

# **CANADIAN** CRIMINAL JUSTICE

A PRIMER / **SIXTH EDITION**



**CURT T. GRIFFITHS**

# CANADIAN CRIMINAL JUSTICE

A PRIMER / SIXTH EDITION



# **CANADIAN CRIMINAL JUSTICE**

A PRIMER / **SIXTH EDITION**

**CURT T. GRIFFITHS**

SIMON FRASER UNIVERSITY

**NELSON**

This is an electronic version of the print textbook. Due to electronic rights restrictions, some third party content may be suppressed. The publisher reserves the right to remove content from this title at any time if subsequent rights restrictions require it. For valuable information on pricing, previous editions, changes to current editions, and alternate formats, please visit [nelson.com](http://nelson.com) to search by ISBN#, author, title, or keyword for materials in your areas of interest.

# NELSON

## Canadian Criminal Justice, Sixth Edition

by Curt T. Griffiths

**VP, Product Solutions:**  
Claudine O'Donnell

**Publisher, Digital and Print Content:**  
Leanna MacLean

**Marketing Manager:**  
Claire Varley

**Content Manager:**  
Suzanne Simpson Millar

**Photo and Permissions Researcher:**  
Jessie Coffey

**Senior Production Project Manager:**  
Imoinda Romain

**Production Service:**  
Manoj Kumar, MPS Limited

**Copy Editor:**  
Michael Kelly

**Proofreader:**  
MPS Limited

**Indexer:**  
MPS Limited

**Design Director:**  
Ken Phipps

**Higher Education Design Project  
Manager:**  
Pamela Johnston

**Interior Design Modifications:**  
Ken Cadinouche

**Cover Design:**  
deborahH brock

**Cover Image:**  
The Good People Series, "Mid  
Summer Night Gathering,"  
figurative palette knife painting.  
© G.O.D. Laurie Justus Pace.  
Graphics One Design, 2014

**Compositor:**  
MPS Limited

**COPYRIGHT © 2019, 2014**  
by Nelson Education Ltd.

Printed and bound in Canada  
1 2 3 4 21 20 19 18

For more information contact  
Nelson Education Ltd.,  
1120 Birchmount Road, Toronto,  
Ontario, M1K 5G4. Or you can visit  
our Internet site at [nelson.com](http://nelson.com)

Cognero and Full-Circle Assessment  
are registered trademarks of  
Madeira Station LLC.

**ALL RIGHTS RESERVED.** No part of  
this work covered by the copyright  
herein 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,  
submit all requests online at  
[cengage.com/permissions](http://cengage.com/permissions).  
Further questions about  
permissions can be emailed to  
[permissionrequest@cengage.com](mailto:permissionrequest@cengage.com)

Every effort has been made to  
trace ownership of all copyrighted  
material and to secure permission  
from copyright holders. In the event  
of any question arising as to the use  
of any material, we will be pleased  
to make the necessary corrections in  
future printings.

## Library and Archives Canada Cataloguing in Publication

Griffiths, Curt T. (Curt Taylor),  
1948–, author

Canadian criminal justice:  
a primer/Curt T. Griffiths,

Simon Fraser University.—Sixth  
edition.

First edition written by Alison  
J. Cunningham. Includes  
bibliographical references  
and index. Issued in print and  
electronic formats.  
ISBN 978-0-17-672440-5  
(softcover).—ISBN 978-0-17-685383-9  
(PDF)

1. Criminal justice, Administration  
of—Canada—Textbooks.  
2. Textbooks. I. Cunningham, Alison  
J., 1959–. Canadian criminal.  
II. Title.

HV9960.C2G75 2018 364.971  
C2018-900512-2  
C2018-900513-0

ISBN-13: 978-0-17-672440-5  
ISBN-10: 0-17-672440-0

*To Sandra, my partner on the journey of radical amazement,  
and  
to the Bradys and their adventures,  
past, present, and future.*

# About the **Author**

Curt Taylor Griffiths (Ph.D., Sociology, University of Montana) is a Professor in the School of Criminology and Coordinator of the Police Studies Program at Simon Fraser University in Vancouver. Among his primary areas of teaching and research are policing, corrections, comparative criminal justice, legal reform and capacity-building, enhancing the effectiveness of international development initiatives, and the dynamics of community justice.

Professor Griffiths has been a Visiting Expert at the United Nations Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI), Tokyo, Japan, and a Visiting Fellow at the American University in Cairo and at Tokiwa University, Mito, Ibaraki, Japan. He has conducted research and evaluations and worked with justice agencies and community organizations in a variety of jurisdictions, including Egypt, Japan, Dominica, the Netherlands, and Latvia, as well as in the remote Canadian north.

Professor Griffiths is the author or co-author of more than 100 research reports and articles and of several college/university-level texts, including *Canadian Criminal Justice: A Primer*, *Canadian Police Work*, and *Canadian Corrections* (with Danielle Murdoch). He is a member of the editorial boards of *The International Review of Victimology*, *International Criminal Justice Review*, and *Police Practice and Research: An International Journal*.



Courtesy of Sandra Snow



# Brief Contents

Preface	xiv
A Unique Learning Framework	xviii
Acknowledgements	xx
A Note to Instructors	xxi
<b>PART I</b>	<b>CANADIAN CRIMINAL JUSTICE: SETTING THE FRAMEWORK</b> . . . . . 2
CHAPTER 1	The Foundations of Criminal Justice . . . . . 4
CHAPTER 2	Understanding the Criminal Justice System . . . . . 21
CHAPTER 3	Considerations in the Study of Criminal Justice. . . . . 42
<b>PART II</b>	<b>THE POLICE.</b> . . . . . 66
CHAPTER 4	The Structure and Roles of the Police . . . . . 68
CHAPTER 5	Police Powers and Decision-Making. . . . . 101
CHAPTER 6	Police Strategies, Operations, and Engagement . . . . . 132
<b>PART III</b>	<b>THE CRIMINAL COURTS</b> . . . . . 164
CHAPTER 7	The Structure and Operation of the Criminal Courts . . . . . 166
CHAPTER 8	The Prosecution of Criminal Cases. . . . . 200
CHAPTER 9	Sentencing . . . . . 248
<b>PART IV</b>	<b>CORRECTIONS</b> . . . . . 284
CHAPTER 10	Corrections in the Community: Alternatives to Confinement . . . . . 286
CHAPTER 11	Correctional Institutions . . . . . 312
CHAPTER 12	Release, Re-entry, and Reintegration . . . . . 359
<b>PART V</b>	<b>YOUTH JUSTICE</b> . . . . . 400
CHAPTER 13	The Youth Justice System . . . . . 402
<b>PART VI</b>	<b>RECONSIDERING CRIMINAL JUSTICE.</b> . . . . . 436
CHAPTER 14	Going Forward: Challenges to and Opportunities for Criminal Justice Reform . . . . . 438
Glossary	454
Index	460

# Table of Contents

Preface	xiv	The Criminal Law in a Diverse Society . . . . 16	Is the Criminal Justice System Effective? . . 32
A Unique Learning Framework	xviii	Summary . . . . . 17	<i>Are the Criminal Law and the Criminal Justice System a Deterrent?</i> . . . . . 33
Acknowledgements	xx	Key Points Review . . . . . 18	<i>Evidence-Based Policies and Programs.</i> . . . . 34
A Note to Instructors	xxi	Key Term Questions . . . . . 18	Restorative Justice: An Alternative Approach to Criminal Justice . . . . . 34
<hr/>			
<b>PART I CANADIAN CRIMINAL JUSTICE: SETTING THE FRAMEWORK</b> . . . . . 2		Critical Thinking Exercise . . . . . 19	<i>Entry Points for Restorative Justice in the Criminal Justice System</i> . . . . . 36
<b>CHAPTER 1: The Foundations of Criminal Justice</b> . . . . . 4		Class/Group Discussion Exercise . . . . . 19	Summary . . . . . 36
Thinking Critically about the Criminal Justice System . . . . . 5		Media Link . . . . . 19	Key Points Review . . . . . 37
<i>What Is Critical Thinking?</i> . . . . . 5		References . . . . . 20	Key Term Questions . . . . . 37
What Is a Crime and Why? . . . . . 6		<b>CHAPTER 2: Understanding the Criminal Justice System</b> . . . . . 21	Critical Thinking Exercise . . . . . 38
<i>What Is a Crime?</i> . . . . . 6		The Criminal Justice System . . . . . 22	Class/Group Discussion Exercise . . . . . 38
<i>The Social Construction of Crime</i> . . . . . 7		<i>The Purpose of the Criminal Justice System.</i> . . 22	Media Links . . . . . 40
<i>The Origins and Application of the Criminal Law</i> . . . . . 9		<i>The Role and Responsibilities of Governments in Criminal Justice.</i> . . . . 22	References . . . . . 40
The Types of Canadian Law . . . . . 10		<i>Is the Criminal Justice System a “System”?</i> . . 23	<b>CHAPTER 3: Considerations in the Study of Criminal Justice.</b> . . . . 42
The Canadian Legal System . . . . . 10		Models of Criminal Justice Administration:	Multiculturalism and Diversity in Canada . . 43
<i>The Criminal Law.</i> . . . . . 11		Due Process versus Crime Control . . . . . 23	<i>Inequality.</i> . . . . . 43
<i>The Sources of Criminal Law</i> . . . . . 11		<i>An Adversarial System of Criminal Justice.</i> . . 23	<i>Racism, Prejudice, and Discrimination.</i> . . . . 44
<i>The Principles of Canadian Law</i> . . . . . 12		The Flow of Cases through the Criminal Justice System . . . . . 25	<i>Racialized Persons, Racialization, and Racial Profiling.</i> . . . . . 45
<i>The Rule of Law</i> . . . . . 12		The Dynamics of Criminal Justice . . . . . 27	The Experiences of Women . . . . . 47
<i>The Canadian Charter of Rights and Freedoms</i> . . . . . 14		<i>The Role of Discretion in the Criminal Justice System.</i> . . . . . 27	The Experiences of Indigenous Persons . . . 47
<i>The Criminal Code of Canada (1892)</i> . . . . . 15		<i>The Task Environments of Criminal Justice</i> . . 28	<i>Indigenous Persons in Canadian Society: The Legacy of Colonization.</i> . . . . . 48
<i>Criminal Law and Civil Law: What’s the Difference?</i> . . . . . 15		<i>Ethics in Criminal Justice.</i> . . . . . 28	<i>The Experiences of Indigenous Women.</i> . . . . 50
		<i>Accountability in the Criminal Justice System.</i> . . 29	Sexual Minorities . . . . . 50
		<i>Public Confidence and Trust in the Criminal Justice System.</i> . . . . . 30	<i>LGBTQ Youth.</i> . . . . . 51
		<i>The Politics of Criminal Justice: The Agenda of the Federal Conservative Government (2006–15).</i> . . . . . 32	The Experiences of Muslims . . . . . 51
			<i>Muslim Experiences in Quebec.</i> . . . . . 52

