal representation was introduced, leading to an increase in the ability of people to access the courts through legal aid.

Criminal Justice Focus

The World Justice Project: Rule of Law Index 2017–2018

The World Justice Project (WJP) is an independent organization that attempts to advance the rule of law in 99 countries and jurisdictions. According to the WJP, when the rule of law is weak there are numerous problems, including high rates of criminal violence and the unequal access to laws. Where the rule of law is strong, there are few injustices and a lack of corruption.

The WJP bases its rankings on the following four universal principles:*

- The government as well as private actors are accountable under the law.
- The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property and certain core human rights.
- The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
- Justice is delivered in a timely way by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve.

Overall, where does Canada rank in the world in terms of the rule of law? (See Figure 1.2.) One of the areas measured by the WJP in the rule of law is criminal justice, which is based on seven separate factors. How does Canada rank among the 99 countries and jurisdictions when it comes to delivering justice? Overall, Canada is in ninth place (see Figure 1.3).

Which groups are discriminated against in Canada? And what can we do to improve our ranking so that the discrimination that exists in our criminal justice system is reduced to the point of elimination?

**The World Justice Project Rule of Law Index 2017–2018*, p. 11, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf; https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2017-2018-report.

FIGURE 1.2 The Global Rule of Law, Overall Top 20 Rankings, 2017–2018

Source: Data from The World Justice Project Rule of Law Index 2017–2018, pp. 6–7, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf; https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2017-2018-report.

Continued on next page

Criminal Justice Focus (*Continued*)

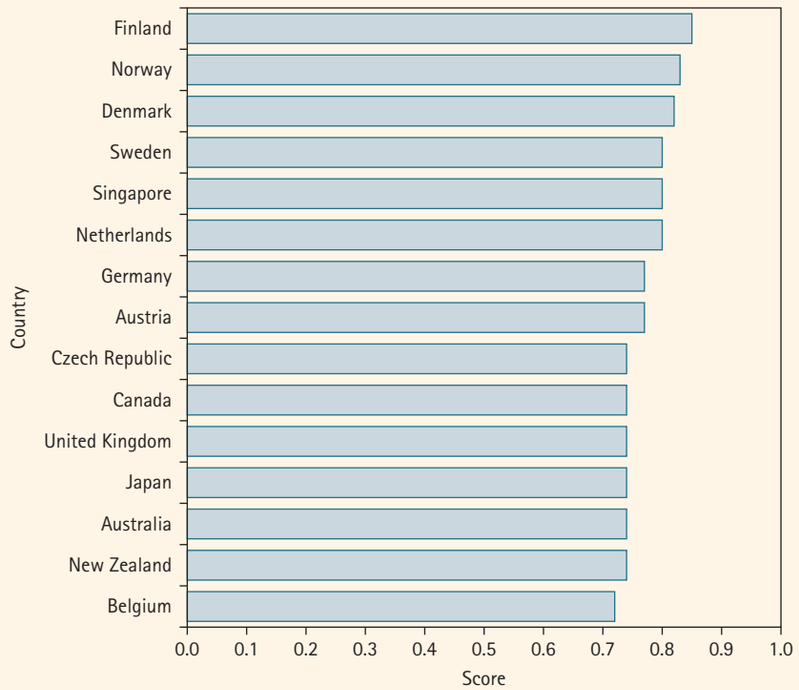


FIGURE 1.3 The Global Rule of Law, Criminal Justice Top 15 Rankings, 2017–18

Source: Data from The World Justice Project Rule of Law Index 2017–2018, p. 43, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf; https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2017-2018-report.

Questions

1. According to the World Justice Project, what happens when the rule of law is weak?
2. Where does Canada rank in the global rule of law, criminal justice? How can Canada increase its ranking?

Public interest law focuses on achieving justice by emphasizing group participation in law and placing traditionally underrepresented and marginalized members into groups in order that they be better represented in the legal process. Since the Charter of Rights and Freedoms can lead to issues of "fundamental societal significance, access to Charter justice enables the resolution of public interest issues important to the whole community . . . public interest litigants are crucial to realizing the Charter's democratic potential because they illustrate the systemic impacts of the law on the most vulnerable people" (Phillips 2013:23). This approach attempts to change laws, court procedures, and the nature of legal practices in order that access to justice can be attained by the members of various groups whose voices have traditionally not been heard in court, such as consumer action groups and environmental and women's movements.

A third type of approach that attempts to increase access to justice is informal justice, which has attempted to increase access to justice through the creation of alternatives to the traditional criminal justice system. A significant and successful part of this approach was the introduction of restorative justice (see Chapter 3). Other examples include the introduction of mediation and arbitration services, alternative dispute resolution, and community justice centres.

Legitimacy of Criminal Justice Institutions

Another element of the rule of law is the degree to which people consider the operation of the criminal justice system to be legitimate. Legitimacy is important as it refers to the agreement with efforts of the police, courts, and corrections to control crime. Without legitimacy people question the rule of law. What, then, encourages people to have this legitimacy? People have been found to be very sensitive to

the way these institutions (and the people who work within them) exercise their authority—that is, to issues of procedural justice (Tyler 1990). Support for the legitimacy of our criminal justice institutions is based on citizens' perceptions of fairness and equity, particularly on the basis of the fairness of procedures. Tyler (ibid.) believes four elements are key to understanding procedural fairness and why people perceive criminal justice institutions to have legitimacy. What are these four elements and what do they refer to?

- *Participation* refers to the extent to which individuals believe they have control over the process, especially in terms of having the opportunity to present their side of the story to the decision makers.
- *Neutrality* occurs when decision makers do not allow the personal characteristics of individuals to influence decisions and treatment during the process.
- *Trustworthiness* of authorities refers to the degree to which decision makers can be trusted to behave fairly.
- *Treatment* with dignity and respect is based on whether or not decision makers treat individuals with dignity and respect for their rights.

These four elements apply to all stages of the criminal justice system. If people feel an institution is not fair or is disrespectful in its actions, their level of legitimacy decreases. If, for example, members of a minority group feel they are discriminated against they will believe the authorities do not act in a procedurally just manner. This has significant implications as it has been found to impact the willingness of some groups to cooperate with the authorities. If the public questions the legitimacy of these institutions they question the use of their legal authority, in particular how they use their discretionary powers.

mtcurado/iStock/Thinkstock

The physical presence of our courts conveys their importance and high status in our society.

SUMMING UP AND LOOKING FORWARD

How does our criminal justice system operate to ensure that its decisions are fair and equal? The answer to this question is found in part by looking at what our society considers the most important characteristics of justice. The critical characteristics of our system of justice include the adversarial system, substantive justice, procedural justice, the rule of law, access to justice, and feelings of legitimacy toward criminal justice institutions. These are some of the essential aspects of the normative framework of our criminal justice system. While there is almost total agreement on the above characteristics, there is not necessarily as much agreement on what the goals of our criminal justice system should be. Various goals have been identified and these have allowed different conceptualizations to be put forward about what our criminal justice system should achieve. This has led to the identification of principles and characteristics that ultimately provide for different understandings of the role of criminal justice in our society. It is these ideologies, referred to most commonly as "models," that is the focus of the next section.

Review Questions:

1. Identify each of the major characteristics of our criminal justice system.
2. Do you think that the adversarial system always leads to the discovery of truth?
3. To what extent do you think the normative framework is practised throughout our criminal justice system on a daily basis?

The Major Ideologies of Canada's Criminal Justice System

One of the important aspects of our criminal justice system, as a social institution and as one of social control, is that it operates as an ideology. An ideology consists of beliefs that guide individuals or groups. This means that the people can interpret the operations of the various elements of our criminal justice system based upon different belief systems. When this occurs, value conflicts

can emerge. One of the most important value conflicts is how we should approach controlling crime: should there be more individual freedom or social order? The best-known analysis of these value conflicts is the work of Herbert Packer, who in 1968 described two models that are helpful in understanding the issues and decision making of our criminal justice system. What Packer called models are in fact ideologies, and he developed two of them: the **due process model** (Figure 1.4) and the **crime control model** (Figure 1.5).

Packer pointed out that different agencies can prioritize a different model than other agencies, although they are able to co-exist. For example, the police prefer the crime control model, while prosecutors follow the due process model.

The due process model emphasizes the rule of law and the protection of the legal rights of the accused. It is viewed as being just and fair by upholding the ideal of equality throughout all areas of the criminal justice system. This approach operates on the basis of "the need to administer justice according to legal rules and procedures which are publicly known, fair and seen to be just" (Hudson 2001:104). The most important goal of this model is not to reduce crime but to see that justice is done—specifically, by protecting the legal rights of the accused. This ensures that innocent people are not

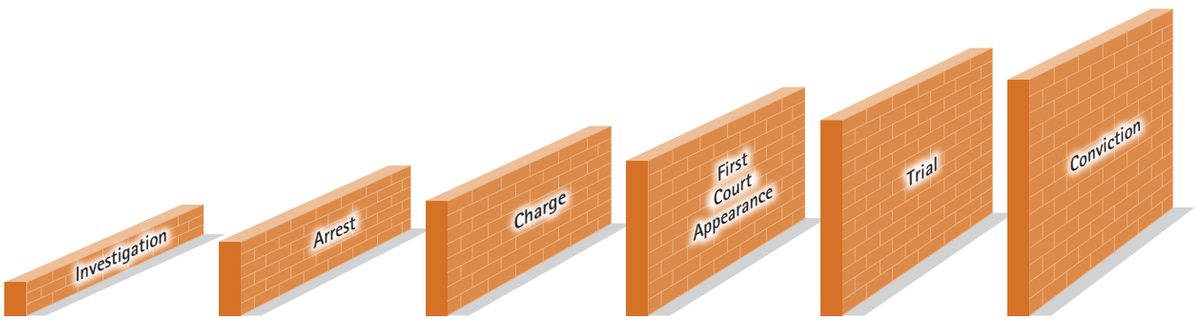


FIGURE 1.4 The Due Process Model
The due process model is an obstacle course.

