



Criminal Justice

in Canada

SECOND EDITION

COLIN GOFF

Criminal Justice in Canada

SECOND EDITION

COLIN GOFF

University of Winnipeg

NELSON
★
THOMSON LEARNING

Australia • Canada • Mexico • Singapore • Spain • United Kingdom • United States

Preface

Public interest in the operation of the Canadian criminal justice system has reached an all-time high. This surge in interest is not surprising, considering the attention given to issues such as crimes of violence and the perceived inability of the police, courts, and correctional facilities to adequately control crime and criminals. Many citizens are demanding increased rights for victims, an increase in the number of police officers, and harsher penalties for convicted offenders. Not surprisingly, students are demanding more post-secondary courses in criminal justice, with the result that colleges and universities today are graduating large numbers of students who will be employed in our criminal justice system.

This increasing interest led me to introduce more information about our criminal justice system in criminology courses. The popularity of this approach made apparent the great need for a comprehensive introductory course and accompanying text about criminal justice. *Criminal Justice in Canada* was written to fill that need and to provide an accurate account of the basic features of our criminal justice system.

This text describes the formal processes of our criminal justice system and shows how these reflect the basic structural and procedural components of our system. This approach involves a discussion of the major criminal justice agencies and the way those agencies operate to identify, apprehend, process, and control offenders. The book covers what most experts consider to be the central facets of our criminal justice system. It does not aim to describe every feature and nuance of each agency in our criminal justice system, but rather to spotlight those legal cases that have shaped the operation of the various agencies in fundamental ways. Criminological research studies are included also, and so are federal and provincial government evaluations and policy efforts. In addition, some of the most recent developments and controversial aspects of our system are included: community policing, intermediate punishments (such as electronic monitoring), specialized courts (such as family violence court), as well as hate crimes and community notification programs for sex offenders.

New to the Second Edition

The second edition of *Criminal Justice in Canada* features discussion on many of the changes that have occurred since the book was first published. A significant new crime control philosophy, restorative justice, has appeared, as have new policing styles, types of sentences available to judges, and correctional policies. And while many of the traditional aspects of our system remain the same, new legal challenges and court decisions have necessitated this edition.

Chapter 1 now includes—in addition to discussion on what the federal government considers to be the appropriate definition and operating criteria of our criminal justice

system—a flow chart of the complete Canadian criminal justice system. In **Chapter 2** students will find a discussion of some of the most recent issues involving legal changes, specifically the idea of community registration of sex offenders and antigang legislation. **Chapter 3** continues to reflect the major philosophies that form the basis of the criminal justice system. **Chapter 4** contains completely updated trends and patterns of Canadian crime statistics. **Chapter 5** develops the idea of community policing and introduces the “broken windows” thesis, which argues that neighbourhood disorder leads to crime. **Chapter 6** features new material on the debate surrounding high-speed police pursuits. **Chapter 7** has been updated to include a discussion of *R. v. Feeney* and search warrants as well as a discussion of the collection of DNA samples by the police, as reflected in *R. v. Stillman*. **Chapter 8** looks at the organization of our court system and the roles of the various actors within it. **Chapter 9** discusses the sentencing amendments introduced by the federal government a few years ago.

Chapters 10, 11, and 12 have been restructured to account for new policies as well as recent studies in the areas of corrections. **Chapter 10** reflects the contemporary trend of Canadian federal authorities to use the community as a site in which offenders serve sentences such as conditional sentences. **Chapter 11** features a flow chart of Canada’s federal correctional system, a discussion of the Canadian special handling unit, and updated information on boot camps. Additions to **Chapter 12** include a discussion of community reintegration, updated recidivism statistics, and a discussion of the “faint hope” clause.

Finally, the Second Edition of **Criminal Justice in Canada** features two new chapters: **Chapter 13**, Juvenile Justice, and **Chapter 14**, Contemporary and Future Challenges in the Canadian Criminal Justice System. **Chapter 13**, written in response to suggestions that a chapter on the Canadian juvenile justice system be added, includes discussion on some of the topical issues involving the juvenile justice system in Canada today, including the proposed new Youth Criminal Justice Act. **Chapter 14** explores issues facing our criminal justice system, including hate crimes, the issue of sentencing enhancements, and the legal debates over the legal right to vote in federal elections by federal inmates. This chapter also covers new issues relating to community justice, such as community prosecutions and restorative justice.