The Experiences of Blacks . . . . .	52	Defining Features of the Police Role . . . . .	74	<i>The Experience of Women Police Officers</i> . . . . .	93
<i>The Black Experience Project</i> . . . . .	53	<i>The Ever-Expanding Police Role</i> . . . . .	74	Summary . . . . .	94
Additional Considerations . . . . .	53	<i>The Impact of Legislation and</i>		Key Points Review . . . . .	95
<i>The Escalating Costs of the Criminal</i>		<i>Court Decisions</i> . . . . .	75	Key Term Questions . . . . .	95
<i>Justice System</i> . . . . .	53	Core Policing in the Early 21st Century . . . . .	76	Critical Thinking Exercise . . . . .	96
<i>The Changing Boundaries of Criminal Justice</i>		<i>Policing a Diverse Society</i> . . . . .	76	Class/Group Discussion Exercise . . . . .	96
<i>Agencies</i> . . . . .	54	A Brief History of Policing . . . . .	78	Media Links . . . . .	97
<i>The Rise of the Surveillance Society</i> . . . . .	55	The Evolution of Policing in Canada . . . . .	78	References . . . . .	97
<i>Addressing the Needs of Crime Victims</i> . . . . .	56	Canadian Policing: A Profile . . . . .	80	<b>CHAPTER 5: Police Powers and</b>	
<i>The Health and Wellness of Offenders</i>		The Structure of Contemporary		<b>Decision-Making</b> . . . . .	101
<i>and Criminal Justice Professionals</i> . . . . .	56	Canadian Policing . . . . .	80	The <i>Charter of Rights and Freedoms</i>	
<i>The Lack of the Diversity among Criminal</i>		<i>Federal Police: The Royal Canadian</i>		and Police Powers . . . . .	102
<i>Justice Professionals</i> . . . . .	57	<i>Mounted Police</i> . . . . .	81	Police Accountability . . . . .	104
Summary . . . . .	57	<i>Provincial Police</i> . . . . .	82	<i>Police Ethics</i> . . . . .	105
Key Points Review . . . . .	57	<i>Regional Police Services</i> . . . . .	82	Police Discretion and Decision-Making . . . . .	105
Key Term Questions . . . . .	58	<i>Municipal Police</i> . . . . .	82	<i>The Exercise of Discretion</i> . . . . .	106
Critical Thinking Exercise . . . . .	58	<i>Indigenous Police</i> . . . . .	83	<i>Typifications and Recipes for Action</i> . . . . .	106
Class/Group Discussion Exercise . . . . .	59	Police Organizations . . . . .	84	<i>Biased Policing and Racial Profiling</i> . . . . .	106
Media Links . . . . .	59	Private Security Services . . . . .	84	<i>Racial Profiling versus Criminal Profiling</i> . . . . .	107
References . . . . .	60	Police Peacekeeping . . . . .	85	<i>Street Checks and Carding</i> . . . . .	108
		The Police Response . . . . .	85	<i>Studies of Biased Policing and</i>	
<b>PART II THE POLICE</b> . . . . .	66	The Recruitment and Training of		<i>Racial Profiling</i> . . . . .	109
<b>CHAPTER 4: The Structure and Roles</b>		Police Officers . . . . .	86	<i>Police Policies on Racial Profiling and</i>	
<b>of the Police</b> . . . . .	68	<i>Police Recruitment</i> . . . . .	86	<i>Street Checks/Carding</i> . . . . .	110
Defining Police Work . . . . .	69	<i>Increasing Officer Diversity in Police</i>		Police Treatment of Indigenous Persons . . . . .	111
The Legislative Framework of Police Work . . . . .	70	<i>Services</i> . . . . .	87	The Police Use of Force . . . . .	111
Perspectives on the Role of the Police . . . . .	70	<i>Police Training</i> . . . . .	88	<i>The Force Options Framework</i> . . . . .	112
<i>The Social Contract Perspective</i> . . . . .	70	The Police Occupation . . . . .	90	<i>Decision-Making and Force Options</i> . . . . .	113
<i>The Radical Perspective</i> . . . . .	70	<i>The Working Personality of Police Officers</i> . . . . .	90	<i>Less-Lethal Force Options</i> . . . . .	113
Police Work in a Democratic Society . . . . .	72	Challenges in Police Work . . . . .	91	<i>Deadly Encounters: The Police Use</i>	
Governance and Oversight of the Police . . . . .	73	<i>Occupational Stress Injuries</i> . . . . .	91	<i>of Lethal Force</i> . . . . .	114