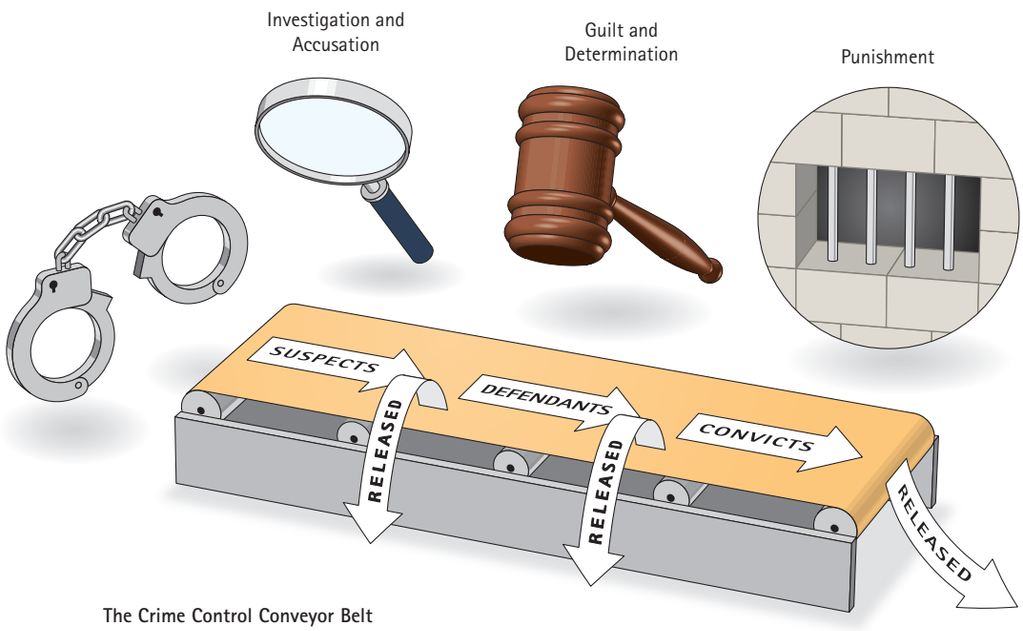


FIGURE 1.5 The Crime Control Model

convicted. If they are, a serious wrong has occurred somewhere in the justice system and it needs to be corrected immediately. The best way to protect the rights of the accused is to limit the powers of criminal justice officials. The criminal justice system under this model operates very differently than it would under the crime control model—it operates like an obstacle course.

According to Sykes and Cullen (1992), the crime control model is best characterized by such statements as "get tough on crime" and "the criminal justice system is weak on criminals." It holds that the most important goal of the criminal justice system is to reduce crime by incarcerating criminals for lengthy periods of time. This reduces lawlessness, controls crime, and protects the rights of law-abiding citizens. To achieve this goal, the criminal justice system operates like an assembly line—it moves offenders as efficiently as possible to conviction and punishment so that effective crime control is attained. Certainty of punishment is achieved through mandatory sentences, longer prison terms, and the elimination of parole.

The crime control model rests on the presumption of guilt. That is, most individuals who are arrested are in fact guilty and so great trust is placed in the decisions made by criminal justice officials, who wish to protect society. To ensure conviction very little if any attention is placed upon the legal rights of individuals being processed through the system. The model assumes that criminal justice officials make few if any errors, since most defendants are guilty. Each stage of the criminal justice system involves a series of uniform and routine decisions made by officials. Finality is important to officials, because it indicates that there are few problems with the system and that, as a result, there will be few challenges to the system. Support for the use of discretion throughout the system is a key feature of this model, since legal technicalities would reduce its efficiency. When the criminal justice system is allowed to operate as efficiently as possible, it is believed that the crime rate will be reduced. Furthermore, when issues about the administration of justice come into conflict with the goal of protecting society, the crime control model errs in favour of protecting the rights of the law-abiding citizenry.

The crime control model highlights law and order and that the focus of the criminal justice system should be to eliminate crime and to convict and incarcerate all offenders. Others have attempted to develop different models, largely on the grounds that the original ideologies developed by Packer fail to take into account the current realities of the criminal justice system. Some believe that the criminal justice system possesses a multitude of goals beyond due process and crime control, while others focus on the impact of scarce resources. King (1981), for example, identified two other models, one of which is what he referred to as the **medical (rehabilitation) model**, whose goal it is to rehabilitate those convicted of a criminal offence. The majority of the activities associated with this model are found at the latter stages of the system, after the individual has been convicted and is being assessed by those who work in the court system or in corrections. Probation officers assist judges by providing presentence reports, providing information to the judge about an offender's needs. They may recommend release into the community with conditions, which may include attending appropriate treatment programs or involvement in a therapeutic court such as a problem solving court (see Chapter 11). If the individual is sentenced to a period of incarceration, correctional staff may select the appropriate treatment program for the offender.

The second model developed by King is the **bureaucratic model**, which emphasizes the pressures felt by those working in the criminal justice system to work within numerous restrictions such as scarce resources as well as the intense pressure placed on them by the public to solve crimes. Cost-effectiveness has increasingly become a major issue for the various agencies in the criminal justice system over the past few decades. According to King, these restrictions have led various agencies to create measures of bureaucratic efficiency, such as making sure that those charged with a criminal offence are tried within a reasonable period of time. Otherwise, charges may be dropped on the basis that the government has taken too long to try their case. If a defendant decides to plead not guilty both the prosecution and defence have to prepare a case, which may involve the expenditure of significant amounts of resources. However, if the defendant pleads guilty much of this cost can be avoided. As a result, guilty pleas are more cost-effective than prosecuting the majority of cases.

Others have attempted to update the models to reflect more contemporary goals relevant to the criminal justice system. Roach (1999), for example, has proposed an alternative model: the **punitive model of victims' rights** and the **non-punitive model of victims' rights**. Roach views the punitive model as more of a roller coaster approach to punishment, in a continual state of crisis as the rights of victims and potential victims are in constant conflict with the rights of the accused. The non-punitive model is portrayed as a circle that "symbolizes successful crime prevention through family and community-building and successful acts of restorative justice" (Roach 1999:699). For Roach, the benefit of an emphasis upon a non-punitive approach is that it would lead to a reduced tendency to rely upon the constant use of the criminal sanction.

Ruth and Reitz (2003) prefer to ignore differentiating between separate models and instead offer a unified set of goals they believe should be shared among all major

TABLE 1.1 Models of the Criminal Justice System

Models	Goals
Crime Control Model (Packer)	Assembly line (efficient) justice
	Factual guilt
	Public safety
	Punish offenders
	High rate of conviction
Due Process Model (Packer)	Fairness, equality, and justice
	Obstacle course
	Legal guilt
	Protection from the powers of the state
	Search for truth
Medical (Rehabilitation) Model (King)	Needs of the offender
	Treatment of the offender
	Discretion of judges
	Expertise of treatment personnel
	Community reintegration
Bureaucratic Model (King)	Management of criminals
	Speed of case processing
	Efficiency of system
	Management of resources
	Administrative discretion
Punitive Model (Roach)	Roller coaster
	Factual guilt
	Victims' rights
	Victim focus throughout the system
	Greater punishment
Non-Punitive Model (Roach)	Circle (healing, cooperation, restoration)
	Victims' needs
	Reduction of harm
	Non-adversarial emphasis
	Reduced involvement of criminal justice actors

agencies operating within the criminal justice system. They identify five goals; the first four are the ones the criminal justice system should achieve, while the fifth goal focuses upon the proper size and scope of the system itself (see Exhibit 1.3). Each goal is interrelated with the others, and while they may never be attained they nevertheless serve as a guide to the formal and affiliated agencies working within the criminal justice system.

EXHIBIT 1.3 Ruth and Reitz's Unified Goals of the Criminal Justice System

Goal #1: To reduce the amount of crime. The response must include not only immediate reactions (e.g., arresting, prosecuting, and punishing) but also activities that are not connected to traditional activities, such as alternative dispute resolutions.

Goal #2: To confront fear. Fear can lead to a society that is "divided, distrustful, and distracted."

Goal #3: Justice needs to include the crime victim, potential future victims, and the offender. It also requires just laws, fair processes for their enforcement, and the even-handed administration of those processes.

Goal #4: The justice system must operate in a way that creates and sustains broad faith in its moral legitimacy. Perceptions of injustice as the outcomes of our criminal justice system are problematic, as they reduce the perception of legitimacy within our justice system.

Goal #5: The proper scope of the crime response. Criminal justice should be used only if the behaviour in question is severe enough to be condemned as criminal.

What Is Criminal Justice?

In Canadian society today, when most people speak of justice they are referring to the fairness of our criminal law system, and their view is informed by three different assumptions. First, guilt, innocence, and the sentence should be determined fairly and in accordance with the available evidence. Second, punishment should fit the offence as well as the offender. Third, like cases should be treated alike and different cases differently (Law Reform Commission of Canada 1977). The primary principle of the justice model is that punishment should be proportional; that is, "commensurate to the seriousness of the offence" (Hudson 2003:40).

This view of criminal justice currently guides most Canadians' thinking regarding the most appropriate form for justice to take in our society. It is most closely related to what is called the justice model (see Chapter 3). This approach emphasizes that justice is achieved when the various agencies of our criminal justice system follow legal rules and procedures that are

publicly known, fair, and just. Key components of this approach are ideas such as the presumption of innocence, procedural fairness, and the need to follow legal rules. Discretion and unequal treatment must be reduced as much as possible. It is argued that when these rules and procedures are followed, our criminal justice system operates in an efficient, fair, and impartial manner (von Hirsch 1976). An important component of the justice model is "justice as fairness," or equality before the law. Here, the rule of law dictates that justice prevails in every stage of the criminal justice system, so no one person experiences discrimination.

SUMMING UP AND LOOKING FORWARD

What does our criminal justice system seek to achieve? Is it to reduce the amount of crime and to prevent crime in the future? Differing ideologies have led to the varying explanations about the various criminal justice agencies as well as what policies should be adopted. Various models allow us to recognize different conceptualizations of goals in our criminal justice system. Some focus on specific approaches (e.g., the crime control model, the bureaucratic model, or the punitive model of victims' rights), while others focus on having all criminal justice agencies working together to achieve agreed-upon goals.

Now that the essential characteristics and models have been discussed we need to outline some of the key decision points in our criminal justice system in order to understand how people can be processed and released at both the pretrial and trial stages.

Review Questions:

1. Identify the major elements of the crime control, due process, rehabilitation, and bureaucratic models.
2. What is the importance of including victims into the goals of our criminal justice system?
3. Do you think that all of the central actors in our criminal justice system can agree on what the most important goals are?

Key Decision Points of the Criminal Justice Process

According to the Law Reform Commission of Canada (1988), a key function of our criminal justice system is to bring offenders to justice. At the same time, our legal system has developed a number of legal rights and protections for those accused of crimes. Various fundamental principles exist that attempt to ensure that no arbitrary actions violate these principles. Our criminal justice system is based on the presumption of innocence of all defendants and is supposed to conduct itself in a manner that is fair, efficient, accountable, participatory, and protective of the legal rights of those arrested and charged with the commission of a criminal action.

An integral part of these guarantees is found in what is known as *criminal procedure*. Criminal procedure is concerned with how criminal justice agencies operate during the interrogation of suspects, the gathering of evidence, and the processing of the accused through the courts. Criminal procedure also ensures that the agents of the state act in a fair and impartial manner in their search for truth. Our system of criminal procedure has two major parts: *pretrial procedure* and *trial procedure*. What follows is an overview of the pathway people experience as they are processed through our criminal justice system. One can think of this as a horizontal approach (see Figure 1.6), which includes numerous formal decision-making points before they move on to the next stage.