Instructor’s Support Manual

Available to instructors is a combination Instructor’s Manual/Test Bank that includes a number of useful teaching tools such as lecture outlines, learning objectives, key terms/key people, teaching suggestions, additional suggestions for videos, recommended readings, and overhead transparency masters. The test bank portion of the support manual includes multiple-choice, true–false, fill-in-the-blank, and short-answer questions. The ISBN for the Instructor’s Manual/Test Bank is 0-17-616780-3.

Also available is a video that includes film clips from CTV that illustrate the issues and concepts discussed in each chapter of the text. The video ISBN is 0-17-616894-X.

Acknowledgments

Writing a text on such a diverse area as the Canadian criminal justice system involves the efforts of a number of individuals. In particular, two individuals deserve recognition for their help in seeing this project through to publication. Robert Bangs of the RCMP gave up much of his time to offer his expertise and it was much appreciated. In addition, the comments, insights, and meticulous work provided by Nancy Edge McKinnon were invaluable, and her dedication, enthusiasm, and persistent effort contributed to the quality of the final manuscript.

Other thanks go to the librarians at the University of Winnipeg, especially those who work in Interlibrary Loans. I would also like to recognize Gil Geis and Frank Cullen, colleagues and teachers who have unfailingly supported my work.

Many individuals who work at Nelson Thompson Learning deserve recognition. The enthusiasm, patience, tact, and positive support given by Toni Chahley, the project editor, throughout the whole project made it enjoyable. The editorial skills, suggestions, and detailed work by Bob Kohlmeier, the production editor, were always appreciated. Other individuals at Nelson who contributed include Evelyn Veitch, Joanna Cotton, Don Thompson, and Joanne Sutherland, as well as those regional sales representatives whose comments and feedback played such an important role.

Finally, the reviewers of the manuscript deserve special mention for their detailed reviews and comments, and I appreciate their efforts. Many of their suggestions were incorporated into the final text. The reviewers included Sandra Bell, St. Mary's University; Marilyn Belle-McQuillan, University of Western Ontario; Gerald Flannigan, Fanshawe College; Ian Hepher, Lethbridge Community College; Reginald M. McLean, barrister and solicitor; Julian Roberts, University of Ottawa; Gordon Rose, Simon Fraser University; Vicki Ryckman, Lambton College; Lynne Scott, Durham College; and Bob Tulloch, Sault College.



**Criminal Justice in Canada,
Second Edition**

by Colin Goff

This book is dedicated to Sarah, Buddy, and Robley.

Editorial Director and Publisher:
Evelyn Veitch

Executive Editor:
Joanna Cotton

Marketing Manager:
Don Thompson

Project Editor:
Toni Chahley

Production Editor:
Bob Kohlmeier

Production Coordinator:
Hedy Sellers

Copy Editors:
Bob Kohlmeier, Natalia Denesiuk

Proofreaders:
Mary K. McLean, Sarah Robertson

Art Director:
Angela Cluer

Interior Design:
Katherine Strain

Cover Design:
Katherine Strain

Cover Images:
Mel Curtis/PhotoDisc,
Geostock/PhotoDisc,
The Studio Dog/PhotoDisc,
Shelley Gazin/CORBIS

Compositor:
Alicja Jamorski

Printer:
Webcom

COPYRIGHT © 2001 by Nelson Thomson Learning, a division of Thomson Canada Limited. Nelson Thomson Learning is a registered trademark used herein under license.

Printed and bound in Canada
3 4 03 02 01

For more information contact
Nelson Thomson Learning,
1120 Birchmount Road,
Scarborough, Ontario, M1K 5G4.
Or you can visit our internet site at
<http://www.nelson.com>

The numbered list on page 317 is from T. Clear (1994), *Harm in American Penology: Offenders, Victims, and Their Communities* (Albany, N.Y.: SUNY). Reprinted by permission of the State University of New York Press © 1994, State University of New York. All rights reserved.