<i>The Use of Force and Persons with Mental Illness (PwMI)</i> . . . . .	115	<i>Problem-Oriented Policing (POP)</i> . . . . .	147	The Challenges of Mega-trials . . . . .	193
Police Powers in Investigations . . . . .	117	Crime Attack Strategies . . . . .	148	Summary . . . . .	194
<i>Entrapment: A Misuse of Police Powers</i> . . . . .	117	<i>Tactical-Directed Patrol</i> . . . . .	148	Key Points Review . . . . .	194
<i>The “Mr. Big” Technique: A Controversial Investigative Strategy</i> . . . . .	117	<i>Targeting High-Risk Offenders</i> . . . . .	148	Key Term Questions . . . . .	195
<i>Search and Seizure</i> . . . . .	118	The Police and Vulnerable/At-Risk Groups . . . . .	150	Critical Thinking Exercise . . . . .	195
<i>The Power to Detain and Arrest</i> . . . . .	120	<i>Responding to Persons with Mental Illness</i> . . . . .	150	Class/Group Discussion Exercise . . . . .	196
<i>The Right of Suspects to Remain Silent</i> . . . . .	123	<i>The Police Treatment of Indigenous, Vulnerable, and Marginalized Women</i> . . . . .	152	Media Links . . . . .	196
Police Officer Misconduct . . . . .	124	<i>The Police and the LGBTQ Community</i> . . . . .	156	References . . . . .	196
<i>Complaints Against the Police</i> . . . . .	124	Summary . . . . .	157	<b>CHAPTER 8: The Prosecution of Criminal Cases</b> . . . . .	200
<i>The Reluctance to File a Complaint</i> . . . . .	126	Key Points Review . . . . .	158	The Flow of Cases through the Court System . . . . .	202
Summary . . . . .	126	Key Term Questions . . . . .	159	<i>Summary Offences or Proceeding Summarily</i> . . . . .	202
Key Points Review . . . . .	127	Critical Thinking Exercise . . . . .	159	<i>Electable Offences</i> . . . . .	203
Key Term Questions . . . . .	128	Class/Group Discussion Exercise . . . . .	159	The Pre-trial Process . . . . .	203
Critical Thinking Exercise . . . . .	128	Media Links . . . . .	160	<i>Laying an Information and Laying a Charge</i> . . . . .	204
Media Links . . . . .	128	References . . . . .	160	<i>Compelling the Appearance of the Accused in Court</i> . . . . .	204
References . . . . .	129			<i>Release by the Police</i> . . . . .	206
<b>CHAPTER 6: Police Strategies, Operations, and Engagement</b> . . . . .	132	<b>PART III THE CRIMINAL COURTS</b> . . . . .	164	<i>The Decision to Lay a Charge</i> . . . . .	206
Measuring the Effectiveness of Police Strategies and Operations . . . . .	133	<b>CHAPTER 7: The Structure and Operation of the Criminal Courts</b> . . . . .	166	<i>Judicial Interim Release (Bail)</i> . . . . .	207
<i>Crime Rates and Clearance Rates</i> . . . . .	133	The Criminal Courts in Canada . . . . .	167	<i>Pre-trial Remand</i> . . . . .	210
<i>Crime Displacement</i> . . . . .	134	The Provincial/Territorial Court System . . . . .	168	<i>Security Certificates</i> . . . . .	211
<i>Additional Measures of Police Effectiveness</i> . . . . .	134	Provincial and Territorial Specialized Problem-Solving Courts . . . . .	171	Defendants’ Access to Legal Representation . . . . .	212
The Professional Model of Policing . . . . .	134	<i>The Effectiveness of Specialized Courts</i> . . . . .	173	<i>Legal Aid for the Accused</i> . . . . .	213
Community Policing . . . . .	135	<i>Indigenous Courts</i> . . . . .	173	Fitness to Stand Trial . . . . .	214
<i>Defining Community Policing</i> . . . . .	135	Provincial/Territorial Circuit Courts . . . . .	176	Assignment and Plea . . . . .	214
<i>Community-Based Strategic Policing</i> . . . . .	136	The Provincial/Territorial Superior Courts . . . . .	177	Plea Bargaining . . . . .	215
The Police and the Community . . . . .	138	The Supreme Court of Canada . . . . .	179	Access to the Courtroom . . . . .	216
<i>Public Attitudes toward and Confidence in the Police</i> . . . . .	138	The Courtroom Workgroup . . . . .	181	Mode of Trial: Trial by Judge Alone or by Judge and Jury . . . . .	217
<i>The Police and Restorative Justice Approaches</i> . . . . .	139	<i>The Judge</i> . . . . .	181	Disclosure of Evidence . . . . .	219
<i>The Challenges in Developing and Sustaining Police–Community Partnerships</i> . . . . .	140	<i>Justices of the Peace</i> . . . . .	181	The Trial . . . . .	219
<i>Anonymous and Creep Catchers: Guardians of Justice or Vigilantes?</i> . . . . .	140	<i>Defence Lawyers</i> . . . . .	182	The Case for the Crown . . . . .	220
Crime Prevention . . . . .	142	<i>Duty Counsel</i> . . . . .	182	The Case for the Defence . . . . .	221
<i>Primary Crime Prevention Programs</i> . . . . .	142	<i>Crown Counsel</i> . . . . .	183	<i>The “You’ve Got the Wrong Person” Defence</i> . . . . .	222
<i>Secondary Crime Prevention Programs</i> . . . . .	143	<i>Other Courtroom Personnel</i> . . . . .	184	<i>The Mental State of the Accused at the Time of the Alleged Offence</i> . . . . .	223
<i>Crime Prevention in Indigenous Communities</i> . . . . .	145	<i>Features of the Courtroom Workgroup</i> . . . . .	184	<i>Justifications: Excuse-Based Defences</i> . . . . .	225
<i>Challenges in Crime Prevention</i> . . . . .	146	Where Do Judges Come From? . . . . .	185	<i>Procedural Defences</i> . . . . .	228
Crime Response Strategies . . . . .	146	<i>Diversity (or the Lack Thereof) in the Judiciary</i> . . . . .	186	The Jury . . . . .	228
<i>The Broken Windows Approach</i> . . . . .	146	Judicial Ethics and Accountability . . . . .	187	Appeals . . . . .	230
<i>Zero-Tolerance Policing and Quality-of-Life Policing</i> . . . . .	147	<i>Public Complaints about Judges</i> . . . . .	188	Crime Victims and the Court Process . . . . .	231
		Case Delay in the Courts . . . . .	190	<i>Compensation for Crime Victims</i> . . . . .	232
		<i>The Sources of Case Delay</i> . . . . .	190		
		<i>Addressing Case Delay: The SCC R. V. Jordan Decision</i> . . . . .	191		

Accommodating Diversity in the Courtroom . . . . .	232	<i>Victim Impact Statements</i> . . . . .	268	<i>The Application of RNR to Probation Practice: The Strategic Training Initiative in Community Supervision (STICS)</i> . . . . .	299
Wrongful Convictions . . . . .	232	<i>Community Impact Statements (CISs)</i> . . . . .	269	Intensive Supervision Probation . . . . .	300
<i>The Role of the Police</i> . . . . .	234	Public Perceptions of Sentencing . . . . .	270	The Experience of Probationers . . . . .	300
<i>The Role of Crown Counsel</i> . . . . .	234	Restorative Approaches and Sentencing . . . . .	270	The Challenge of Probation Practice . . . . .	301
<i>The Role of Expert Witnesses</i> . . . . .	235	<i>Circle Sentencing</i> . . . . .	270	<i>Occupational Stress</i> . . . . .	301
Restorative Justice Approaches . . . . .	237	The Politics of Sentencing . . . . .	271	<i>Supervising High-Risk and High-Need Probationers</i> . . . . .	301
<i>The Ottawa Restorative Justice Program</i> . . . . .	237	The Effectiveness of Sentencing . . . . .	273	<i>Heavy Workloads and High Caseloads</i> . . . . .	302
Summary . . . . .	238	You Be the Judge . . . . .	274	<i>A Lack of Probation Officer–Offender Contact and Intervention</i> . . . . .	302
Key Points Review . . . . .	238	A Judge Deliberates on a Sentence: The Case of <i>R. v. Burgess</i> . . . . .	275	<i>Probation Services in Remote and Northern Regions</i> . . . . .	303
Key Term Questions . . . . .	239	<i>Victim Impact Statements</i> . . . . .	275	<i>Supervising a Diverse Clientele</i> . . . . .	303
Critical Thinking Exercise . . . . .	239	<i>Vanessa Burgess's Background and Circumstances</i> . . . . .	275	The Need for Reform: Findings from Ontario and British Columbia . . . . .	303
Class/Group Discussion Exercise . . . . .	240	<i>Aggravating Factors</i> . . . . .	276	Surveillance in the Community: The Use of Electronic Monitoring (EM) and GPS Tracking . . . . .	304
Media Links . . . . .	240	<i>Mitigating Factors</i> . . . . .	276	The Effectiveness of Alternatives to Confinement . . . . .	305
References . . . . .	241	Summary . . . . .	277	Summary . . . . .	307
<b>CHAPTER 9: Sentencing</b> . . . . .	246	Key Points Review . . . . .	277	Key Points Review . . . . .	307
The Purpose and Principles of Sentencing . . . . .	247	Key Term Questions . . . . .	278	Key Term Questions . . . . .	308
The Goals of Sentencing: The Cases of Mr. Smith and Mr. Jones . . . . .	247	Critical Thinking Exercises . . . . .	278	Critical Thinking Exercise . . . . .	308
<i>Utilitarian Goals</i> . . . . .	247	Class/Group Discussion Exercise . . . . .	280	Class/Group Discussion Exercise . . . . .	309
<i>Retributive Goals</i> . . . . .	248	Media Link . . . . .	281	Media Links . . . . .	309
<i>Restorative Goals</i> . . . . .	248	References . . . . .	281	References . . . . .	309
<i>What Sentences Did Mr. Smith and Mr. Jones Receive?</i> . . . . .	248			<b>CHAPTER 11: Correctional Institutions</b> . . . . .	312
Sentencing Options . . . . .	249	<b>PART IV CORRECTIONS</b> . . . . .	284	The Creation of the Canadian Penitentiary . . . . .	314
<i>Victim Fine Surcharge (VFS)</i> . . . . .	251	<b>CHAPTER 10: Corrections in the Community: Alternatives to Confinement</b> . . . . .	286	Local Jails and Provincial Prisons . . . . .	315
Additional Sentencing Options . . . . .	252	Absolute and Conditional Discharges . . . . .	288	Federal Corrections . . . . .	316
<i>Judicial Determination</i> . . . . .	252	Suspended Sentence . . . . .	289	Provincial and Territorial Corrections . . . . .	316
<i>Judicial Restraint Order</i> . . . . .	252	Fines . . . . .	289	Facilities Operated by Non-profit Organizations . . . . .	316
<i>Life Imprisonment</i> . . . . .	252	Diversion Programs . . . . .	289	The Use of Incarceration . . . . .	317
Sentencing Considerations . . . . .	253	<i>Victim–Offender Mediation</i> . . . . .	290	Types of Correctional Institutions . . . . .	317
Extraordinary Measures: Dangerous and Long-Term Offenders . . . . .	254	<i>The Issue of Net-Widening</i> . . . . .	291	The Challenges of Managing Correctional Institutions . . . . .	318
<i>Dangerous Offender (DO) Designation</i> . . . . .	254	Conditional Sentences . . . . .	291	<i>Meeting the Requirements of Law, Policy, and Legislation</i> . . . . .	318
<i>Long-Term Offender (LTO) Designation</i> . . . . .	256	Probation . . . . .	292	<i>The Prison as a Total Institution</i> . . . . .	318
Sentencing in a Diverse Society . . . . .	257	<i>Probation and Conditional Sentences: What's the Difference?</i> . . . . .	293	<i>The “Split Personality” of Corrections</i> . . . . .	318
Sentencing Indigenous Offenders . . . . .	258	<i>Probation versus Parole: What's the Difference?</i> . . . . .	293	<i>The Impact of Legislation and Political Agenda</i> . . . . .	319
<i>Indigenous Traditional Punishments</i> . . . . .	261	<i>Recruitment and Training of Probation Officers</i> . . . . .	294	<i>Conditions in Correctional Institutions</i> . . . . .	319
Sentencing and Race . . . . .	262	<i>Role and Responsibilities of Probation Officers</i> . . . . .	295		
How Do Judges Decide? . . . . .	263	<i>The Dual Role of Probation Officers</i> . . . . .	297		
<i>Judicial Discretion</i> . . . . .	263	<i>Collaboration with Other Agencies</i> . . . . .	298		
<i>Statutory Guidance</i> . . . . .	265	The Risk, Need, and Responsivity Model in Probation . . . . .	298		
<i>Maximum Sentences</i> . . . . .	265				
<i>Limits on Judicial Discretion</i> . . . . .	266				
Sentencing and Crime Victims . . . . .	267				

