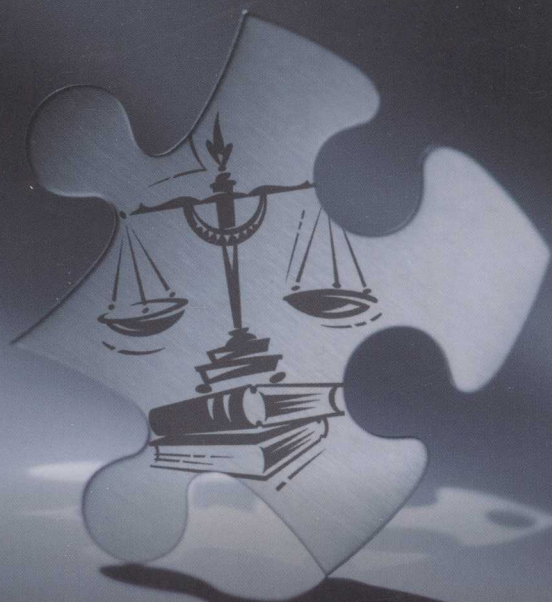


The Canadian Justice System: An Overview

Second Edition

Paul Atkinson

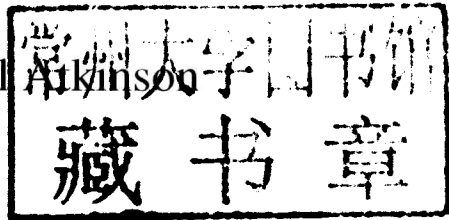


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May 2010

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Singapore	Butterworths Asia, SINGAPORE
South Africa	Butterworth Publishers (Pty) Ltd, DURBAN
Switzerland	Stämpfli Verlag AG, BERNE
United Kingdom	Butterworths Tolley, a Division of Reed Elsevier (UK), LONDON, WC2A
USA	LexisNexis, DAYTON, Ohio

Library and Archives Canada Cataloguing in Publication

Atkinson, Paul. 1953-

The Canadian justice system : an overview, Second edition / Paul Atkinson.

Includes index.

ISBN 978-0-433-46305-4

1. Law—Canada. 2. Justice, Administration of—Canada.

I. Title.

KE444.A85 2005

349.71

C2005-906068-9

KE385.ZA2A85 2005

Printed and bound in Canada.

For Bev, Mike, Dan, Ray Fraess and Carl Gawenus

SOMETHING TO KEEP IN MIND

“I have learned that a man has the right and obligation
to look down at another man, only when that man needs help
to get up from the ground.”

Gabriel Garcia Marquez

Foreword

All of us have opinions about the Justice System — and most of those opinions are derived from a combination of our individual experience, values and knowledge.

Some such opinions appear value-based: “I’ve never had a problem with drugs. I’ve had a problem with the police” — Keith Richards.

Some are cynical: “There is no such thing as justice — in or out of court” — Clarence Darrow.

Some are profound: “Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied by a single garment of destiny. Whatever affects one directly, affects all indirectly.” — Rev. Dr. Martin Luther King

Where do laws come from? How are statutes made? Do judges make laws? How is our justice system organized? How do our civil, criminal and administrative justice systems interact? How are they different? How does our criminal justice system work? Why does it seem to change? What are future trends? What careers are there in the justice system?

Paul Atkinson has, in this book, succeeded in answering these questions and more. The book provides an accessible, entertaining and practical introduction to Canada’s Justice System. It both informs and demystifies.

The book treats law and learning about law as ongoing, fluid, changeable, challenging and fun.

Its stated goal is to lay the foundation for ongoing learning. I am confident that it will do so for each and every reader.

Justice R. James Williams
Supreme Court of Nova Scotia
(Family Division)

Acknowledgment

I would like to thank Fran Cudlipp at LexisNexis for stimulating me to produce a second edition of this text and the wonderful editors who show great patience with my computer incompetence.

My students and teaching colleagues have provided valuable feedback on the first edition, particularly Ralph Ashford, Bob Burgis and Nancy Newton. I hope they are happy with the new additions. Diana Collis makes my job easier on a daily basis. I would not have been able to refresh my knowledge and write without her consistent thoughtfulness.

I miss my good friend, Don Saunders, who passed away last year. Don regularly reminded me that people working in the justice system have a great responsibility to act with integrity and compassion. It should never be a role for the power hungry or those with a bullying mentality.

Bev, Mike, Dan and my students are my hope and daily inspiration. Ray Fraess and Carl Gawenus are the best friends ever — far better than I deserve.

If we can laugh and learn, a good day is always possible. I hope you find this book stimulating and informative.

Paul Atkinson
April 2010

About the Author

Paul Atkinson has taught law courses at Canadian colleges and universities for over 25 years. Paul studied law at the University of Alberta and Osgoode Hall Law School and education at Brock University. Paul has worked as a lawyer in Halifax, Nova Scotia. Paul is also the author of *Proof: Canadian Rules of Evidence*.