Pretrial Criminal Procedure

Arrest

The main purpose of arresting someone is to ensure that the accused appears in a criminal court, in which that person's guilt or innocence will be determined. Another purpose of arrest is to prevent the commission of any further crimes. The police, however, do not have to arrest every person who has violated the law. A number of important issues can determine whether a police officer decides to arrest someone, including the seriousness of the offence, the amount of evidence against the suspect, and the wishes of the victim. Police officers have a tremendous amount of discretion, particularly with less serious offences. Decisions not to arrest someone are often the result of a police officer's attempt to achieve street justice. "Street justice" refers to the attempts made by the police to deal with problems without formally processing anyone. If a police officer decides to arrest a suspect, the next key decision stage in the criminal justice system is the initial appearance.

Initial Appearance

A warrant is issued after a crime has been committed and the police, through their subsequent investigation, have collected enough evidence that they have reasonable and probable grounds to suspect that a certain person committed the offence. Once the evidence has been collected, the police must go to a justice of the peace and lay

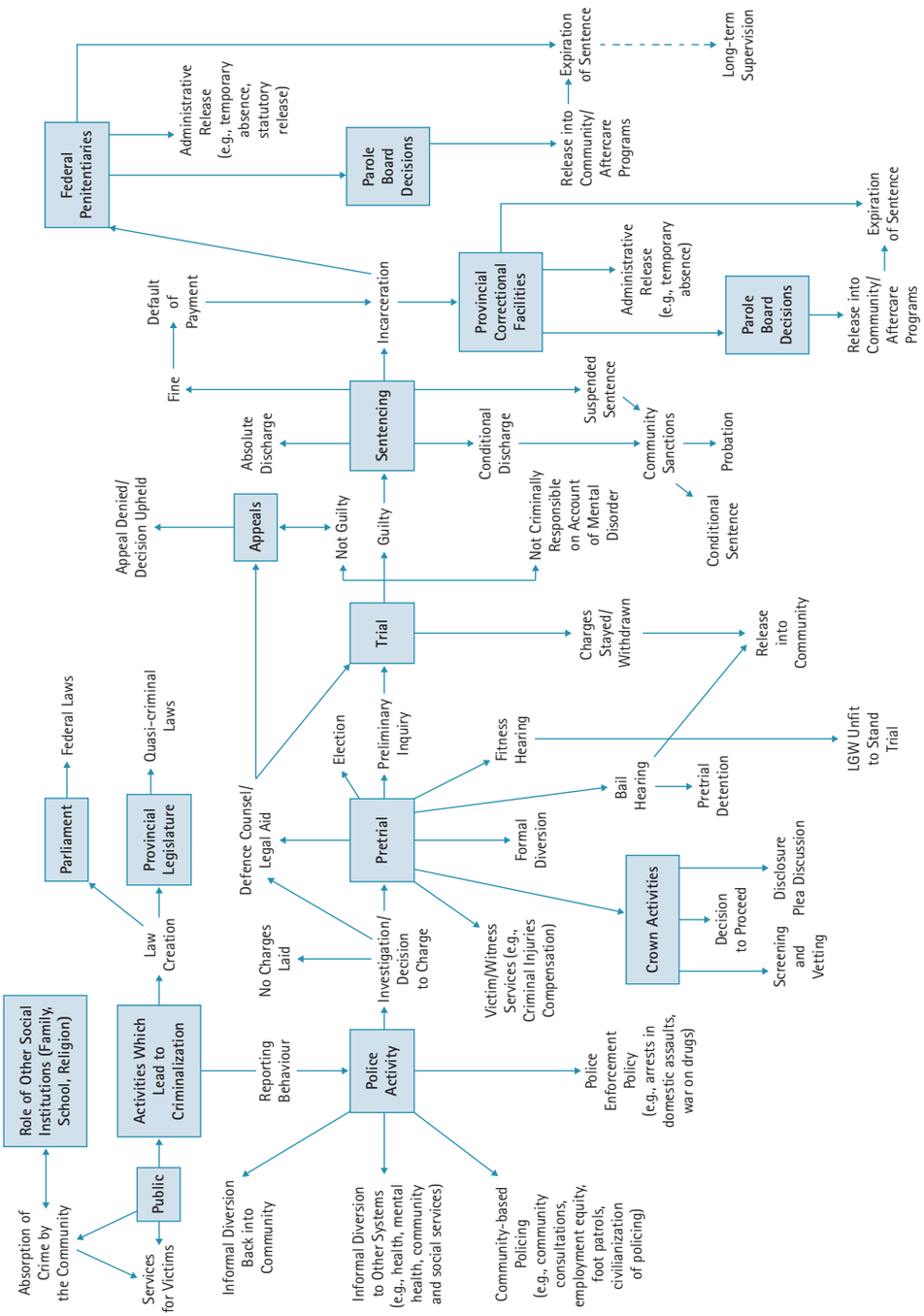


FIGURE 1.6 Overview of the Operation of the Canadian Criminal Justice System

an information against the suspect, indicating why they feel it is in the public interest to arrest the suspect. After the arrest warrant has been signed, the police execute the order by arresting the individual named on the warrant. Most warrants are issued only for the province in which the police investigated the crime. A Canada-wide warrant is issued only after an individual fails to appear in court after being charged with a violent or serious property offence. Even without a warrant, police can arrest an individual. This generally occurs when police officers have no chance to lay an information—for example, when they discover a crime in progress.

Police officers need not arrest an individual when the offence in question is either a summary conviction offence or an indictable offence that does not allow the accused to choose a jury trial. Nor do police officers need to arrest a suspect (1) when they are certain the suspect will appear in court at the designated time and date; (2) when the prosecutor can proceed by way of a summary or indictable offence (i.e., a hybrid offence); or (3) when the offence involves a charge of keeping a gaming or betting house, placing bets, or keeping a common bawdy house.

Police may issue an appearance notice to a suspect or request a justice of the peace to issue a summons. An appearance notice is given to the suspect by a police officer at the scene of the crime. In these cases, the police officer hands the accused a form with information pertaining to the offence as well as the time and place the accused has to appear in court to answer the charge (or charges). The police officer must lay an information with a justice of the peace as soon as possible thereafter. Another alternative to an arrest is a summons. Here the accused is ordered to appear in court by a justice of the peace. The summons must be handed to the accused by a police officer or person granted special powers by provincial authorities. It can also be left at the accused's last known address with an individual who appears to be at least 16 years old. When this document is served, the accused is compelled to appear in court at a designated time and place (Barnhorst and Barnhorst 2004).

Nell Redmond/iStockphoto

An arrest involves the words of arrest along with the touching of an individual with the purpose of detaining them or the individual submitting to the arrest.

Detention

After an individual is arrested, the police have a number of decisions to make about the suspect. For one, they have to determine whether the person arrested should be held in custody before the trial. The law in Canada states that the accused must be released unless there is good reason for keeping them in detention. The police cannot hold an individual for an undetermined reason; Section 9 of the Charter of Rights and Freedoms states that "everyone has the right not to be arbitrarily detained." In addition, s. 10(a) states that "everyone has the right on arrest or detention to be informed promptly of the reasons thereof." If the arresting officer decides that the accused is to be formally detained, the officer in charge at the police station to which the accused is taken has the discretion to release the suspect. The officer usually exercises that discretion unless the suspect is being charged with a criminal offence punishable by imprisonment of five years or more, the suspect is felt to pose a threat to the public, or the suspect is believed unlikely to appear in court. If the officer decides the accused is to remain in custody, the accused must be taken before a justice of the peace within 24 hours or—if this is not possible—at the earliest possible time to see if they can receive bail.

Bail or Custody

The purpose of bail is to make sure that the accused appears at the ensuing trial. In Canada today, the Criminal Code requires all individuals arrested to be brought before a justice of the peace, who decides whether the accused is to be released before trial. The justice of the peace is expected to release the accused unless the prosecutor supplies evidence to show either that the individual should not be released or that conditions should be attached to the release. When a hearing occurs which establishes that a defendant is dangerous to the community, the justice of the peace can deny bail. The accused may be released as long as they have a home, family, job, or other ties to the community. Those charged with first or second degree murder can be released on bail only by a superior court judge.

Bail is such an important part of the Canadian legal process that s. 11(e) of the Charter of Rights and Freedoms guarantees the right of the accused "not to be denied reasonable bail without just cause." According

to s. 457 of the Criminal Code, bail may not be granted when it can be shown to be in the public interest or necessary for the protection or safety of the public, and/or when denial is necessary to ensure the appearance of the accused on the designated date of the trial. In certain circumstances, it is up to the accused to inform the judge they should be released pending trial. If they are not released, they will be placed into pretrial custody until they make their first appearance in court.

Whether the accused is granted bail or is held until the trial, almost all criminal prosecutions in Canada start with an *information*. According to Mewett and Nakatsuru (2000), this serves two important purposes in the Canadian legal system. First, it compels the accused to appear in court on a specific date and at a designated time. Second, it forms the written basis for the charge that the accused faces in court.

Trial Procedure

The First Court Appearance

In most jurisdictions, the accused is *arraigned*—that is, hears the charges that are being brought against them and enters a plea in response. During the arraignment, the accused is brought before a provincially appointed judge. All formal charges are read by the court clerk at this time and the accused (or the accused's lawyer) makes the initial plea. The arraignment does not involve a hearing on the facts of the case but rather allows the defendant to plead guilty or not guilty to the charge(s). If the defendant pleads not guilty, a trial date is set. However, if the defendant pleads guilty, a finding of guilt is entered by the judge. A significant number of defendants plead guilty at this time, often as part of an agreement (i.e., a plea bargain) reached between the defence and prosecution. In a typical plea bargain, charges are dropped or reduced by the prosecution in exchange for the certain conviction of the defendant without a trial. Sometimes the defence counsel or prosecutor indicates to the judge that they are not ready to proceed. This usually happens in cases that involve complex issues, where more time is needed to prepare the defence or prosecution. In such cases, the presiding judge agrees to set aside the case until a later date.

The Indictment and Preliminary Inquiry

When the charge involves an **election indictable offence**—that is, when the accused has the right to choose between trial by judge alone and trial by judge and jury—the next step is to hold a preliminary inquiry. Few cases in Canada actually involve a preliminary inquiry; however, a preliminary inquiry is a right of the accused and is held prior to the formal trial. Preliminary inquiries are heard by a provincial court judge. Summary conviction offences proceed differently from indictable offences in our court system and don't involve a preliminary inquiry.