<i>The Changing Offender Profile</i> . . . . .	319	<b>CHAPTER 12: Release, Re-entry, and Reintegration</b> . . .	359	Decisions and Outcomes: One Man's Journey through the Criminal Justice System . . . . .	390
<i>Overcrowding in Correctional Institutions</i> . . .	323	The Purpose and Principles of Conditional Release . . . . .	360	Summary . . . . .	393
<i>Preventing Disorder and Disturbances</i> . . .	324	The Release Options for Federal and Provincial/Territorial Inmates . . . . .	361	Key Points Review . . . . .	393
<i>Ensuring Inmate Safety</i> . . . . .	325	The Parole Process . . . . .	362	Key Term Questions . . . . .	394
<i>Inmate Health and Infectious Diseases</i> . . .	326	<i>The Changing Face of Conditional Release</i> . .	364	Critical Thinking Exercise . . . . .	394
The Use of Segregation . . . . .	327	<i>Parole Board Grant Rates</i> . . . . .	364	Class/Group Discussion Exercise . . . . .	395
<i>The Controversy over and Reform of Solitary Confinement</i> . . . . .	328	Victims and Conditional Release . . . . .	366	Media Links . . . . .	395
<i>The Incident at the Kingston Prison for Women (P4W): A Watershed Event in Women's Corrections</i> . . . . .	330	Parole Board Decision-Making . . . . .	368	References . . . . .	397
Working Inside: The Experience of Correctional Officers . . . . .	330	<i>Inmate Applicants and the Parole Hearing</i> . . . . .	369		
<i>Recruitment and Training</i> . . . . .	331	<i>The Dynamics of Parole Board Decision-Making</i> . . . . .	370	<b>PART V YOUTH JUSTICE</b> . . . . .	400
<i>The Authority of Correctional Officers</i> . . .	331	<i>Issues in Parole Board Decision-Making</i> . .	371	<b>CHAPTER 13: The Youth Justice System</b> . . . . .	402
<i>Relationships with Inmates</i> . . . . .	332	<i>Is Parole Board Decision-Making Effective?</i> . . . . .	373	The Risk and Needs of Youth . . . . .	404
<i>Corrections Officer Abuse of Authority</i> . . .	333	The Reintegration Process . . . . .	373	Programs for At-Risk Youth . . . . .	405
<i>Relationships with the Administration and Treatment Staff</i> . . . . .	333	Coming Back: The Challenges of Re-entry and Reintegration . . . . .	375	Differences between the Adult and Youth Criminal Justice Systems . . . . .	406
<i>Stressors for Correctional Officers</i> . . . . .	334	<i>The Challenges of Newly Released Offenders</i> . . . . .	376	The Youth Justice System . . . . .	407
Doing Time: The World of the Inmate . . . .	334	<i>Strangers in a Strange Land: The Isolation of Offenders Returning to the Community</i> . .	377	<i>Keeping Youth Out of the Formal Youth Justice System: Extrajudicial Measures and Extrajudicial Sanctions</i> . . . . .	407
<i>Entering the Prison</i> . . . . .	334	<i>Women Offenders and Reintegration</i> . . . .	379	<i>Extrajudicial Measures (EJM)</i> . . . . .	408
<i>Living Inside</i> . . . . .	335	<i>Indigenous Offenders and Reintegration</i> . .	379	<i>Extrajudicial Sanctions (EJS)</i> . . . . .	409
<i>The Inmate Social System</i> . . . . .	336	High-Risk and Special-Needs Offenders on Conditional Release . . . . .	380	<i>Specialized Youth Courts</i> . . . . .	410
<i>The Experience of LGBTQ and Transgendered Inmates</i> . . . . .	338	<i>High-Risk Offenders</i> . . . . .	381	Community Involvement in the Youth Justice System: Youth Justice Committees and Youth Justice Conferences . . . . .	410
<i>Inmate Families</i> . . . . .	338	<i>Persons with Mental Illness</i> . . . . .	381	Youth Court . . . . .	411
<i>Inmate Grievances and Complaints</i> . . . . .	338	<i>Sex Offenders</i> . . . . .	381	<i>The Role of Justices of the Peace (JPs)</i> . . .	411
Does Incarceration Work? . . . . .	339	<i>The State-Raised Offender and Re-entry</i> . .	382	<i>Judicial Interim Release (Bail)</i> . . . . .	411
Classification and Treatment . . . . .	339	Parole Officers and the Supervision of Offenders . . . . .	383	<i>Youth Court Cases</i> . . . . .	412
<i>Case Management</i> . . . . .	340	<i>The Dual Function of Parole Supervision</i> . .	383	<i>LGBTQ Youth</i> . . . . .	412
<i>Institutional Treatment Programs</i> . . . . .	341	<i>Additional Provisions for Supervision</i> . . . .	383	<i>Indigenous Youth</i> . . . . .	413
<i>Women Offenders and Treatment</i> . . . . .	342	Facilities and Programs for Offenders on Conditional Release . . . . .	384	<i>Black Youth</i> . . . . .	413
<i>The Principles of Effective Correctional Treatment</i> . . . . .	343	<i>Non-profit Organizations and Offender Reintegration</i> . . . . .	384	Sentencing Young Offenders . . . . .	414
<i>Restorative Justice in Correctional Institutions</i> . . . . .	343	Making it or Going Back: Factors in the Success or Failure of Offenders on Release . . . . .	385	<i>Non-custodial Sentencing Options</i> . . . . .	415
<i>Indigenous Healing Centres and Lodges</i> . .	343	<i>Suspension and Revocation of Conditional Release</i> . . . . .	386	<i>Youth Probation</i> . . . . .	416
<i>Treatment Programs for Indigenous Inmates</i> .	344	Circles of Support and Accountability (COSAs): A Restorative, Reintegrative Program for High-Risk Sex Offenders . . . . .	387	<i>Custodial Sentencing Options</i> . . . . .	416
Measuring the Effectiveness of Correctional Treatment . . . . .	345	The Effectiveness of Community Supervision Strategies . . . . .	389	Youth in Custody . . . . .	418
Does Correctional Treatment Work? . . . . .	346			<i>Indigenous Youth in Custody</i> . . . . .	418
Summary . . . . .	347			<i>Doing Time in Youth Custody Facilities</i> . . .	419
Key Points Review . . . . .	347			<i>The Use of Solitary Confinement</i> . . . . .	420
Key Term Questions . . . . .	348			<i>Treatment Programs for Youth in Custody</i> .	420
Critical Thinking Exercise . . . . .	349			<i>Youth–Staff Relationships</i> . . . . .	421
Class/Group Discussion Exercise . . . . .	350			The Role of Parents in the Youth Justice Process . . . . .	422
Media Links . . . . .	350			Restorative Justice Programs for Youth Offenders . . . . .	422
References . . . . .	352				