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Chapter 1

Law-Related Careers and the Canadian Justice System

WHY YOU NEED AN OVERVIEW OF THE JUSTICE SYSTEM

If you are reading this text, chances are you are considering a law-related career. Good choice! Career opportunities in this field are diverse, challenging and stimulating. Your career path could lead you to the centres of human interaction where policies are formulated and important social programs are implemented through the law. Alternatively, your path may lead to the very fringes of society where shadows tend to hide the dark deeds that are done until they impact on others and require legal controls. For nearly 25 years I have been teaching people like you, people who are planning careers in the Canadian justice system or who will be working with people impacted by various aspects of the system. Some of my students already work in the field and have a desire to update or expand their knowledge of the law.

In these careers, you can never stop learning. The law is alive. It is constantly changing and evolving. In Canada, we have three levels of government that make new laws or amend existing laws each time they're in session. Each week-day, courts across the country are resolving disputes and interpreting and applying laws that governments have created. The courts are also making law. In our system of justice, court decisions are precedents that mold and shape the way the law will be applied in the future.

This text is designed to provide you with the foundational knowledge you will need to understand the way the various facets of the Canadian justice system work. Many of you will eventually require very specific knowledge of particular laws and the way they are applied to succeed in the fields you have chosen. Others will need a much broader understanding of legal issues and our justice system to cope with the diverse demands of the career paths you wish to pursue. Everyone beginning a practical study of our laws and the way they affect Canadians needs *context*; you need to grasp the big picture, where our laws come from, why they are implemented in a particular way, how they are used, by whom and when. This text will provide that background.

Over the next several pages, a variety of law-related careers will be discussed with an explanation of the importance of the material included in this book for someone who is considering each career path. I have had the good fortune to teach people who have been successful in most of these careers and have frequently drawn on their expertise to focus and refine the content of the Introduction to the Canadian Justice System course that I teach to hundreds of aspiring

Canadian justice careerists each year. Since the first edition of this book was published in 2005, I have received useful suggestions from students and teachers who have used the book and have incorporated their ideas.

POLICE OFFICERS

There are approximately 50,000 Canadian police officers. Some work for municipal police services. These can range in size from a few officers to the thousands who work in our largest cities. Others work for provincial police services that operate exclusively in Ontario and Quebec. The largest single police employer is the Royal Canadian Mounted Police, which serves as our national police service, but also provides municipal and provincial policing on a contract basis in many parts of the country. British Columbia is home to the largest concentration of Mounties. The Department of National Defence maintains its own military police service. These officers can serve on Canadian Forces bases at home and abroad.

Obviously, a detailed knowledge of criminal law and criminal procedure is fundamentally important to a police officer. Chapters 8 through 11 of the text focus on these aspects of the Canadian justice system.

Officers also need to know how to read statutes and how to distinguish between laws that are created by the federal, provincial, territorial or municipal levels of government. This information is introduced in Chapter 2. A police officer who doesn't understand that courts also create law by establishing precedents would be poorly equipped to perform his or her duties. Chapter 3 should assist an aspiring police officer in acquiring this important contextual information.

Some people pursuing a career as a police officer may be so focused on the criminal justice aspects of the job that they fail to recognize at the outset how much more they need to know. Police officers are prominently positioned in the front lines of society. They are frequently called as a resource when people have legal problems that really fit into one of the civil or administrative categories of the justice system that are discussed in Chapters 5 through 7. Chapter 4 provides an introductory discussion of how legal matters are split among the three major categories in our system of justice and explains distinctions that police officers always need to have in mind when they respond to a call. There are times when the best thing an officer can do for a citizen in distress is to provide an appropriate referral to someone working in another area of the justice system.

The civil category of the law, where people sue one another, impacts on the daily functions of a police officer for other reasons. Officers are in the middle of conflict situations on a regular basis. Police officers often become important witnesses in civil trials because they were called to the scene, or were there to investigate potential criminal aspects of an event that could also end up forming the basis of a lawsuit. Officers are also at risk of being sued themselves and need to know where those risks lie. An officer who doesn't recognize the limits of the powers he or she is expected to exercise will soon discover that many normal

police activities can invite lawsuits. Whether the number of incidents that are recorded on video will create more or fewer lawsuits against police officers will become apparent in the next few years. Chapters 5 and 6 outline some of the key reasons that people sue others.

Administrative law is discussed in Chapter 7. This area of the law includes a wide range of legal decision-making that doesn't occur in court, but impacts on police functions. The National Parole Board is an administrative tribunal that decides if and when prisoners should be released from jail prior to the end of their sentences. Before a decision is made, police will be asked to provide input on the effect the individual's release will have on the local community. Police are also informed of any restrictions that are placed on prisoners who are released so officers can monitor compliance. Police often refer victims of crime to provincial or territorial administrative boards that are empowered to provide financial compensation to people who have been injured by criminal behaviour. If a police officer is accused of inappropriate conduct, discipline hearings will be conducted by senior officers following administrative law principles.

Chapter 12 discusses trends in the Canadian justice system, all of which could impact upon the way a police officer performs his or her job in the future and even on the availability of opportunities in policing.

In short, there should be something in each of the Chapters that could provide useful contextual information for someone considering a career as a police officer.