ALL RIGHTS RESERVED. No part of this work covered by the copyright hereon may be reproduced, transcribed, or used in any form or by any means—graphic, electronic, or mechanical, including photocopying, recording, taping, web distribution or information storage and retrieval systems—without the written permission of the publisher.

For permission to use material from this text or product, contact us by
Tel 1-800-730-2214
Fax 1-800-730-2215
www.thomsonrights.com

The four-item numbered list on page 353 is from D. Cooley (1992), "Prison Rules and the Informal Rules of Social Control," *Forum on Corrections Research* 4, no. 3, pages 31–36. Reprinted by permission.

Statistics Canada information is used with the permission of the Minister of Industry, as Minister

**Canadian Cataloguing in
Publication Data**

Goff, Colin H., 1949–
Criminal justice in Canada

2nd ed.
Includes bibliographical references
and index.
ISBN 0-17-616779-X

1. Criminal justice, Administration
of – Canada. I. Title.

HV9960.C2G63 2000 364.971
C00-931439-3

responsible for Statistics Canada. Information on the availability of the wide range of data from Statistics Canada can be obtained from Statistics Canada's Regional Offices, its World Wide Web site, at <http://www.statcan.ca>, and its toll-free access number, 1-800-263-1136.

Contents

List of Exhibits xii

Preface xiv

New to the Second Edition xiv

Instructor's Support Manual xv

Acknowledgments xvi

Chapter 1 An Overview of the Criminal Justice System in Canada 1

The Latimer Case 1

The Operation and Role of the Canadian Criminal Justice System 4

Due Process or Crime Control? 5

What Is Criminal Justice? 9

Substantive and Procedural Justice 9

The Major Agencies of the Criminal Justice System 12

The Police 12

The Courts 13

Corrections 15

Processing Cases through the Canadian Criminal Justice System 17

The Formal Organization of the Canadian Criminal Justice System 17

Pretrial Criminal Procedure 17

Arrest, Appearance, Notice, and Summons 17

Detention 18

Bail or Custody 19

Trial Procedure 20

The First Court Appearance 20

The Indictment and Preliminary Inquiry 21

The Trial 22

Sentencing 22

Incarceration 23

The Criminal Justice "Funnel" 23

The Informal Operation of the Criminal Justice System 23

Reporting the Crime 27

Recording of the Crime by the Police 27

Laying a Charge 29

Bail (Judicial Interim Hearing) 30

Prosecution 30

Sentencing 31

The Adversarial System 32

Benefits of the Adversarial System 32

Limits of the Adversarial System 32

The Costs of the Criminal Justice System 33

Summary 36

Discussion Questions 36

Suggested Readings 37

References 37

Court Cases 39

Chapter 2 Criminal Law and Criminal Justice in Canada 40

Sources of the Criminal Law in Canada 44

 The Constitution 44

 Statute Law 45

 Case Law 45

 Administrative Law 45

 The Canadian Charter of Rights and Freedoms 46

The Nature of Crime 51

 Legality 51

 Mens Rea 54

 Actus Reus 56

 Concurrence between Mens Rea and Actus Reus 57

 Harm 57

 Causation 59

 Punishment 59

The Classification of Criminal Offences 60

 Summary Conviction, Indictable, and Hybrid Offences 60

 Crimes of Violence, Property, and “Other” Criminal Code Offences 61

The Seriousness of Crime 65

 Legal Responses to Violent Crimes 65

Criminal Law Reform 66

 Antigang (Criminal Conspiracy) Legislation 67

 Community Notification Laws 68

Summary 72

Discussion Questions 73

Suggested Readings 73

References 74

Court Cases 75

Chapter 3 Crime Control Philosophy and Criminal Justice Policy 77

Crime Control in Canada 79

Crime Control Philosophy and Criminal Justice Policy 80

The Justice Model 80

 History 80

 The Criminal Sanction 81