The purpose of a preliminary inquiry is not to determine the guilt or innocence of the individual charged with a crime but rather to determine whether there is enough evidence to send the accused to trial. During a preliminary inquiry, a prosecutor attempts to show the judge that enough evidence exists for a criminal trial. The prosecution has the power to call as few or as many witnesses as it thinks necessary to prove to the judge that a case merits a trial. Once a witness testifies for the prosecution, defence counsel has the right of cross-examination.

The defence has the right to call witnesses to support a claim of innocence. If the defence can prove to the judge that the prosecution doesn't have a good case, there won't be a trial. Thus, a good defence during the preliminary inquiry can lead to the discharge of the accused. One reason witnesses are called to testify is to get their testimony on record, especially if witnesses are sick or about to leave the country. The evidence provided by witnesses during the preliminary inquiry may be used during the trial. Most preliminary inquiries last less than a day, and only rarely does a preliminary inquiry end in a judicial decision to discharge the accused or withdraw the charges. An inquiry is important to defendants because it allows them to "hear the nature and judge the strength" of much of the evidence that the prosecution will use during the trial (Barnhorst and Barnhorst 2004:21). The defendant may then decide to plead guilty.

If the judge decides to discharge the accused, this does not mean that the accused is acquitted. It simply means that insufficient evidence exists at this time to proceed to trial. Mewett and Nakatsuru (2000:88) point out that a discharge means that "the accused cannot be tried on that information and that proceedings on that information are terminated." If, at a future date, new evidence is produced and strongly indicates the accused was involved in the crime, the prosecution usually proceeds by way of a direct indictment instead of requesting another preliminary inquiry. Whichever avenue is chosen, the attorney general or a senior official in the provincial justice department is required to give personal approval of the Crown's actions.

The Trial

At trial, the prosecutor must prove beyond a reasonable doubt that the defendant committed the offence for which they have been criminally charged. The defendant's lawyer tries to discredit all or part of the prosecutor's case by establishing some type of doubt about whether the defendant committed the alleged offence.

A trial may be heard by a judge alone or a jury. For most indictable offences, the accused can elect trial by judge alone or by judge and jury. Some exceptions apply—for example, with first and second degree murder charges the accused must be tried by judge and jury unless both the defendant and the attorney general of the province agree to proceed with a judge alone. A trial by judge alone involves a judge hearing all of the evidence and then deciding whether the defendant is not guilty or guilty. If the trial involves a jury, it is supposed to consist of a representative cross-section of the community where the offence allegedly occurred. The jury, after hearing all of the evidence, decides whether the accused is guilty or not. If the verdict is guilty, the defendant proceeds to the sentencing stage of the trial.

In Canada, the accused has the right to change their mind about the type of trial chosen, although some restrictions apply. In a re-election, as this process is called, an accused who initially selected trial by a provincial court judge has 14 days to change their mind and request a trial by a judge and jury. An accused who originally selected trial by judge and jury has 15 days after the completion of the preliminary inquiry to change their mind and select a trial heard by a provincial court judge alone.

Once the indictment is read to the accused in court, that person has to plead to the charge(s) by entering a plea of either guilty or not guilty. If the accused pleads not guilty, the prosecution has to prove that the defendant is guilty of the offence beyond a reasonable doubt. In this situation, no reasonable amount of doubt concerning the guilt or innocence of the accused can be left unresolved. If reasonable doubt exists, the accused is acquitted of all charges.

Sentencing

If the accused is found guilty the judge will select criminal punishment from the sentencing options available. Commonly applied sentences in Canada include an absolute or a conditional discharge, probation, **incarceration**, a suspended sentence, and a fine. A judge may decide to combine two of these sentences, such as a period of incarceration with a fine. The sentence depends in large part on the charges the individual was found guilty of and the prior record of the offender. In a few instances, a judge has no choice in setting the penalty. For example, a judge who finds an offender guilty of first or second degree murder must sentence the accused to life imprisonment with no chance for parole for a specified number of years.

In many instances, a judge also relies on a presentence report compiled by a probation officer. This report may evaluate such things as the employment record of the offender and any family support. Other sources of information that a judge may use to determine a sentence include a victim impact statement, information given about the accused at the sentence hearing by the Crown prosecutor or the defence lawyer, and any mitigating or aggravating circumstances surrounding the commission of the crime. These can be significant factors in the sentencing.

rubberball/Getty Images

A witness is sworn in during trial. All individuals who give evidence in court must swear or, if they object to taking an oath, make a solemn affirmation to tell the truth.

Incarceration

If the sentence involves a period of incarceration, the offender is sent to either a provincial jail or a federal institution. The majority of offenders sentenced to a period of incarceration serve some portion of their sentence under community supervision on either parole or probation. Both of these sentences are a form of conditional release, where offenders remain in the community while they are serving their sentence. Most offenders in Canada do not serve the full term of their sentence as they receive either day parole or full parole before the end of their sentence. If they don't receive parole, they receive statutory release after serving two-thirds of the sentence. While incarcerated, offenders can receive some form of rehabilitation or treatment. Programs have been designed to help offenders reintegrate into society. The amount of treatment given to offenders varies, however. After their release, offenders on parole must contact their parole officer on a regular basis. They may be required to spend some time in a halfway house or under some other form of community supervision.

SUMMING UP AND LOOKING FORWARD

A key function of our criminal justice system is to bring offenders to justice. It closely follows the justice model, which emphasizes legal rights and protections for those accused of crimes. Our criminal justice system is based on the presumption

of innocence of all defendants and is supposed to conduct itself in a manner that is fair, efficient, accountable, participatory, and protective of the legal rights of those arrested and charged with the commission of a criminal action.

Much of what we learn about the criminal justice system is formal in nature; that is, the vast majority of those individuals charged are processed through each stage of the system. This system can be divided into two major categories: pretrial procedure and trial procedure.

Pretrial procedures typically involve an individual being investigated by the police, who determine whether or not charges should be laid. They may decide to detain a person, or they may decide to arrest an individual and take them to the police station for further questioning or issue an appearance notice or a summons for a later court date. In those situations where a crime has already been committed, the police may decide to obtain a warrant to arrest someone or to gather evidence. Individuals who are arrested may be placed into custody or apply for bail to ensure that they will appear at a later court hearing.

Once a case reaches court, there are a number of trial procedures. At the first court appearance the individual charged will enter a plea. If it is "not guilty" there usually is a preliminary inquiry. If a decision is made to proceed, there is a trial. If there is a finding of guilt at trial, the individual will be sentenced. In these situations, an individual may be incarcerated for a period of time; prior to completing all of their sentence, they may be released on either day parole, full parole, or statutory release.

This is not always what people experience as they are processed through the system, however. Alternative interpretations have been developed in order to explain a different approach, which is premised on the argument that not all criminal cases are handled in the exact same way by either the police or judiciary. This approach argues that the type of treatment received by an accused is commonly based on their group membership, the seriousness of the charge, the personal status of the individual, as well as their resources. Commonly referred to as the "informal criminal justice system," this model is discussed in the next section.

Review Questions:

1. Identify the key decision points found in the pretrial stages of our criminal justice system.
2. Identify the key decision points found in the trial stages of our criminal justice system.
3. What are the different types of sentences one can receive if convicted?

The Informal Organization of the Canadian Criminal Justice System

The previous section illustrated some of the key decision points as an accused moves through our criminal justice system. This approach presents this process in a horizontal fashion. Those who focus upon the informal processing tend to look at our system vertically; that is, the system operates like a **wedding cake**: Layer 4, the lowest level (where most cases are located), involves lesser offences; Layer 3 includes the less serious crimes; Layer 2 includes the more serious crimes; and Layer 1, the top level, is where the most celebrated cases are and where most of the media attention is focused, since these crimes involve celebrity defendants or unique factors (see Figure 1.7).

The reality of this informal processing has been recognized not only by researchers but also by some members of the legal profession. For example, the Law Reform Commission (1977:12–13) has recognized that, despite the belief that only those who commit crimes are formally charged, processed, and tried, and only those convicted of a crime are punished, "reality falls short of aspiration" . . . and . . . "our picture of the criminal justice system bears little resemblance to reality." An important aspect of this approach is its attention to the ways in which the organizational and institutional cultures found within criminal justice agencies can affect the services provided to offenders. A variety of approaches have been forwarded that attempt to explain the operations of the informal system of criminal justice.

People researching our criminal justice system believe that almost everyone who enters it experiences quite a different process than that pictured by the formal system. For example, Ericson and Baranek (1982) argue that the formal system operates only in theory and that the legal protections given to the accused are frequently ignored or plea bargained away by the defence counsel and prosecutor. As such, "legal justice" does not exist. Instead, most defendants receive a form of "bargain justice," where the accused is encouraged to plead guilty in return for a reduced sentence or the dropping of a number of charges. These critics argue that the final result is a court system in which the vast majority of the accused plead guilty before any item of evidence is contested in open court. Guilty pleas usually involve a reduction in the number of charges or a recommendation to the judge that the sentence be reduced.

Provincial criminal courts are crowded with individuals who are charged with lesser offences and waiting to have their cases heard. The courtrooms themselves have an air of "assembly-line justice"; defendants line up to enter the courtroom, only to have their cases summarily dispatched. Defendants in these courts rarely contest their cases in front of a judge. Most defendants who enter

FIGURE 1.7 The Wedding Cake Model of Crime
The wedding cake model of criminal justice features a four-tiered hierarchy of criminal cases, with the tiers decreasing in size as the severity of the cases increases. A small number of celebrated cases make up the highest tier level.

the provincial courts plead guilty to the charges during their initial appearance or find the charges either stayed (postponed indefinitely) or withdrawn by a prosecutor (Desroches 1995; Ericson and Baranek 1982; Ursel 1994; Wheeler 1987). For example, Desroches (1995:252) reported that 90 percent of the 70 robbers he interviewed pleaded guilty in provincial court, quickly averting any argument over the charges in an open courtroom. Most indicated they pleaded guilty simply because they wanted to "get the thing over with." Most criminal cases in Canada end up being heard in the provincial courts, which handle routine criminal cases. This is the extent of most Canadians' involvement in the court system.

One approach developed to explain the informal nature of our justice system is the **courtroom work group**. The existence of this group disputes the belief that the criminal courts operate as a formal, rational legal system with all of its members following the rule of law and well-defined rules as they go about their daily work roles. Instead, courts consist of informal work groups whose members hold considerable discretion, largely as a result of professional bonds that have developed among the members (Eisenstein and Jacobs 1974). One important feature of this group is group cohesion—that is, everyone involved cooperates with everyone else, and the members establish shared methods and values that help the group as a whole achieve its goals. As a result, the needs of the group members take precedence over concerns about the system's fairness and equality. The relationships among the individuals in this group have a significant impact on the day-to-day operations of the various criminal justice agencies and on the outcomes of individual cases.