Release, Re-entry and Reintegration of Youth offenders . . . . .	424	<i>Developing and Implementing Evidence-Based Legislation, Policies, and Programs . . . . .</i>	439	<i>Expanding Effective Criminal Justice Interventions and Learning From Failure . . . . .</i>	447
<i>Aftercare Programs . . . . .</i>	424	<i>Proactive Problem-Solving versus Reactive Sanctioning . . . . .</i>	440	<i>Developing Human and Helping Relationships . . . . .</i>	447
<i>The Role of Informal Social Support Networks . . . . .</i>	424	<i>Managing Technology . . . . .</i>	440	<i>Giving Voice to At-Risk and Vulnerable Groups . . . . .</i>	447
The Costs of Youth Justice . . . . .	424	<i>Adhering to the Rule of Law and Respecting the Rights of the Accused and Offenders . . . . .</i>	441	<i>Improving Assistance for Victims of Crime . . . . .</i>	448
The Effectiveness of Interventions with Youth Offenders . . . . .	425	<i>Considering Ethics in Criminal Justice . . . . .</i>	441	<i>Strengthening Restorative Justice . . . . .</i>	448
Summary . . . . .	427	<i>Ensuring Accountability in the Criminal Justice System . . . . .</i>	442	Questions to Be Asked about the Criminal Justice System . . . . .	449
Key Points Review . . . . .	427	<i>Ensuring the Health and Wellness of Criminal Justice Professionals . . . . .</i>	442	Summary . . . . .	450
Key Term Questions . . . . .	428	<i>Addressing the Needs of Victims . . . . .</i>	443	Key Points Review . . . . .	450
Critical Thinking Exercises . . . . .	428	<i>Indigenous Persons and the Criminal Justice System: Time for a Reset? . . . . .</i>	443	Key Term Question . . . . .	450
Class/Group Discussion Exercise . . . . .	429	<i>Addressing Trauma in Offenders . . . . .</i>	444	Critical Thinking Exercise . . . . .	451
Media Links . . . . .	429	<i>Reducing the Marginality of Offenders . . . . .</i>	445	Class/Group Discussion Exercise . . . . .	451
References . . . . .	429	<i>Administering Criminal Justice in a Diverse Society . . . . .</i>	445	Media Link . . . . .	451
<hr/>		<i>The Need to Reimagine Criminal Justice . . . . .</i>	446	References . . . . .	451
<b>PART VI RECONSIDERING CRIMINAL JUSTICE . . . . .</b>	436	Opportunities for Criminal Justice Reform	446	Glossary . . . . .	454
<b>Chapter 14: Going Forward: Challenges to and Opportunities for Criminal Justice Reform . . . . .</b>	438	<i>The Escalating Costs of Criminal Justice . . . . .</i>	446	Index . . . . .	460
Challenges for the Criminal Justice System . . . . .	439				

# Preface

## THE GOAL OF THIS TEXT

The Canadian criminal justice system is a complex, dynamic, and ever-changing enterprise. How the various components of the system operate and the extent to which they succeed in preventing and responding to crime and criminal offenders affect not only the general public but also criminal justice personnel and offenders. This edition of *Canadian Criminal Justice: A Primer*, Sixth Edition, is designed with the same basic objectives as the previous editions: to present in a clear and concise fashion materials on the criminal justice system in Canada and to highlight the key issues surrounding this country's responses to crime and offenders. This book is not an exhaustive examination of all facets of the criminal justice process. Rather, its intent is to present, with broad brush strokes, information on the structure and operations of the criminal justice system, at the same time identifying some of the more significant challenges and controversies that arise at each stage of the justice process.

## ORGANIZATION OF THE TEXT

This edition of the text is organized into six parts. Part I is designed to set the framework for the study of Canadian criminal justice. Chapter 1 sets out the foundations of the criminal justice system, Chapter 2 highlights key features of the dynamics of the criminal justice process, and Chapter 3 discusses inequality, racism and discrimination, and the lived experiences of Indigenous peoples, racialized groups, and persons in visible/cultural/religious minorities as a backdrop for the study of Canadian criminal justice.

Part II contains three chapters that focus on various dimensions of Canadian policing. Chapter 4 discusses the structure and roles of the police; Chapter 5 examines police powers and decision-making; and Chapter 6 considers police strategies, operations, and engagement.

Part III presents materials on the criminal courts. Chapter 7 examines the structure and operation of the criminal courts; Chapter 8 looks at the prosecution of criminal cases; and Chapter 9 discusses sentencing in the criminal courts.

Part IV contains three chapters that focus on Canadian corrections. Chapter 10 discusses correctional alternatives to confinement; Chapter 11 reviews correctional institutions; and Chapter 12 examines the release, re-entry, and reintegration of offenders into the community.

Part V contains Chapter 13, which examines the youth justice system.

Part VI is titled “Reconsidering Criminal Justice,” and in Chapter 14, the final chapter of the text, the challenges to and opportunities for criminal justice reform are discussed.

**Part Openers** provide a concise introduction for students and highlight key trends in the criminal justice system that will be discussed in the chapters following.

**Learning Objectives** are set out at the beginning of each chapter. They identify the purpose of the materials that are presented and serve to orient the reader to the chapter.

Tables, graphs, charts, and photographs are interspersed throughout the book, and provide visual representations of data, current events, or key people and places in the criminal justice system.



A running glossary proceeds throughout the text, with key terms defined in the margins, for easy retrieval from students.

Each chapter ends with a **Summary**, to help students reflect on what they have just learned. **Key Points Review** and **Key Term Questions** have been retained and updated from the fifth edition, to test knowledge of specific topics.

New to the Sixth Edition, **Critical Thinking** and **Class/Group Discussion Exercises** at the end of the chapter further engage the student in considering and discussing critical issues in the justice system. Many of the exercises centre on actual cases and events.

Lastly, **Media Links** have been carefully selected to provide students with access to persons who are involved in some way with the criminal justice system, as well as to provide a more in-depth examination of issues that were raised in the chapter.

## CHANGES TO THE SIXTH EDITION

In addition to updating legislation, inserting new court rulings, and including new materials on all facets of the justice system, there are a number of significant changes in this edition. These include the following:

### FEATURE BOXES

There are several formats that are used to present materials and to engage the student reader. The **Perspective** feature provides first-hand accounts that capture the dynamics of the criminal justice system; boxes strategically placed throughout the chapters highlight case studies, innovative programs, and important court decisions. **At Issue** boxes are centred on topics that are the subject of debate, and challenge students to consider various perspectives and to answer questions that will assist them in formulating their thoughts on the topic. **Research File** boxes appear throughout the book, and summarize the research literature on criminal justice policies and programs. And general boxes (no title) provide stories generally in the news or engaging for students, and delve into a topic more deeply.

### FILE BOXES

In each chapter, there are a number of file boxes that are designed to highlight important events, research studies, and cases. **Police File** boxes appear in Part II; **Court File** boxes are included in Part III; **Legal File** boxes are included in Parts II and III; **Criminal Justice Files** appear in Part I; **Corrections Files** in Part IV; and **Youth Justice Files** in Part IV.

## NOTABLE CHAPTER-SPECIFIC CHANGES

**Chapter 1:** This chapter has been re-written and examines how crimes are “created,” Canadian law, the Canadian legal system, and the criminal law in a diverse society. A new section in Chapter 1, “Thinking Critically about the Criminal Justice System,” provides students with suggestions on how to be a critical thinker and how to consider the materials presented in the text.

**Chapter 2:** This chapter introduces students to the purpose of the criminal justice system, and the role and responsibilities of governments in the administration of justice. The competing models of criminal administration are discussed, as are the flow of cases through the system and several of the features of the criminal justice process. Restorative justice is introduced, and it is noted that this alternative approach to justice will be considered throughout the text, rather than having its own dedicated chapter as in the previous edition.

**Chapter 3:** This is a new chapter that focuses on considerations in the study of criminal justice. It includes a discussion of the issues surrounding racism, discrimination, and inequality, and the experiences of Indigenous and racialized persons and members of visible/cultural/religious minority groups in Canada. The chapter is designed to provide the reader with exposure to the lived experiences of persons who may be subjected to racism and discrimination, which, in turn, will contribute to an understanding of issues such as racial profiling and biased policing and the overrepresentation of Indigenous persons and Blacks in the criminal justice system. The issues of racism and discrimination are key themes in the text.

Additional considerations in the study of criminal justice are also presented in this chapter, again to provide background context for the materials presented in subsequent chapters.

**Chapter 13:** This is another new chapter in the text, and it examines the youth justice system. Many adults who come into conflict with the law first became involved in the youth justice system. This fact compels an understanding of the approach to youth in conflict, the legislation and programs designed to address their issues, and their experiences in the youth justice system, both under supervision in the community and in youth correctional facilities.

## INSTRUCTOR RESOURCES

The **Nelson Education Teaching Advantage (NETA)** program delivers research-based instructor resources that promote student engagement and higher-order thinking to enable the success of Canadian students and educators. Visit Nelson Education's **Inspired Instruction** website at [www.nelson.com/inspired](http://www.nelson.com/inspired) to find out more about NETA.

The following instructor resources have been created for *Canadian Criminal Justice: A Primer*, Sixth Edition. Access these ultimate tools for customizing lectures and presentations at [www.nelson.com/instructor](http://www.nelson.com/instructor).



## NETA TEST BANK

This resource includes more than 350 multiple-choice questions written according to NETA guidelines for effective construction and development of higher-order questions. Also included are more than 250 true/false questions, 150 short-answer questions, and 140 essay questions.

The NETA Test Bank is available in a new, cloud-based platform. **Nelson Testing Powered by Cognero**® is a secure online testing system that allows instructors to author, edit, and manage test bank content from anywhere Internet access is available. No special installations or downloads are needed, and the desktop-inspired interface, with its drop-down menus and familiar, intuitive tools, allows instructors to create and manage tests with ease. Multiple test versions can be created in an instant, and content can be imported or exported into other systems. Tests can be delivered from a learning management system, the classroom, or wherever an instructor chooses. Nelson Testing Powered by Cognero for *Canadian Criminal Justice: A Primer*, Sixth Edition, can be accessed through [www.nelson.com/instructor](http://www.nelson.com/instructor).