 The Operation of a Justice Model–Based Criminal Justice System 85

Deterrence	86
History	86
The Criminal Sanction	87
The Operation of a Deterrence-Based Criminal Justice System	88
Selective Incapacitation	89
History	89
The Criminal Sanction	90
The Operation of a Selective Incapacitation–Based Criminal Justice System	92
The Rehabilitation Approach	94
History	94
The Criminal Sanction	95
The Operation of a Rehabilitation-Based Criminal Justice System	95
Restorative Justice	98
History	99
Restorative Justice Sanctions	100
The Operation of a Restorative Justice–Based Criminal Justice System	100
Aboriginal Justice Systems	101
Models of Aboriginal Justice Systems	102
Summary	106
Discussion Questions	108
Suggested Readings	108
References	108
Court Cases	111
Chapter 4 Crime Trends and Patterns in Canada	112
Trends in Crime Rates	113
What the Police Say: The Uniform Crime Reporting System	114
What Victims Say: Victimization Data	117
Criminal Victimization in Canada, 1988–93	118
General Trends and Patterns	118
Personal Victimization	120
Victimizations Not Reported to the Police	121
Comparing Police-Reported and Victimization Data	122
Violent Crime	123
Murder	123
Sexual Assault	128
Assault	130
Robbery	130
Criminal Harassment (Stalking)	131
Crimes against Property	132
Abduction	133
Breaking and Entering	133
Theft	134

Motor Vehicle Theft	135
Other Criminal Code Incidents	136
Other Types of Crime	137
White-Collar (or Economic) Crime	137
Computer Crime	138
Organized Crime	139
Hate Crimes	139
Summary	139
Discussion Questions	140
Suggested Readings	40
References	141
Chapter 5 Police Operations	142
The Distribution of the Police in Canada	144
The Organization of the Police	145
The Police Role	146
The Patrol Function	147
Incident-Driven Patrol	149
Is Preventive Patrol an Effective Deterrent?	150
Kansas City Preventive Patrol Experiment	150
The Study Design	151
Results of the Study	151
Policy Recommendations	151
Impact of the Study	152
Directed Patrol	152
Management of Demand Patrol	154
Foot Patrol	154
Proactive–Reactive Patrol	156
Deterrence through Patrol Officer Arrests	156
Criminal Investigations	157
The Study Design	158
Policy Recommendations	158
Impact of the Study	159
Recent Changes in Policing	159
The Broken Windows Model	161
Problem-Oriented Policing	162
Community Policing	163
Aboriginal (First Nations) Police Forces	164
Summary	169
Discussion Questions	170
Suggested Readings	170
References	171

Chapter 6 Issues in Canadian Policing 174

- Police Discretion 176
 - Studies of Police Discretion 177
 - Factors Affecting a Police Officer's Decision to Arrest 179
 - Situational Variables 179
 - Community Variables 179
 - Extralegal Factors 180
- The Personality of Police Officers 181
 - The Working Personality of the Police Officer 183
- Higher Education and Policing 184
- Policing Style 184
 - The Social Agent 185
 - The Watchman 185
 - The Law Enforcer 186
- Police Use of Deadly Force 187
 - Variations among Provinces and Cities 189
 - Race and Deadly Force 189
 - Deadly Force against Police Officers 190
- Police Misconduct 190
 - Police Accountability 191
- The Changing Composition of the Police 194
 - Women and Policing 194
 - Unequal Treatment 195
 - The Performance of Women Police Officers 196
 - Women Police Officers: Gender Conflicts at Work 199
- Visible-Minority and Aboriginal Police Officers 199
- Police Performance 202
- Summary 204
- Discussion Questions 204
- Suggested Readings 205
- References 205
- Court Cases 210

Chapter 7 Pretrial Procedures 211

- Arrest 212
 - Arrest without a Warrant 213
 - Arrest with a Warrant 214
- Custodial Interrogation 215
- Right to Counsel 215
- Compelling Appearance, Interim Release, and Pretrial Detention 217
- Bail Reform 219
- Search and Seizure 223