An essential component of the courtroom work group is that it develops a shared understanding of **normal crimes**, which refers to the social characteristics of the individuals who have been charged with a criminal offence, the settings in which the alleged crime has occurred, and the types of victims that are involved. In these cases, the members of the courtroom workgroup "make sense" of the individuals and cases being processed through the courts, an assessment that may only in part be influenced by legal definitions of crime (Sudnow 1965).

Three other characteristics of the courtroom work group essentially allow its members to accomplish their tasks: (1) there is an emphasis on speed—that is, on disposing of cases rather than dispensing justice; (2) guilt is presumed—in other words, it is generally understood that individuals charged by the police are in fact guilty; and (3) secrecy is prized, because it enables all members to decide cases among themselves and to keep these negotiations private. All of these have a significant impact on the daily operations of our justice system and on the type of justice administered to and experienced by both offenders and victims.

An alternative approach to explaining the processing of cases through the criminal justice system is referred to as the **criminal justice funnel** (see *Criminal Justice Insight*). When a crime is committed and the offender is charged by the police, the case enters the top of the funnel. From there, it passes through ever-narrowing stages until it exits. Sometimes this exiting occurs at the bottom of the funnel, with the offender being sent to a correctional facility, but it can also exit higher up the funnel, such as when all charges are dropped because a witness refuses to testify or because the prosecutor feels the evidence is not sufficient. Between the top and the bottom of this funnel, then, are key decision-making points; at each, the case load has the potential to be reduced.

The actors and agencies in our criminal justice system are controlled by the formal rules of law; that said, they enjoy considerable leeway in how they prioritize and carry out their activities. According to those who study the informal criminal justice system, it is better to perceive the system as a process. This view emphasizes the key decision points through which cases pass. Each decision point is, in effect, a screening stage that involves a series of routinized operations; its efficacy is gauged primarily in terms of its ability to move a case to its next stage and a successful conclusion. The processing of individuals through our criminal justice system has in effect become a system of human resource management. The various actors go about their daily activities without stepping on

Criminal Justice Insight

The Crime Funnel

The criminal justice funnel reveals how decisions made at one stage in our criminal justice system impact the next stage by sorting out who should and should not continue (Figure 1.8). This is referred to as *case attrition*; that is, at each stage of the funnel, there are fewer people than before, as more people are released or placed into other parts of the system—for example, when a judge decides to sentence someone to a community sanction instead of sending them to a correctional facility. The decisions made throughout the criminal justice funnel by authorities oftentimes reflect the strength of the case. For example, prosecutors may decide that there is not enough evidence to proceed with the charges and judges may decide that the crime was not serious enough to send the person convicted to a correctional facility, especially after looking at their (non-existent) prior record. In other words, the criminal justice system is considered to be fair and just.

Decisions made by lax officials also may lead to reductions throughout the funnel. There are too many loopholes in the system and the result is offenders being dealt with "too easily." This leads to claims that the criminal justice system is unfair and unjust.

Does the criminal justice funnel represent a system operating in a fair and just way, according to formal rules, or does it represent an informal system where fairness and justice is compromised?

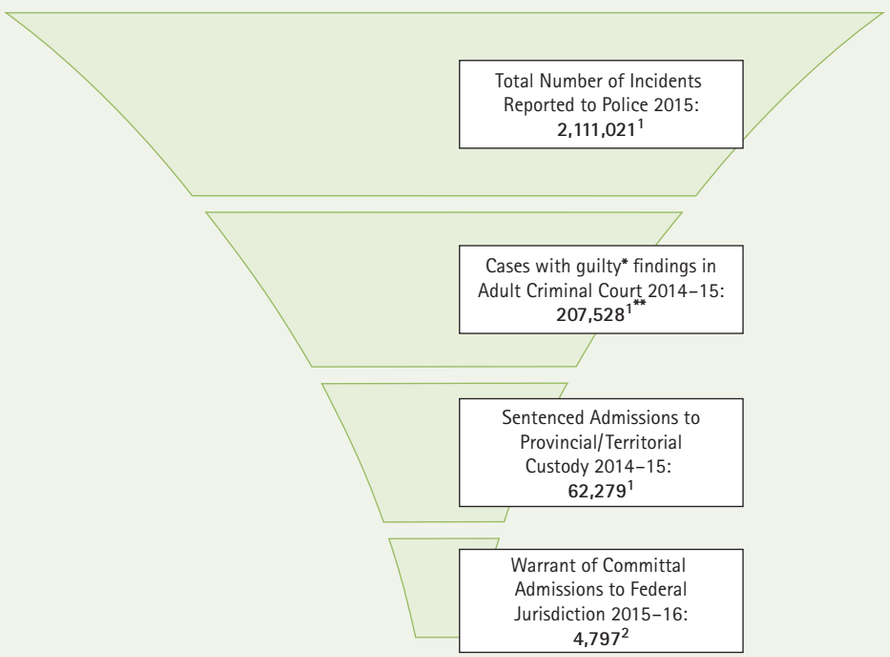


FIGURE 1.8 The Criminal Justice Funnel

The criminal justice funnel reveals that at each stage in the criminal justice system, fewer numbers of people are processed at the next stage.

[1] Uniform Crime Reporting Survey-2, Adult Criminal Court Survey, and Adult Correctional Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

[2] Correctional Service Canada.

* The type of decision group "guilty" includes guilty of the offence, of an included offence, of an attempt of the offence, or of an attempt of an included offence. This category also includes cases where an absolute or conditional discharge has been imposed.

** This figure includes only cases in provincial court and partial data from Superior Court. Superior Court data are not reported to the Adult Criminal Court Survey for Quebec, Ontario, Manitoba, and Saskatchewan. Information from Quebec's municipal courts is not collected.

Source: *Corrections and Conditional Release Statistical Overview Annual Report 2016*, Fig. A7, p. 13, https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2016/ccrso-2016-en.pdf. Reproduced with the permission of the Minister of Public Safety and Emergency Preparedness, 2018.

Continued on next page

Criminal Justice Insight ***(Continued)***

Questions

1. What is the importance of the crime funnel for understanding the operation of the Canadian criminal justice system?
2. What are the reasons for the reductions in the number of people flowing through each stage of the crime funnel?

toes, all the while bending informal agency rules. This system is dedicated to the search for simple solutions. Simple routine justice treats similarly situated defendants in the same ways. Its central elements correspond more to the personal and political needs of justice personnel than to any abstract concept of justice or the rule of law.

Both of these approaches note that a significant feature is that people are treated unfavourably on the basis of a number of factors, such as their gender, social class, race, ethnicity, and sexual preference. This is due to **discretion**; that is, the ability of an individual or an organization within our criminal justice system to take alternative courses of action beyond the formal rules and procedures. This discretion leads to disparity and discrimination, both of which occur "where the law is permissive and individual discretion wide, and that where there are few guidelines as to how a decision should be taken, decision making is often based on subjective judgments . . ." (Gelsthorpe and Padfield 2003:4).

Disparity

Disparity refers to a difference, but one that doesn't necessarily include discrimination. Concerns about disparity in our criminal justice system arise when inconsistencies appear as a result of the authorities using illegitimate factors when making their decisions. In the area of criminal justice, disparity has most commonly been raised with sentencing, most specifically whether people receive different sentences for similar offences. However, it has also been used to analyze a broader issue, notably whether individuals, such as offenders and victims, are treated equally or unequally when there are similar circumstances. As Gelsthorpe and Padfield (ibid.) note, when a disparity is found it "strikes at the heart of the ideal . . . that all are equal before the law."

Legitimate reasons for differences include appropriate legal factors such as the seriousness of the offence and the prior record of the offender. These are considered to be legitimate reasons for differences in our treatment of alleged offenders and those convicted of a crime within our criminal justice system since they are specifically concerned with the criminal behaviour of the offender. Illegitimate factors are extralegal factors, such as race, religion, and gender, which involve decisions about the group the alleged offender belongs to and are unrelated to the criminal activity of any particular individual. For example, our criminal justice system is not supposed to operate or decide about a person's criminality on the basis of their social class. If it did, it is entirely possible that middle- and upper-class individuals who commit crimes would serve their sentence within the community, while members of the working class would receive a prison sentence.

Discrimination

Discrimination refers to the differential treatment of individuals based on negative judgments relating to their perceived or real membership in a group. In other words, something about an individual (e.g., race) overrides their other qualities (e.g., educational attainment). Most research efforts in the area of discrimination focus upon gender and race, while fewer have studied sexual orientation, age, religion, and disability. Discrimination can occur when individuals or groups are perceived as inferior or difficult (Gelsthorpe and Padfield 2003).

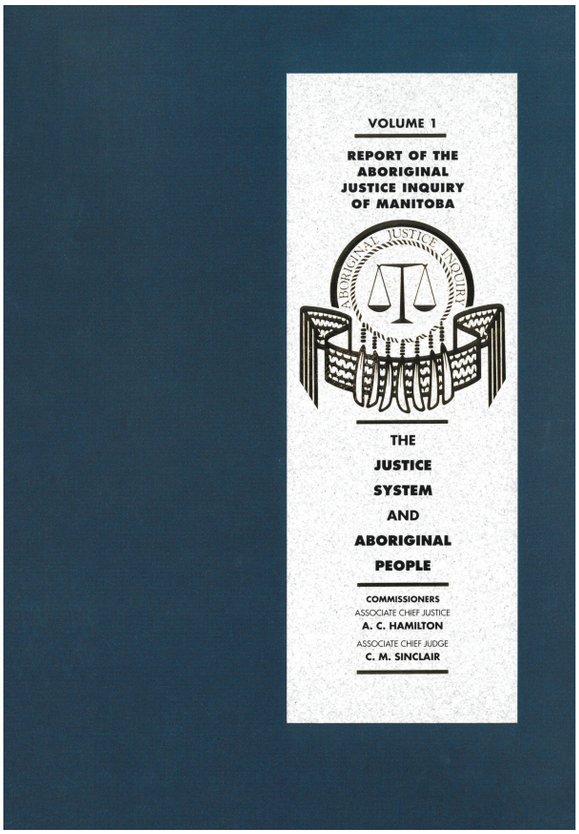
Various types of discrimination have been identified, and each has the potential to influence fairness in a variety of different ways in our criminal justice system. **Systemic discrimination** refers to discrimination (e.g., race and/or gender) existing in all aspects of the operations of our criminal justice system. This means that discrimination can consistently be found in the rates of arrest, the type of charges laid, and the decision to prosecute or stay charges, as well as in the conviction rates and types of sentences given to those convicted without any significant variation over a selected time period. Provincial inquiries into the treatment of racial minorities within the Canadian criminal justice system during the 1990s (e.g., the Manitoba Aboriginal Justice Inquiry) reported the existence of systemic discrimination.