## NETA POWERPOINT

Microsoft® PowerPoint® lecture slides have been created for every chapter. There is an average of 25 slides per chapter, many featuring key figures, tables, and photographs from *Canadian Criminal Justice: A Primer*, Sixth Edition. NETA principles of clear design and

engaging content have been incorporated throughout, making it simple for instructors to customize the deck for their courses.

## IMAGE LIBRARY

This resource consists of digital copies of figures, tables, and photographs used in the book. Instructors may use these jpegs to customize the NETA PowerPoint or create their own PowerPoint presentations. An Image Library Key describes the images and lists the codes under which the jpegs are saved. Codes normally reflect the chapter number (e.g., C01 for Chapter 1), the figure or photo number (e.g., F15 for Figure 15), and the page in the textbook. For example, C01-F15-pg26 would correspond to Figure 1-15 on page 26.

## NETA INSTRUCTOR'S MANUAL

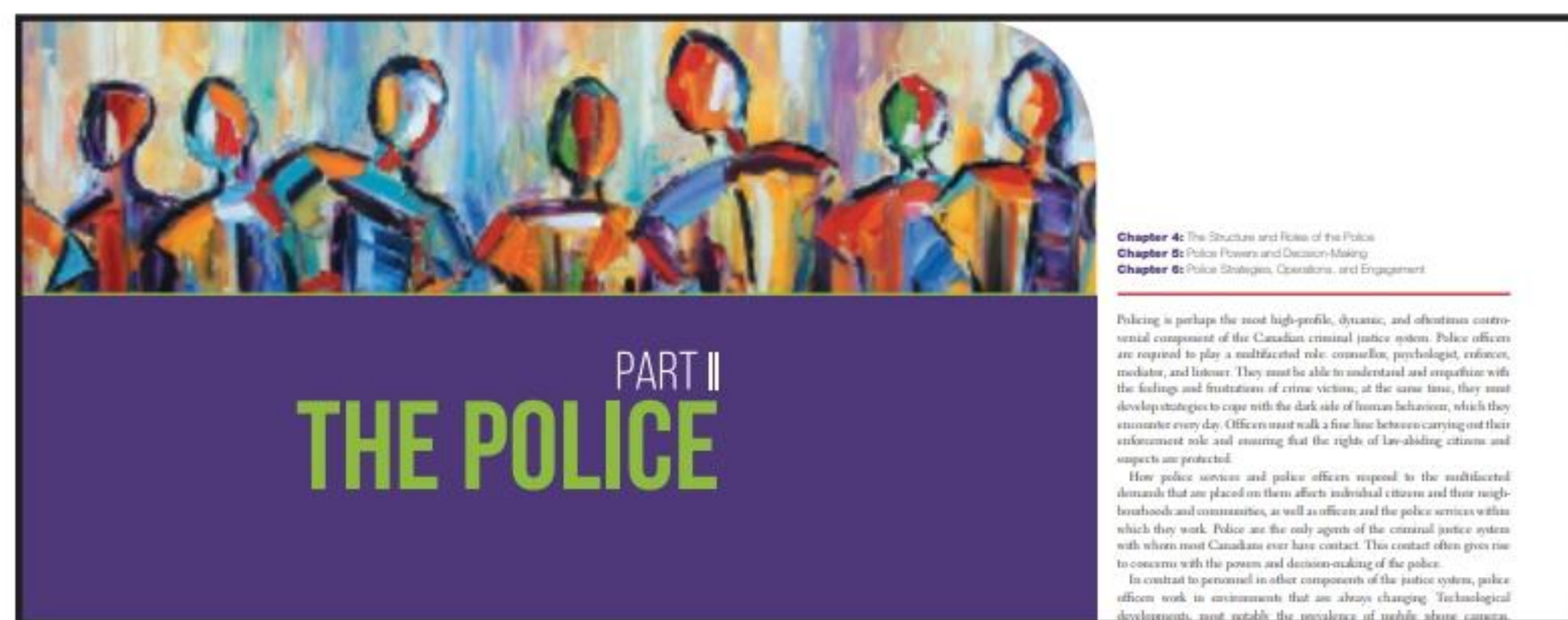
This resource is organized according to the textbook chapters and addresses key educational concerns, such as typical stumbling blocks student face and how to address them. Other features include common student misconceptions, in-class activities, online activities, suggested answers to questions in the text, and links to video clips with questions for discussion or homework submission.

## STUDENT ANCILLARIES

Nelson Education's **Premium Companion Website** for *Canadian Criminal Justice: A Primer* brings course concepts to life with interactive learning and exam preparation tools that integrate with the printed textbook. Students activate their knowledge using engaging online resources. Visit [www.nelson.com/student](http://www.nelson.com/student) for access.

# A Unique Learning **FRAMEWORK**

**Part Openers** provide a concise introduction for students and highlight key trends in the criminal justice system that will be discussed in the chapters following.



**CHAPTER 3**  
**CONSIDERATIONS IN THE STUDY OF CRIMINAL JUSTICE**

**LEARNING OBJECTIVES**

After reading this chapter you should be able to:

- Discuss the issues surrounding racism, discrimination, and inequality in Canada.
- Define and discuss the notions of racism, racialization, and racial profiling and the presence of these elements in Canadian society.
- Discuss the experiences of Indigenous and racialized persons and members of visible/cultural/religious minority groups in Canada.
- Discuss the concerns over the escalating costs of the criminal justice system.

**Learning Objectives** identify the purpose of the materials that are presented and serve to orient the reader to the chapter.

**Perspective** boxes provide first-hand accounts that capture the dynamics of the criminal justice system.

**PERSPECTIVE**

**A Physician's Perspective on the Burdens and Ethics of Assisted Death**

If you ask the public, what you're really asking them is, "Do you want to have a right to access these interventions if you come to the end of your life and you're suffering?" That's a very different question than if you ask a medical professional, "Do you want to kill your patients? Or do you want to assist in the death of your patients?" One is a right, the other is an obligation. Those are intricately related. If someone in society has a right to something, it means someone else has an obligation to provide that. So basically the Supreme Court that has told Canadian physicians, after

**AT ISSUE 7.1**

**SHOULD THERE BE INDEPENDENT OVERSIGHT OF THE JUDICIARY?**

Earlier in this book, it has been noted that the police are the only criminal justice agency that is subjected to outside civilian oversight. The legal profession, including the judiciary, is self-regulated; that is, the only structures of accountability exist within the legal profession. Concerns have been raised about the ability of provincial and territorial law societies to both represent and regulate the profession and the effectiveness of the Canadian Judicial Council as oversight bodies.<sup>8</sup> As well, it is noted that most complaints that are made to the Canadian Judicial Council are not made public but rather are kept private between the complainant

not subject to the direction or control of the executive branch of government."<sup>9</sup>

A review of the record indicates that few complaints ultimately result in the removal of a judge from the bench. As well, since the disciplinary procedure was established in 1971, there have been very few public inquiries by the council into the behaviour of a federal judge. Most complaints (which average less than 200 per year) are handled by the chairperson of the council and are not publicized but kept between the complainant, the judge, and the C.J.C. It might be argued that this practice limits the transparency of the council's work

**At Issue** boxes challenge students to consider the various perspectives of a topic and answer questions that will assist them in formulating their thoughts on the topic.

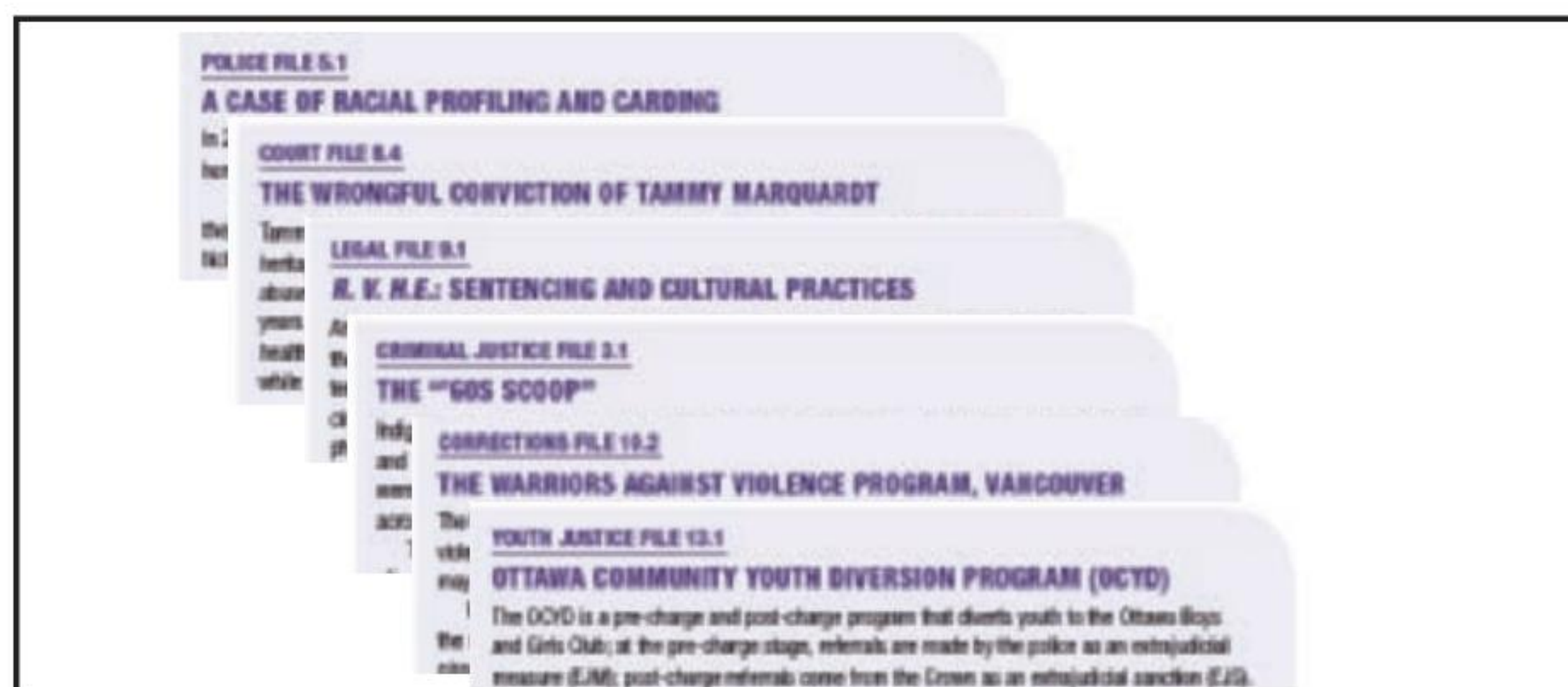
**General boxes** provide stories generally in the news or engaging for students, and delve into a topic more deeply.