Requirements for Search Warrants	224
The “Reasonableness” Test	224
Particularity	224
Searches Needing a Warrant	225
Warrantless Searches in Exigent Circumstances	226
Searches Incident to an Arrest	227
Warrantless Searches in Motor Vehicles	230
Other Types of Warrantless Searches	230
The Doctrine of Plainview	230
Reasonable Grounds	230
Consent Searches	231
Electronic Surveillance	232
The Law of Electronic Surveillance	232
Stay of Proceedings	235
Legal Aid	235
Summary	240
Discussion Questions	240
Suggested Readings	241
References	241
Court Cases	242

Chapter 8 The Courts and Trial Procedure 244

The Courts	245
The Court System in Canada	248
The Daily Business of the Courts	248
The Defence Lawyer	250
The Crown Prosecutor	251
The Responsibilities of the Crown Prosecutor	252
Judges	253
Criminal Trial Procedure	254
The Plea	254
Preliminary Hearing	254
The Right to a Jury Trial	258
Jury Selection	258
Legal Rights and Criminal Trials	260
The Right of the Accused to Confront the Accuser	261
The Right to a Speedy Trial	261
The Right to a Public Trial	264
Prosecutor Discretion	265
Plea Bargaining	266
The Criminal Trial	267
The Opening Statement	268
Trial Evidence	269

The Defence Lawyer's Presentation of Evidence	270
The Closing Argument	270
The Charge to the Jury	270
The Verdict	271
Appeals	271
Summary	272
Discussion Questions	273
Suggested Readings	274
References	274
Court Cases	276
Chapter 9 Sentencing	277
Purposes of Sentencing	278
How Do Judges Decide on a Sentence?	279
Deterrence	282
Selective Incapacitation	283
Rehabilitation	284
Justice Model	285
Sentencing Law in Canada	286
How People Are Sentenced	287
Issues in Sentencing	290
Public Opinion and Sentencing	290
Judicial Variation in Sentencing	291
Sentencing Guidelines	292
Victim Participation in Sentencing	296
Healing Circles	301
Summary	303
Discussion Questions	303
Suggested Readings	304
References	304
Court Cases	307
Chapter 10 Alternatives to Prison: Probation, Conditional Sentences, and Intermediate Sanctions	308
Probation	310
The Use of Probation as a Sanction	311
Eligibility for Probation	311
Who Gets Probation?	312
Breaches of Probation	312
The Conditional Sentence of Imprisonment	313
The Use of Conditional Sentences	313
The Impact of Conditional Sentences	315
Intermediate Punishments	316

Intensive Supervision Probation	319
The ISP in Operation	320
Evaluations of ISPs	321
Home Confinement and Electronic Monitoring	322
Electronic Monitoring Technology	323
Evaluations of Electronic Monitoring Programs	323
The Impact of Home Confinement and Electronic Monitoring Programs	328
Fines	328
Intermediate Punishments: How Well Do They Work?	330
Do Intermediate Punishments Reduce Prison Crowding?	330
Are Intermediate Punishments a Cost-Saving Alternative?	331
Can Intermediate Punishments Control Crime?	332
Will Intermediate Punishments Work?	333
Summary	334
Discussion Questions	335
Suggested Readings	335
References	335
Suggested Readings	335
References	335
 Chapter 11 Corrections in Canada: History, Facilities, and Populations	 340
The History of Prisons in Canada	341
The Adult Correctional Population in Canada Today	341
Federal and Provincial/Territorial Correctional Institutions	343
Security Levels	345
Female Inmates	347
Aboriginal Inmates	350
Prison Life	350
Inmate Society	352
Prison Violence	354
Prison Suicide	354
Prisoners' Rights, Due Process, and Discipline	356
The Duty to Act Fairly	357
Alternative Correctional Facilities	362
Boot Camps (Shock Incarceration)	362
Private Prisons	365
Summary	368
Discussion Questions	368
Suggested Readings	369
References	369
Court Cases	372
 Chapter 12 Community Reintegration	 373
Introduction	373

Community Release under Attack	374
“Nothing Works”	374
Discretion and Disparity	375
Conditional Release Programs in Canada	376
Risk of Recidivism	379
Risk Assessment	381
Contemporary Community Sanctions in Canada	384
Conditional Release Programs	385
The Effectiveness of Community Release Programs	386
Recidivism Rates	387
Conditional Release and Due Process	390
The “Faint Hope Clause”	391
Risk Factors for Recidivism	393
Gender	394
Race	395
Age, Marital Status, and Employment	396
How Inmates View Recidivism	397
Summary	398
Discussion Questions	398
Suggested Readings	399
References	399
Court Case	402