With **institutionalized discrimination**, disparities appear in the outcomes of decisions. Such disparities are the result of established (i.e., institutionalized) policies in the criminal justice system. These policies do not directly involve extralegal factors such as an individual's employment status, race, gender, or religion. The main issue here is one of system outcomes or results rather than any intent to discriminate against a specific individual or member of a group. One example involves decisions made within the criminal justice system based on the employment status of

those accused of a crime when they are applying for bail. A policy granting bail made on the basis of the employment status of the accused can be legitimized on the basis of research showing that employed persons are better risks for showing up for trial than those who are unemployed. But what if all men are employed and very few women are? Since women are disproportionately overrepresented among the unemployed, they are more likely to be denied bail. This result is referred to as a *gender effect*, which means that discrimination is the result of a policy that is not concerned with the gender of those who apply for bail. Institutional discrimination is the result of a policy; it does not exist because of individuals who are prejudiced.

Contextual discrimination arises from organizational policies within criminal justice agencies such as the police and the courts. One example is when a police service fails to enforce the criminal harassment (or anti-stalking) provisions of the Criminal Code simply because it foresees the complainant dropping charges before the case enters the courts. Another example is when a judge sentences the members of one racial minority group more harshly when they victimize the members of another racial group, but less severely when they victimize a member of their own racial group.

Individual discrimination occurs when an individual employed within the criminal justice system acts in a way that discriminates against the members of certain groups. For example, a police officer may discriminate against members of a certain social class and/or ethnic group by arresting them in all circumstances while only giving warnings to all others.



Hamilton, A.C; C.M. Sinclair, REPORT OF THE ABORIGINAL JUSTICE INQUIRY OF MANITOBA. 2 volumes: Vol. 1: The Justice System and Aboriginal People. Vol. 2: The Deaths of Helen Betty Osborne and John Joseph Harper. Queen's Printer (Winnipeg, 1991). Copyright © 2015, Province of Manitoba.

In its study of the treatment of Indigenous peoples in the criminal justice system in Manitoba, the *Aboriginal Justice Inquiry* found evidence of systemic discrimination across the province.

Investigating: Challenging Discrimination Against Transgender Individuals

The pursuit of justice oftentimes focuses upon the pursuit of equal treatment. It is important to ask whether everyone is treated equally, or if there are systematic inequalities and/or discriminatory treatment based on race, ethnicity, social class, gender, or sexuality. If inequalities or discrimination exist in our society, this can have a tremendous impact on how different groups of people are perceived, processed, and treated by the criminal justice system. Recent changes in our Criminal Code have led to the criminalization of certain types of acts against transgender individuals. In addition, changing social values have led to questions about how our society treats end-of-life decisions, and this has led to legalized medical assistance in death.

Transgender Rights

Transgender people often experience abuse, harassment, and discrimination. In a 2011 national survey of Canadian transgender high school students, 74 percent of respondents reported experiencing verbal harassment at school from other students and teachers, and 37 percent said they had experienced physical assault. A 2015 study reported of the transgender people they had surveyed in Ontario, 73 percent said they had been made fun of for being trans, 20 percent reported they had been physically or sexually assaulted for being trans, and 10 percent of trans emergency room patients said they had care stopped or denied (Bauer and Scheim 2015). The Canadian Human Rights Commission noted that transgender persons typically face high levels of discrimination. Transgender and gender-diverse individuals across Canada "face discrimination, exclusion, and hostility in their daily lives—often impacting their access to everyday services that many Canadians take for granted when they, for example, want to see a family physician, travel, or use a public washroom" (Human Rights

Continued on next page

Investigating: Challenging Discrimination Against Transgender Individuals (*Continued*)

Tribunal of Ontario 2014). This is because the legal protections for transgender people in Canada have been minimal.

A few members of parliament had introduced private member bills to protect transgender individuals from discrimination but these hadn't passed. It was not until 2016 that the federal Liberal government introduced Bill C-16 to give protections to transgender Canadians. This bill was designed to protect trans-identifying individuals by including gender identity and gender expression in the hate speech laws. It also would help "combat the historical 'erasure' of trans people, by acknowledging their unique social challenges in the face of widespread societal and institutional discrimination and marginalization" (Ponsford 2017:23).

A key aspect of Bill C-16 was that it proposed to amend the Criminal Code to include both "gender identity" and "gender expression" as grounds for hate crimes. Both of these terms were used by the federal government to refer to a person's understanding of what their gender is and how they choose to express it.

Bill C-16 was passed and received Royal Assent in June 2017. The Minister of Justice and Attorney General of Canada, Jody Wilson-Raybould, stated that this new legislation "would protect trans and gender diverse Canadians who are targeted because of their gender identity or expression from hate propaganda. These changes would also require a court to treat the commission of an offence that is motivated by hate based on gender identity or expression as an aggravating factor for sentencing purposes" (Department of Justice 2017).

Questions

1. What are the types of discrimination faced by transgender persons in Canada?
2. What is the significance of Bill C-16? What other changes do you feel need to be made?

It is important, however, to recognize that discrimination and disparities can be permitted under exceptional conditions in our criminal justice system. For example, an individual who is found not criminally responsible for committing a crime may in fact face a longer sentence than a criminally responsible offender convicted of the same offence. This is because the potential exists for the individual found not criminally responsible to receive an indeterminate sentence, whereas the criminally responsible offender receives a designated term of punishment. It has been argued (*Winko v. Forensic Psychiatric Institute* [1999]; *R. v. LePage* [1999]) that this policy discriminates against the mentally disordered. The Supreme Court of Canada upheld the relevant Criminal Code provision (s. 672.65) even though a disparity resulted. The Court held that for an individual convicted in a criminal court, a specific period of incarceration is punishment for the criminal act. A more flexible approach is warranted for offenders who are not criminally responsible, given that they are not morally responsible for their actions. In such cases, the purpose of punishment is the protection of society and the treatment of the offender (Mewett and Nakatsuru 2000).

SUMMING UP AND LOOKING FORWARD

Not all criminal cases are viewed or processed in the same manner despite claims to the contrary. The type of treatment given to any particular case may be determined by such factors as an individual's membership in a particular group, their social status, the seriousness of the offence, and the defendant's ability to use their personal resources. For many critics, then, the processing of cases through our criminal justice system does meet the expectations set out in the essential characteristics of justice. This has been referred to as the informal criminal justice system and a number of explanations have been forwarded to try to explain it, such as the courtroom work group and the criminal justice funnel. Discretion is a common feature in these approaches, and the concern is that disparity and various types of discrimination may occur.

This chapter has largely focused upon an approach to achieving and delivering justice through the normative framework of the criminal justice system. It was also noted that this approach can be ignored by those working within the criminal justice system and who decide to use informal mechanisms to control offenders. This section presents yet another perspective: the informal organization of our criminal justice system. This approach to criminal justice policy emphasizes how groups operate to expedite offenders and make the system more efficient. Some have questioned this approach by arguing that it contravenes many aspects of the normative framework of our criminal justice system. As later chapters are considered, it will be possible to assess many of these new directives to achieving and delivering justice.

Review Questions:

1. Is our criminal justice system always "just"?
2. Is it inevitable that discretion will exist in our criminal justice system? Is it possible for significant amounts of discretion to co-exist with the essential characteristics of our criminal justice system?
3. Define disparity and discrimination. What is the potential negative impact of each on our criminal justice system?

ANTI-TERRORISM LAWS: CRIME CONTROL OR DUE PROCESS?

Laws usually develop in a deliberate manner in our society. However, the Canadian Anti-terrorism laws did not follow this approach, as they were first introduced quickly after commercial airlines were hijacked in the United States on September 11, 2001. Another piece of anti-terrorist legislation was introduced after two members of the Canadian Armed Forces, Warrant Officer Patrice Vincent and Corporal Nathan Cirillo, were killed in attacks in Saint-Jean-Sur-Richelieu, Quebec, and Ottawa, respectively, in October 2014.

Both of these events led the federal government and many Canadians to ask whether we are sufficiently prepared to handle such actions. More specifically, if laws had been in place in Canada, could these attacks have somehow been prevented? And what is the best way to legally respond to these actions in the present and the future? Even though most Canadians demanded some form of legal response, the creation of new legal powers can involve difficult decisions about how anti-terrorism laws should be enacted. Should the government pass laws concerning terrorist threats and acts of terrorism that would follow the crime control model to protect national security interests? Or should these laws follow the due process model, thereby guaranteeing the accused a trial with all of the safeguards found in our criminal justice system?

THE CANADIAN PRESS/Pascal Marchand

Fred Lum/The Globe and Mail/The Canadian Press

The deaths of two soldiers in the fall of 2014 led the Canadian Government to introduce new anti-terrorist legislation (Bill C-51).

The Government's Response

After 9/11, the federal government introduced two pieces of legislation to deal with terrorism in Canada. The first, introduced on October 15, 2001, was the Anti-terrorism Act (Bill C-36), which created measures to (1) identify, prosecute, convict, and punish terrorists and terrorist organizations; and (2) give new investigative powers to law enforcement and security agencies. Some of the measures included the following:

- Defining and designating terrorist groups to make it easier to prosecute terrorists and their supporters.
- Making it an offence to knowingly participate in, contribute to, or facilitate the activities of a terrorist group or to instruct anyone to carry out a terrorist activity or an activity on behalf of a terrorist group.
- Creating tougher sentences and parole supervision for terrorist offenders.
- Cutting off financial support for terrorists by making it a crime to knowingly collect or give funds to them, either directly or indirectly.

The second proposal to extend law enforcement and security agencies involves powerful new investigative tools to collect information about and prosecute terrorists and terrorist groups. These included the following:

- Making it easier to use electronic surveillance against terrorist organizations.
- Creating new offences targeting unlawful disclosure of certain information of national interest.
- Amending the Canada Evidence Act to guard certain information of national interest from disclosure during courtroom or other judicial proceedings.
- Within certain defined limits, allowing the arrest of suspected terrorists and their detention for 72 hours without charge, in order to prevent
- terrorist acts and save lives.
- Establishing investigative hearings with the power to compel individuals possessing information about a terrorist organization to disclose that information to a judge even in the absence of a formal trial.

Continued on next page

Critical Issues In Canadian Criminal Justice (*Continued*)

Some criticized these new measures, arguing that Bill C-36 violated human rights in Canada, as well as failing to balance individual liberties with the security interests of the country. The first person convicted under the anti-terrorism law was Momin Khawaja, a Canadian who was involved with a British group that had plotted unsuccessfully to set off bombs in London, England. He was arrested in March 2004, and the trial began in June 2008. In October 2008 he was found guilty on all charges and sentenced to 10 and one-half years in prison in addition to the 5 years he had already served. The Canadian government appealed the sentence, and the Ontario Court of Appeal then sentenced him to life imprisonment. Mr. Khawaja then appealed his sentence to the Supreme Court of Canada, which said it would hear the case in order to examine the constitutionality of the definition of "terrorist activity" as it was overbroad and had a negative effect on the freedom of expression in Canada. In a 7–0 decision, the Supreme Court rejected his argument, stating that those who decide to engage in a terrorist activity must "pay a very heavy price."