**BOX 1.1**

**THE FUNCTIONS OF THE CRIMINAL LAW**

In Canadian society, the criminal law provides the following functions:

- acts as a mechanism of social control
- maintains order
- defines the parameters of acceptable behaviour
- reduces the risk of personal retaliation (vigilantism, or people taking the law into their own hands)



**File boxes** highlight important events, research studies, and cases. Police File boxes appear in Part II; Court File boxes are included in Part III; Legal File boxes are included in Parts II and III; Criminal Justice Files appear in Part I; Corrections Files in Part IV; and Youth Justice Files in Part IV.

**Research File** boxes appear throughout the book, and summarize the research literature on criminal justice policies and programs.

#### RESEARCH FILE 13.1

##### A PROFILE OF INDIGENOUS YOUNG WOMEN IN CUSTODY

A study ( $N = 500$ ) of youth in custody in British Columbia found that, among the Indigenous young women

- 97 percent had left home early to live on their own, on the streets, or in foster care;
- 82 percent had been in foster care at some point;
- 80 percent reported childhood trauma, including physical abuse (80 percent), sexual abuse (65 percent), and mental health issues in the family (30 percent);
- 80 percent had been introduced to hard drug use at an early age; and
- Compared to non-Indigenous young women in custody, had spent more time in their lives in custody.

### SUMMARY

This chapter was designed to provide background context to the study of the Canadian criminal justice system. Inequality, racism, prejudice, and discrimination were introduced as features of Canadian society. These are often manifested in racial profiling and the racialization of groups and individuals. Women, Indigenous persons, Muslims, and sexual minorities have lived experiences that affect their quality of life and may place them at risk of being victimized or of coming into conflict with the law.

**Summaries** encourage students to reflect on what they have just learned.

**Critical Thinking Exercises and Class/Group Discussion Exercises** at the end of the chapter further engage the student in considering and discussing critical issues in the justice system. Many of the exercises focus on actual cases and events.

### CRITICAL THINKING EXERCISE

#### Critical Thinking Exercise 3.1

##### Indigenous Experiences

The study of the involvement of Indigenous persons in the criminal justice system requires an understanding of their historical and contemporary circumstances. Watch the film *We Will Be Free* at

### CLASS/GROUP DISCUSSION EXERCISE

#### Class/Group Discussion 3.1

##### The “Colonized Mind” of Indigenous Persons

Jana-Rae Yerxa is Anishinaabe from Little Eagle and Couchiching First Nation and belongs to the Sturgeon clan. She uses the concept of the “colonized mind” of Indigenous persons to explain the experiences of Indigenous peoples and their perspectives and perceptions.

### MEDIA LINKS

“Warriors Against Violence,” *CBC News*, July 6, 2015, <http://www.cbc.ca/news/indigenous/warriors-against-violence-tries-to-heal-aboriginal-men-1.3136168>

“Who’s Watching? 4,500 Outstanding Warrants for Alleged Probation and Conditional Sentence Violations in Ontario,” *Global News*, May 10, 2017. Follow the links in this article for a several part media series on probation in Ontario, <http://globalnews.ca/news/3430313/4500-outstanding-warrants-for-alleged-probation-and-conditional-sentence-violations-in-ontario>.

“Who’s Watching? Ontario’s Probation System ‘a Joke,’ Say Offenders” (Part 1), *Global*

**Media Links** have been carefully selected to provide students with access to persons who are involved in some way with the criminal justice system, as well as to provide a more in-depth examination of issues that were raised in the chapter.

# Acknowledgements

I would like to acknowledge the many people throughout the criminal justice system who have contributed to the ideas and information that have been incorporated into this book. My love and thanks to my life partner, Sandra Snow, for her unwavering support and encouragement.

I would also like to thank the reviewers of the previous edition of the text for their invaluable comments, criticisms, and suggestions:

Stephen Schneider, Saint Mary's University

Eva Wilmot, Camosun College

Nathan Innocente, University of Toronto at Mississauga

Cat Baron, Algonquin College

Vicki Ryckman, Loyalist College

As always, it has been a pleasure to work with the professionals at Nelson: Leanna MacLean, Suzanne Simpson Millar, and Imoinda Romain.

# A Note to **Instructors**

## SEMI-ANNUAL UPDATES

The dynamic nature of the Canadian criminal justice system presents challenges in ensuring that the materials in the text are accurate and up-to-date. Throughout the system, there are high-profile issues being debated, court decisions that are impacting every facet of the system, and a veritable explosion of criminal justice research. With editions of the text on a four-year publication cycle, the materials can become dated, often by the time the print dries on a new edition.

To address this, updates for each of the chapters will be provided to course instructors semi-annually—in the spring and fall of each calendar year. The updates will include significant legal cases and impactful court rulings, new research findings, and major changes in legislation, policy, and operations of the various components of the justice system. New Critical Thinking Exercises and Class/Group Discussion Exercises will also be provided to accompany the new materials.

These updates will be designed to provide instructors and students with current materials that will enhance the study of the Canadian criminal justice system. The first update will be available in spring 2019.

As always, I encourage feedback on the book generally and on any specific materials in it, errors of fact, and omissions. Feel free to contact me at [griffith@sfu.ca](mailto:griffith@sfu.ca) with any comments, questions, or suggestions for future editions of the book.

Thanks.

Curt Taylor Griffiths, Ph.D.  
Vancouver, British Columbia  
April 2018



© Laurie Justus Pace. Graphics One Design, 2014

PART I

# CANADIAN CRIMINAL JUSTICE: SETTING THE FRAMEWORK





**Chapter 1:** The Foundations of Criminal Justice

**Chapter 2:** Understanding the Criminal Justice System

**Chapter 3:** Considerations in the Study of Criminal Justice

- 
- A 10-year-old girl disappeared while walking home from a friend's house in Toronto in 2013. Her body parts were later found in bags floating in Lake Ontario. Police canvassed about 300 homes in her neighbourhood and asked men to provide DNA. One man who refused was arrested and subsequently convicted. He later pleaded guilty to first-degree murder. **At Issue:** To what extent, if any, should the police be allowed to conduct a “DNA sweep” (or “blooding”) in order to attempt to solve a crime? (see Chapter 5).
  - In 2012, N.S., a Muslim woman living in Ontario, wanted to wear her niqab (full face veil revealing only the eyes) while testifying in a preliminary hearing involving charges against her uncle and cousin for sexual assault. **At issue:** Should a Muslim woman who wears a niqab be permitted by the judge to testify in court against her alleged perpetrator? (see Chapter 8).
  - In April 2013, a 16-year-old boy shot his 15-year-old cousin with a hunting rifle at a playground, paralyzing him. Both boys were African Nova Scotians. The boy was subsequently found guilty of attempted murder. **At Issue:** Should cultural assessments play a role in the sentencing of young offenders? (see Chapter 13).

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

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



© Laurie Justus Pace, Graphics One Design, 2014

## CHAPTER 1

# THE FOUNDATIONS OF CRIMINAL JUSTICE

### LEARNING OBJECTIVES

After reading this chapter, you should be able to

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

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

On a daily basis, there is a continual stream of events, persons, and issues related to criminal justice, as well as ongoing debates as to whether the justice system is fair; provides “justice” for victims, offenders, and communities; and is capable of addressing its challenges.

The major components of the criminal justice system are the police, the courts, and corrections. However, the victims of crime, offenders, and the community are also important considerations and will be discussed throughout the following chapters. All of these groups have a stake in the criminal justice process and may be impacted by the events and decisions that occur during it. Certain groups of offenders, including Indigenous and racialized persons and others, may face particular challenges. This text is designed to stimulate a research-informed discussion that also includes the “voices” of persons in conflict with the law, crime victims, and justice system personnel.