Chapter 13 Juvenile Justice 403

Juvenile Justice versus Criminal Justice	403
Trends in Youth Crime	413
Youth Court Caseloads	415
Youth Court Decisions and Dispositions	417
Alternative Measures	420
Custody	424
Transfer to Adult Court	426
The Youth Criminal Justice Act	428
Parental Responsibility for Juvenile Crimes	429
Summary	431
Discussion Questions	431
Suggested Readings	432
References	432
Court Cases	433

Chapter 14 Contemporary and Future Challenges in the Canadian Criminal Justice System 434

Enhanced Hate Crime Sentencing (<i>contributed by Helmut-Harry Loewen</i>)	435
Dispute Resolution outside the Courtroom	440
Community-Oriented Lawyering	440

Community Courts	444
The Privatization Movement	445
The Police	445
Corrections	448
Truth-in-Sentencing: How Long Should Offenders Be Kept in Prison?	449
Corrections: The Older Inmate	450
Restorative Justice	453
Restitution Programs	454
Mediation Programs	454
Reparing Harm to the Victim	455
Summary	456
Discussion Questions	456
Suggested Readings	457
References	457
Court Cases	460
Glossary	461
Cases Cited	466
Index	467

List of Exhibits

Exhibit 1.1	The Due Process and Crime Control Models of the Criminal Justice System	7
Exhibit 2.1	Sexual Assault Legislation in Canada	43
Exhibit 2.2	The Charter of Rights and Freedoms: Legal Rights of the Accused and the Canadian Criminal Justice System	47
Exhibit 2.3	The Charter in Action: <i>Stinchcombe v. The Queen</i> (1991)	52
Exhibit 2.4	Harm and Criminal Harassment	58
Exhibit 2.5	Robbery: Violent Crime or Property Crime?	62
Exhibit 2.6	Sex Offender Registration	71
Exhibit 3.1	Have Legal Rights of Individuals Gone Too Far?	83
Exhibit 3.2	The Selective Incapacitation of Sexual Predators	92
Exhibit 3.3	Are Rehabilitation Programs More Effective in Reducing Recidivism Than Selective Incapacitation Punishments?	96
Exhibit 4.1	Murder as Defined by the Criminal Code	129
Exhibit 4.2	Breaking and Entering as Defined by the Criminal Code	134
Exhibit 4.3	Home Invasions	135
Exhibit 4.4	Computer-Related Crime	138
Exhibit 5.1	Criminal Investigations	160
Exhibit 5.2	The Ten Principles of Community Policing	165
Exhibit 5.3	Policy Principles of the First Nations Policing Policy	168
Exhibit 6.1	Benefits of a University Degree for Police Officers	186

Exhibit 6.2	Women Police Officers	198
Exhibit 7.1	Pretrial Release in Domestic Abuse Cases	221
Exhibit 7.2	<i>R. v. Feeney</i> (1997)	228
Exhibit 7.3	<i>R. v. Stillman</i> (1997)	233
Exhibit 8.1	Court Jurisdiction over Criminal Code Offences, Sections 469 and 553	255
Exhibit 8.2	The Right to a Speedy Trial (<i>R. v. Askov</i> 1990)	263
Exhibit 9.1	The Principles of Sentencing in Canada	287
Exhibit 9.2	Rights of Victims in Canada	299
Exhibit 10.1	Electronic Monitoring of Drug Offenders: Is It Really Successful? A Case Study	326
Exhibit 11.1	Special Handling Units: Canada's Supermaximum Institutions?	358
Exhibit 11.2	Inmate Participation in Treatment Programs: <i>R. v. Rogers</i> (1990)	
Exhibit 12.1	Federal Policy on Offender Reintegration	377
Exhibit 13.1	The Legal Rights of Youths: Search and Seizure	408
Exhibit 13.2	Measuring Youth Crime	414
Exhibit 14.1	Community Prosecution	443