Preventive Detention and Investigation Hearings

In the Anti-terrorism Act, many consider the "investigation hearings" and "preventive detention" sections to be the most controversial. Investigative hearings (s. 83.28 of the Criminal Code) are designed to allow the Crown to approve an application for an order requiring an individual who has not yet been charged with an offence to appear before the court for questioning about a terrorist offence. After an order is granted under s. 83.28, the individual in question could be arrested, compelled to give answers to questions, and charged with contempt for refusing to testify or for providing false testimony (Diab 2008:65).

The preventive arrest clause (s. 83.3 of the Criminal Code) enables the police to arrest suspects without a warrant and detain them for up to 72 hours without charge before a judge has to decide to impose a peace bond if the authorities had reason to believe a terrorist act would be committed. Once a peace bond is issued,

EXHIBIT 1.4 Selected Prosecutions on a Terrorism Charge

Between 2002 and the end of 2016, 20 individuals had been convicted of a terrorism offence in Canada. Another 21 persons had been charged and were awaiting trial or had warrants out for their arrest.

R. v. Khawaja (2008)	Found guilty of various offences, including for his role in a plot to plant bombs in the United Kingdom. Ultimately sentenced to life imprisonment.
R. v. Namouth (2010)	Sentenced to life imprisonment for conspiring to deliver, discharge, or detonate an explosive or lethal device in a public place.
R. v. Thambithurai (2014)	Sentenced to six months' imprisonment for a terrorism-related offence.
R. v. Ahmed (2014)	Sentenced to 12 years' imprisonment for conspiracy to facilitate terrorist activity and participation in the activities of a terrorist group.
R. v. Esseghaier and R. Jaser (2015)	Sentenced to life imprisonment for planning to blow up a Via Rail train.
R. v. Nuttall and A. Korody	Charged with terrorism for placing what they thought were explosives on the grounds of the B.C. legislature. After a trial, there was a stay of proceedings as there were questions about the RCMP conduct. The federal government appealed this decision in January 2018.
Aaron Driver (2015)	Arrested in June 2015 and held on a peace bond due to concerns he would become involved in terrorist-related activities. Subsequently shot and killed by the RCMP in Strathroy, Ontario in August 2016.

Continued on next page

EXHIBIT 1.5 Timeline for Selected Anti-Terrorism Measures in Canada

October 2001	Bill C-36 Anti-terrorism Act introduced into Parliament
December 2001	Bill C-36 enacted
May 2004	Bill C-42 Public Safety Act enacted
February 2007	Parliament defeats a motion that proposed extending the preventive arrest and investigative hearing provisions
October 2007	Federal government introduces Bill C-3, reintroducing both the preventive arrest and investigative hearing provisions
September 2008	Bill C-3 dies on the Order Paper with the call for a federal election
March 2009	Bill C-3 reintroduced as Bill C-19; this bill dies on the Order Paper in December 2009
April 2010	Bill C-19 reintroduced as Bill C-17; this bill dies on the Order Paper in March 2011
November 2011	Bill S-215 An Act to amend the Criminal Code (suicide bombings) enacted
February 2012	Bill C-17 Combating Terrorism Act reintroduced as Bill C-7
February 2012	Bill C-13 Protecting Canadians from Online Crime Act introduced
March 2012	Bill C-10 Justice for Victims of Terrorism Act enacted
July 2013	Bill C-7 Combating Terrorism Act enacted
November 2013	Bill S-9 Nuclear Terrorism Act enacted
October 2014	Bill C-44 Protection of Canada from Terrorists Act introduced
December 2014	Bill C-13 passes; comes into force in March 2015
January 2015	Bill C-51 Anti-terrorism Act, 2015 is introduced
April 2015	Bill C-44 receives Royal Assent and becomes law
June 2015	Bill C-51 passes and becomes law
June 2017	Bill C-59 is introduced

the detention ends. Bonds can be used to impose stringent conditions on individuals up to a maximum of 12 months. If the bond's conditions are violated or refused, the judge can extend it. See Exhibit 1.5 for a timeline of Canada's anti-terrorism measures.

When the investigative hearing and preventive arrest sections were included in the Anti-terrorism Act, concerns were expressed that they would override civil liberties. As a result, the federal government placed a "sunset" clause on the provisions of the law enabling "preventive arrests" and "investigative hearings." Both provisions were to expire at the end of February 2007, unless the House of Commons and Senate passed a resolution to extend them.

After five years, neither one had been used; nevertheless, the federal government decided to attempt to renew both the investigative arrest and preventive arrest clauses of the Anti-terrorism Act. In its House of Commons Committee Interim Report on Preventive Arrests and Investigative Hearings (2006), all members of the committee agreed that investigative hearings be extended to December 31, 2011, but recommended that such hearings should be held only when there is reason to believe there was "imminent peril that a terrorist offence would be committed." A majority of the Committee also agreed that the preventive arrests should be continued, but some members pointed out that they could be used to label an individual as a terrorist on the basis of a reasonable suspicion.

In February 2007, when the two provisions were close to expiring, the minority Conservative federal government introduced a motion into Parliament extending preventive arrests and investigative hearings for the next three years (Bill C-3). A few weeks later this motion was defeated. In July 2007, the federal government stated that it intended to reintroduce both provisions. This Bill was introduced but did not pass due to the fact that a federal election was called in September 2008.

After forming a majority government in 2011, the Conservative federal government in February 2012 introduced legislation that successfully brought back preventive detentions. It also created a number of new offences, such as making it an offence to leave, or attempt to leave, Canada to attend a terrorist training camp, leaving Canada to facilitate a terrorist activity, and leaving Canada to commit an offence for the benefit of a terrorist group. To date, only four verdicts have been reached in cases involving a terrorism charge and only six peace bonds have been imposed.

Security Certificates

Security certificates were introduced in the Immigration Act in 1988. This provision was strengthened in 2002 after the 9/11 attacks in order to give authorities a faster

Continued on next page

and more efficient way to remove non-citizen terrorist suspects from Canada without having to lay charges and then process the accused through the criminal justice system as they would a citizen of Canada. Two cabinet ministers view secret intelligence and sign a certificate declaring a non-resident a national security risk, leading to potential deportation. Suspects who argue that they would face torture in their homelands could spend an indefinite amount of time in jail, without criminal charges, as their cases work their way through the courts. This process was described by some as "draconian" as accused persons and their counsel are provided with only a vague summary of the allegations against them. Evidence to back up the allegations is received in secret by a judge, and neither the accused nor their lawyer can attend (Makin 2007).

Security certificates were challenged in the Supreme Court (*Charkaoui v. Canada [Minister of Citizenship and Immigration]* 2007). On February 23, 2007, the Supreme Court, in a 9–0 ruling, invalidated provisions of the Immigration and Refugee Protection Act that denied persons named in security certificates a right to a fair hearing—the right to know and to be able to rebut the information against them. In its decision, the Supreme Court wrote that "the state can detain people for significant periods of time; it must accord them a fair judicial process." They also decided that "without this information, the named person may not be in a position to contradict errors, identify omissions, challenge the credibility of the informants or refute false allegations." The court also stated that foreign nationals who do not live in Canada should be treated on par with permanent residents and given the chance to file applications for judicial review of a security certificate immediately after being detained, instead of having to wait 120 days to make any filing, as they do under the post-9/11 rules.

In its decision, the Supreme Court made several suggestions to "Charter-proof" the certificates, including allowing a security-cleared "special advocate" into a hearing to look out for the interests of the accused, a system that existed in the United Kingdom. At the same time, the court cautioned that a suspect's right to the government's case "is not absolute" and some evidence may have to remain secret to protect national security (Tibbetts 2007). The Supreme Court suspended its ruling for one year in order to allow the government to introduce new legislation in its place.

In October 2007, the Conservative government introduced Bill C-3, An Act to amend the Immigration and Refugee Protection Act (certificates and special advocates), in response to the Supreme Court ruling. It received Royal Assent on February 13, 2008. The new legislation introduced a special advocate into the certificate process. The role of the special advocate is to protect the interests of those individuals subject to a certificate hearing during the closed proceedings. They are also able to argue before federal judges that certain evidence should not be secret, and they could cross-examine government witnesses. They are able to cross-examine witnesses, make submissions to the Court, and communicate with the individual in question until such time that they are allowed to view the confidential information.

Bill C-51 and C-59

Less than a week following the deaths of the two soldiers and the attack on Parliament Hill, the federal Conservative government tabled a new bill, Bill C-51 (Anti-terrorism Act, 2015). The bill, prepared prior to the shootings in October, gives new powers to the police and the Canadian Security Intelligence Service (CSIS), while requiring less evidence in their counterterrorism investigations. Critics argued that these new powers give the authorities too much power, and have too little oversight by Parliament (Wingrove 2014). Bill C-51 became law in June 2015. In June 2017, the federal Liberal government introduced a new act to the House of Commons, Bill C-59, which proposes to enhance Canada's national security while at the same time protecting Canadians rights and freedoms.

Questions

1. Do you think that the provisions found in the Anti-terrorism Act help deter terrorist acts?
2. Do you believe that due process protections found in the Anti-terrorism Act are sufficient to ensure rights of the accused are upheld?
3. In the wake of terrorist acts, how can the federal government protect the legal rights of all residents of Canada while at the same time ensuring the safety of the rest of the public?
4. In a time of crisis, should the federal government be allowed to give itself extraordinary legal powers even if they violate individual rights?

SUMMARY

Key Points

1. While our criminal law is reserved for wrongful acts that seriously threaten the social values of Canadians, it is important to realize that it is not static, and so our understanding of what is a crime constantly changes.
2. A key objective in our society is to socially control behaviour viewed as criminal.
3. The criteria used to judge the performance and practices of our criminal justice system is known as the normative approach to criminal justice, which includes the adversarial system, substantive justice, procedural justice, the rule of law, access to justice, and the legitimacy of our criminal justice institutions.
4. The two major models of our criminal justice system are the crime control model and the due process model.
5. Other models of our criminal justice system have been identified, including the medical (rehabilitation) model, the bureaucratic model, the punitive model, and the non-punitive model.
6. The view of criminal justice that currently guides most Canadians' thinking about the proper way for our criminal justice system to operate is the justice model.
7. The three major agencies of our criminal justice system are the police, the courts, and corrections.
8. The Canadian criminal justice system is based on the presumption of innocence and it is supposed to operate in a way that is fair, efficient, accountable, participatory, and protective of the legal rights of those charged with a criminal offence.
9. The two types of criminal procedure found in the Canadian criminal justice system are the pretrial criminal procedure and trial procedure.
10. The informal criminal justice system operates like a wedding cake as it is arranged hierarchically in four layers.
11. The courtroom work group disputes the belief that the criminal justice system operates in a formal and rational way.
12. The informal approach to the criminal justice system uses the image of the criminal justice funnel to explain how cases are processed.
13. There are four types of discrimination, which all have serious implications for individuals being processed in the criminal justice system: systemic, institutionalized, contextual, and individual discrimination.