FORENSIC INVESTIGATORS AND ANALYSTS

The magical world of D.N.A., fingerprints, fibres, footprints, tire marks, blood splatters and human behaviour, forms a link between science and the law. Forensic investigators and analysts may become specialists in one or several scientific fields, but they need to have a general knowledge of the entire justice system.

Since many forensic investigators and analysts will either work for police services or with police services on a regular basis, the list of need-to-know information about the law is very similar to that outlined above for police officers. Their specialized knowledge will involve them in investigations that may not be limited to the criminal courts, but may well extend to lawsuits and the decision-making processes of administrative tribunals. They will need to know the limits imposed by statutes and the common law on the investigative process and may be controlled in their activities by laws created by both the federal and provincial or territorial levels of government.

CORRECTIONAL WORKERS

Job opportunities on this career path are far more varied than most members of the public realize. People seldom think beyond the role of a correctional officer, or guard in a traditional jail setting. They fail to realize that the vast majority of offenders who are convicted of federal, provincial or territorial offences and require correctional supervision serve either their entire sentences, or a significant portion of their sentences, outside of correctional institutions.

Career opportunities exist in an array of community supervision capacities: half-way houses, group homes and parole and probation services. Even within the lock-up facilities, roles of correctional personnel vary a great deal. Some officers concentrate their efforts on security matters, while others are involved in training, counselling and vocational employment programs. Officers act as escorts when inmates leave correctional facilities for a variety of purposes. Many facilities employ medical staff, teachers, fitness coordinators, chefs and others with specialized training.

The corrections field is a shared responsibility in Canada, with both federal and provincial levels of government playing a significant role. Someone interested in a career in this field will benefit from an understanding of the division of law-making responsibilities, explained in Chapter 2. This Chapter also provides an initial look at the organization and analysis of *statutes*. As government employees and agents, correctional personnel are controlled in all of their actions by the limits of the government-created *statutes* that provide the initial power to provide correctional services and *regulations* which set parameters on how that power is exercised.

It would also be a mistake for someone planning to work in corrections to ignore Chapter 3, which discusses the role courts play in our justice system. Not only do courts set precedents, which create an integral component of the whole spectrum of legal controls, they also pronounce the sentences which correctional personnel have the responsibility of implementing.

Chapter 4 discusses the way our justice system is organized. Like police officers, people starting a career in corrections will understand that they will be central players in the criminal justice system, which gets detailed treatment in Chapters 8 through 11. They may not be quite as cognizant that decisions that are made by correctional officers affecting inmates or offenders in community supervision situations fall within the category of *administrative law*. Every note that is made in an offender's file could impact upon the outcome of an administrative decision reached by institutional supervisors or the National Parole Board. Some key principles of administrative law are explained in Chapter 7 to provide this contextual guidance.

Correctional officers should not ignore the basic principles of our civil justice system. Again, like police officers, they are often at the centre of tense, conflict situations. They perform functions that require the careful application of security principles to avoid causing harm to others. Mistakes can lead to lawsuits. Chapter 5 will outline some of these risks.

Chapter 6 discusses civil law concepts that may have a bigger impact upon a correctional officer's personal life than on his or her professional responsibilities. Consider it a bonus. Chapter 12 discusses trends that directly implicate correctional personnel.

SECURITY AND RISK MANAGEMENT PERSONNEL

Private security and risk management is big business, with various experts suggesting that job opportunities may be two to three times those available to police officers and growing all the time. While there are many entry level jobs providing a security presence to deter and detect criminal and nuisance activities in airports, hospitals, retail settings, private businesses, remote job sites and at entertainment and athletic events, employers may also be looking for a whole lot more.

Security and risk managers should be involved in the initial planning and construction phases of all new facilities. Knowledge of security risks, combined with intelligent layout and use of appropriate technology can reduce long term security costs immeasurably. Even with existing facilities, cost efficient remedies can be added by experts who know what they are doing. The special knowledge required to implement security programs in relation to the widespread use of computers has created exciting job opportunities for security experts with that added know-how.

Most businesses consider the risks of being sued by customers and others who are present on facilities and the safety and personal security of employees at least as important as the risks associated with theft, trespass and other criminal concerns. They expect risk managers to be able to predict dangerous situations and to provide innovative solutions, operational policies and training packages to avoid the unpleasant legal ramifications of a lack of careful planning.

Someone entering this field had better be prepared to have a grasp of the entire spectrum of our justice system. Government and court created laws discussed in Chapters 2 and 3 will impact in terms of setting standards and evaluating potential risk situations. The risks of being sued are covered in Chapters 5 and 6 and people entering the security field will take a special interest in the property ownership issues that are discussed in Chapter 6. Employee rights and protections are greatly affected by administrative tribunals, which operate under the principles discussed in Chapter 7, while interaction with the criminal justice system, discussed in Chapters 8 through 11 is inevitable for the private security professional.

LAW CLERKS, PARALEGALS AND COURT AND TRIBUNAL AGENTS

Law clerks, paralegals and court and tribunal agents may work in a law office, government or private business setting under the supervision of a lawyer, or may