Key Words

access to justice, 9

adversarial system, 8

bureaucratic model, 14

contextual discrimination, 25

courtroom work group, 22

crime control model, 13

criminal justice funnel, 22

discretion, 24

discrimination, 24

disparity, 24

due process model, 13

election indictable offence, 19

incarceration, 20

individual discrimination, 25

institutionalized discrimination, 24

lower courts, 4

medical (rehabilitation) model, 14

non-punitive model of victims' rights, 14

normal crimes, 22

procedural justice, 8

punitive model of victims' rights, 14

rule of law, 9

social control, 7

substantive justice, 8

superior courts, 4

systemic discrimination, 24

wedding cake, 21

Critical Thinking Questions

1. In order to understand our criminal justice system, we need to explore the differing definitions of "crime" and the impact these have upon the role of criminal legislation and what we perceive to be behaviour that has to be regulated. What definition of crime best describes how our criminal justice system operates?
2. A number of key characteristics form the basis of our criminal justice system, and while some of these may be more recognizable than others, each impacts the decisions made throughout the entire system. What are the essential characteristics of the normative approach to our criminal justice system?
3. What does our criminal justice system seek to achieve? Is it to reduce the amount of crime and to prevent crime in the future? Is it to treat all people equally and achieve equal justice for all?
4. According to the crime control model, the primary focus of our criminal justice is a safe and secure society, while the due process model guarantees that fair procedures will be used throughout the system. Based on these two models, what should be the primary focus of our criminal justice system?
5. What are the key points that people experience as they are being processed through the formal structure of our criminal justice system? In the formal criminal justice system, courts are legal institutions where lawyers fight to defend their clients, prosecutors fight to protect society, and neutral judges act as referees to make sure the system is fair and operates according to the principles of fundamental justice.
6. The operation of our criminal justice system may be more informal than formal. In the informal criminal justice system, trials are conducted for the purpose of sanctioning what was decided behind closed doors. Once defendants are charged, prosecutors, defence lawyers, and judges agree they are guilty of something so the main issue is to determine the appropriate punishment. Defendants are outsiders in this process. What are the implications of an informal approach for our system of criminal justice?

Weblinks

The issue of assisted dying has been of great interest to Canadians in recent years. To understand many of the legal issues surrounding this issue, watch the following video on YouTube: "Mini Law School: A Conversation about Assisted Dying: What Does the Law Have to Say?" (1:18:09).

Court Cases

B.C.G.E.U. v. B.C. (A.G.) (1988), 2 S.C.R. 214.

Carter v. Canada (Attorney General) (2015), S.C.C. 5.

Charkaoui v. Canada (Minister of Citizenship and Immigration) (2007), 1 S.C.R. 350.

R. v. Khawaja (2012), S.C.C. 69.

R. v. LePage (1999), 2 S.C.R. 744.

Rodriguez v. British Columbia (Attorney General) (1993), 3 S.C.R. 519.

Winko v. Forensic Psychiatric Institute (1999), 2 S.C.R. 625.

Suggested Readings

Bauslaugh, G. 2010. *Robert Latimer: A Story of Justice and Mercy*. Toronto: James Lorimer & Company.

Ericson, R.V. and P.M. Baranek. 1982. *The Ordering of Justice: A Study of Accused Persons as Dependants in the Criminal Justice Process*. Toronto: University of Toronto Press.

Godfrey, R. 2006. *Under the Bridge*. Toronto: HarperCollins.

Mallea, P. 2011. *Fearmonger: Stephen Harper's Tough-on-Crime Agenda*. Toronto: James Lorimer.

Roach, K. 2010. *The 9/11 Effect: Comparative Counter-Terrorism*. Cambridge: Cambridge University Press.

Royal Society of Canada. 2011. *The Royal Society of Canada Expert Panel: End of Life Decision-Making*. Ottawa: The Royal Society of Canada.

References

Barnhorst, R. and S. Barnhorst. 2004. *Criminal Law and the Canadian Criminal Code*. 4th ed. Toronto: McGraw-Hill Ryerson.

Bauer, G. and A. Schiem. 2015. *Transgender People in Ontario, Canada: Statistics to Inform Human Rights Policy*. London, Ontario.

Billingsley, B. 2002. "The Rule of Law: What Is It? Why Should We Care?" *LawNow* 26:27–30.

Bowal, P. and B. Lau. 2005. "The Contours of What Is Criminal." *LawNow* 29:8–10.

Conor, P. 2018. *Police Resources in Canada, 2017*. Ottawa: Canadian Centre for Justice Statistics.

Davies, M., H. Croall, and J. Tyrer. 2005. *Criminal Justice: An Introduction to the Criminal Justice System in England and Wales*. 3rd ed. Essex: England.

Davison, C.B. 2006. "Procedural Justice Preserves Fundamental Fairness." *LawNow* 30:17–19.

Department of Justice. 2017. Statement by Minister Wilson-Raybould on passage of Bill C-16 in Senate and moving one step closer to ending discrimination based on gender identity or expression. https:wwwnewswire.ca

Desroches, F.J. 1995. *Force and Fear: Robbery in Canada*. Scarborough, ON: Nelson Canada.

Diab, R. 2008. *Guantanamo North: Terrorism and the Administration of Justice in Canada*. Halifax: Fernwood.

Eckstein, C. 2007. *History of Euthanasia, Part 1*. Retrieved May 9, 2009 (www.chninternational.com).

Eisenstein, J. and H. Jacobs. 1974. *Felony Justice: An Organizational Analysis of Criminal Courts*. Boston: Little Brown.

Ericson, R. and P.M. Baranek. 1982. *The Ordering of Justice: A Study of Accused Persons as Defendants in the Criminal Process*. Toronto: University of Toronto Press.

Gelsthorpe, L. and N. Padfield. 2003. *Exercising Discretion: Decision-Making in the Criminal Justice System and Beyond*. Devon: Willan.

Hudson, B. 2006. "Criminal Justice." Pp. 93–95 in *The Sage Dictionary of Criminology*, 2nd ed., edited by E. McLaughlin and J. Muncie. London: Sage.

Hudson, B. 2003. *Understanding Justice: An Introduction to the Idea, Perspective, and Controversies in Modern Penal Theory*. Milton Keynes: Open University Press.

Hudson, B. 2001. "Crime Control, Due Process, and Social Justice." Pp. 104–5 in *The Sage Dictionary of Criminology*, edited by E. McLaughlin and J. Muncie. London: Sage.

Human Rights Tribunal of Ontario. 2014. *Annual Report 2013–2014: OHRC Today*. Toronto, Ontario.

Hume, M. 2011. "Right-to-Die Case Gets Early Court Date," *The Globe and Mail,* August 4, p. A5.

King, M. 1981. *The Framework of Criminal Justice*. London: Croom Helm.

Law Reform Commission of Canada. 1988. *Compelling Appearance, Interim Release, and the Pre-Trial Detention*. Ottawa: Law Reform Commission of Canada.

Law Reform Commission of Canada. 1977. *Our Criminal Law*. Ottawa: Minister of Supply and Services Canada.

Makin, K. 2007. "Top Court to Rule on Security Certificates," *The Globe and Mail*, February 20, p. A10.

Mewett, A.W. and S. Nakatsuru. 2000. *An Introduction to the Criminal Process in Canada*. 4th ed. Scarborough, ON: Carswell.

Muncie, J. 2002. "The Construction and Deconstruction of Crime." *In the Problem of Crime*, 2nd ed., edited by J. Muncie and E. McLaughlin. London: Sage.

Packer, H.L. 1968. *The Limits of the Criminal Sanction*. Stanford, CA: Stanford University Press.

Parker, C. 1999. *Just Lawyers: Regulation and Access to Justice*. New York: Oxford University Press.

Peritz, I. 2009. "Majority of Quebec Specialists Favour Euthanasia," *The Globe and Mail*, October 14, p. A7.

Perraux, L. 2009. "Quebec Doctors Cautiously Back Euthanasia," *The Globe and Mail*, November 4, p. A5.

Phillips, D. 2013. "Public Interest Standing, Access to Justice, and Democracy Under the Charter: *(AG) v. Downtown Eastside Sex Workers United Against Violence*." *Constitutional Forum* 22:21–31.

Ponsford, M. 2017. "The Law, Psychiatry and Pathologization of Gender-Confirming Strategy for Transgender Ontarians." *Windsor Review of Legal and Social Issues* 38.

Roach, K. 1999. "Four Models of the Criminal Process." *Journal of Crime and Criminology* 89:671–715.

Royal Society of Canada. 2011. *The Royal Society of Canada Expert Panel: End of Life Decision-Making*. Ottawa: The Royal Society of Canada.

Russell, P. 1987. *The Judiciary in Canada: The Third Branch of Government*. Toronto: McGraw-Hill Ryerson.

Ruth, H. and K. Reitz. 2003. *The Challenge of Crime: Rethinking Our Response*. Cambridge, MA: Harvard University Press.

Seaman, B. 2006. "Legal Equity, Poverty, and Access to Justice." *LawNow*, June/July, pp. 20–21.

Sudnow, D. 1965. "Normal Crimes: Sociological Features of the Penal Code in a Public Defender's Office." *Social Problems* 12:255–277.

Sutherland, E. 1949. *White Collar Crime*. New York: Dryden.

Sykes, G.M. and F.T. Cullen. 1992. *Criminology*. 2nd ed. Fort Worth, TX: Harcourt Brace Jovanovich.

Tibbetts, J. 2007. "Supreme Court Strikes Down Security Law," *National Post*, February 24, p. A13.

Tyler, T. 1990. *Why People Obey the Law. New Haven*, Conn.: Yale University Press.

Ursel, J. 1994. *The Winnipeg Family Violence Court*. Ottawa: Canadian Centre for Justice Statistics.

von Hirsch, A. 1976. *Doing Justice: The Choice of Punishments*. New York: Hill and Wang.

Walklate, S. 2005. *Criminology: The Basics*. London, Routledge.

Wheeler, G. 1987. "The Police, the Crowns, and the Courts: Who's Running the Show?" *Canadian Lawyer*, February.

Wingrove, J. 2014. "Anti-terrorism Bills Expected to Pass Quickly." *The Globe and Mail*, November 25, p. A17.