## THINKING CRITICALLY ABOUT THE CRIMINAL JUSTICE SYSTEM

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

### WHAT IS CRITICAL THINKING?

It has been said, “Critical thinkers distinguish between fact and opinion; ask questions; make detailed observations; uncover assumptions and define their terms; and make assertions based on sound logic and sound evidence.” Call it “healthy skepticism.” A critical thinker considers multiple points of view and is fair and open-minded to all ideas. Conclusions are reached based on a thoughtful consideration of the issues. **Critical thinking** has also been called *thorough thinking*.<sup>1</sup>

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

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

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

#### Critical thinking (thorough thinking)

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

## **PERSPECTIVE**

### **A Physician's Perspective on the Burdens and Ethics of Assisted Death**

If you ask the public, what you're really asking them is, "Do you want to have a right to access these interventions if you come to the end of your life and you're suffering?" That's a very different question than if you ask a medical professional, "Do you want to kill your patients? Or do you want to assist in the death of your patients?" One is a right, the other is an obligation. Those are intricately related. If someone in society has a right to something, it means someone else has an obligation to provide that. So basically the Supreme Court that has told Canadian physicians, after centuries of this being illegal and completely in opposition to all teachings in medical ethics, "We are now going to make this legally available, and you as a profession have an obligation to step forward and provide it."

I think, to the profession's credit, we have responded to that in a very constructive way. We've taken part in all of the conversations, we've helped to frame the legislation and the regulations, we have not opposed this. But we have also tried to make clear how very, very difficult this is for most doctors.

Imagine you go into the profession of medicine and you're being told your obligation is to preserve life, to improve quality of life, to cure whenever possible, to care always. Then all of a sudden, overnight a court decision tells you, "Now everything's changed. Everything you believe in medicine is a little bit different today." That's very, very challenging for the average doctor to just do a 180 in terms of their belief system and their approach to care at the end of life.

**Source:** From S. Proudfoot. 2016, June 8. "A CMA Doctor on the Burdens and Ethics of Assisted Death," *Maclean's*. <http://www.macleans.ca/society/health/a-cma-doctor-on-assisted-death-and-navigating-the-ethical-grey-area>. Used with permission of Rogers Media Inc. All rights reserved.

The physician's comments on assisted death in the nearby Perspective box highlight that there are often issues of ethics that arise in the law.

## **WHAT IS A CRIME AND WHY?**

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

### **WHAT IS A CRIME?**

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

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

#### **Crime**

An act or omission that is prohibited by criminal law.

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

## THE SOCIAL CONSTRUCTION OF CRIME

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

It is also important to distinguish between behaviours that may be considered *deviant* by a large portion of society, and crimes. While crime is behaviour that breaks the law, deviance is behaviour that is contrary to the norms and values of the larger society. Dressing Goth is not against the law, but may be viewed as deviant by the average passer-by as may be cross-dressing. Deviance includes criminal behavior and

### AT ISSUE 1.1

#### MEDICAL ASSISTANCE IN DYING:<sup>a</sup> THE TENSION BETWEEN THE LAW, RELIGION, AND PROFESSIONAL PRACTICE

In 2015, in the case of *Carter v. Canada (Attorney General)* (2015 SCC 5), the SCC ruled that section 14 and paragraph 241(b) of the *Criminal Code* were unconstitutional because they prohibited physicians from assisting in the consensual death of another person. In June 2016, Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, received Royal Assent and made assisted dying legal for terminally ill patients. The provinces and territories were responsible for developing the appropriate procedures for medically assisted death.

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

Opponents, which include physicians, have argued that assisted dying violates their oath to care for patients.<sup>c</sup> The Christian Medical and Dental Society of Canada initiated court proceedings against the College of Physicians and Surgeons of Ontario, arguing that the policy which states that physicians who are opposed to medically assisted death on moral, religious, or other grounds must refer the patient to another physician who will carry out the practice, makes them ethically responsible for the patient's death. This puts physicians who opposed medically assisted death in the position of being between their legal responsibilities and their rights under the Charter. Physicians who do not refer could be disciplined by the College of Physicians and Surgeons.

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

Given the various perspectives on the practice, the debate over assisted death is likely to continue.

#### QUESTIONS

1. How does one balance the legal and ethical issues surrounding assisted dying?
2. In your view, should this be a legal issue?
3. Should all physicians be required to abide by the law?
4. What position would you take regarding the refusal of some physicians to assist a patient in dying or refusing to refer a patient to another physician who would assist the patient to die?
5. What does this issue illustrate about the interplay between the law, religious views, and professional ethics?

<sup>a</sup> Medical assistance in dying in Canada includes both assisted suicide and voluntary euthanasia. Assisted suicide is the act of intentionally killing oneself with the assistance of another who provides the knowledge, means, or both (Health Law Institute, Dalhousie University, n.d.). In cases of assisted suicide, a physician provides drugs to a terminally ill patient who then takes the drug to end his or her life. In cases of euthanasia, a physician administers a lethal drug to relieve suffering, which ends the person's life.

<sup>b</sup> A. Csanady. 2016, June 10. "Strong Majority of Canadians Want Assisted Suicide Bill to Allow for 'Advance Consent': Poll," *National Post*. <http://nationalpost.com/news/politics/strong-majority-of-canadians-want-assisted-suicide-bill-to-allow-for-advanced-consent-poll/wcm/edc245f6-68ce-40f0-9ca7-a96da827bfff>.

<sup>c</sup> A. Jerome. 2017, April 7. "Physicians Opposed to Assisted Dying Say Their Charter Rights Are Being Violated," *The Lawyer's Daily*. <https://www.thelawyersdaily.ca/articles/2856/physicians-opposed-to-assisted-dying-say-their-charter-rights-are-being-violated>.

**Additional sources:** Department of Justice Canada. 2016. "Medically Assisted Dying: Supreme Court of Canada Ruling." <http://www.justice.gc.ca/eng/cj-jp/ad-am/scc-csc.html>; R. Gallagher. 2016. "Physician-Assisted Suicide and Euthanasia: The Issues," *Canadian Virtual Hospice*. [http://www.virtualhospice.ca/en\\_US/Main+Site+Navigation/Home/Topics/Topics/Decisions/Physician\\_Assisted+Suicide+and+Euthanasia\\_+The+Issues.aspx](http://www.virtualhospice.ca/en_US/Main+Site+Navigation/Home/Topics/Topics/Decisions/Physician_Assisted+Suicide+and+Euthanasia_+The+Issues.aspx); S. Fine. 2016, June 22. "Christian Doctors Challenge Ontario's Assisted-Death Referral Requirement," *Globe and Mail*. <https://www.theglobeandmail.com/news/national/christian-doctors-challenge-ontarios-assisted-death-referral-policy/article30552327>; Health Law Institute, Dalhousie University. n.d. "Assisted Suicide." [http://eol.law.dal.ca/?page\\_id=236](http://eol.law.dal.ca/?page_id=236).

a wide range of other behaviours that are not against the law, but may be frowned upon by the larger society. What is viewed as deviant changes over time: until recent years, tattoos and piercings would have been considered as deviant, but today are not generally viewed as unusual.

The criminal law is not static, however, and, almost overnight, legislative enactments or judicial decisions can render behaviours that were previously illegal merely deviant. In 2013, for example, the Supreme Court of Canada (SCC) struck down Canada's prostitution laws as unconstitutional (*Canada (Attorney General) v. Bedford*, 2013 SCC 72).

A key concept that assists in understanding what is, or is not, a crime is the **social construction of crime**. This is the process by which the “same behaviour may be considered criminal in one society and an act of honour in another society or in the same society at a different time.”<sup>2</sup> Whether a behaviour is defined as a “crime” is not a consequence of the behaviour itself, but is the result of the *social response* to the behaviour or to the persons or groups who are engaged in it.<sup>3</sup>

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

Researchers have conducted historical studies of criminal law reform in an attempt to understand how the social, economic, and political environment may influence legislation. For example, laws against opium use first passed in the early 1900s have been linked to anti-Asian prejudice among Euro-Canadians of the day. Similarly, a review of how marijuana came to be illegal in Canada reveals the prominent role of one Emily Murphy, an Alberta magistrate who was also an anti-drug crusader. Writing under the pen name of Janey Canuck, she wrote a series of articles that were later made into a book titled *The Black Candle*. In the book, Murphy “raged against ‘Negro’ drug dealers and Chinese opium peddlers ‘of fishy blood’ out to control and debase the white race.”<sup>5</sup>

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

A historical example is the massive violation of the prohibition laws against drinking alcoholic beverages by Canadians during and after World War I. An erosion in public support for anti-drinking laws, however, ultimately resulted in the repeal of prohibition. Similarly, the widespread recreational and medicinal use of marijuana by many Canadians, accompanied by changing attitudes toward the drug and the high costs of enforcement, culminated in its legalization by the federal Liberal government in 2018.

A key role in criminalizing certain activities is often played by **moral entrepreneurs**—individuals, groups, or organizations who seek action against certain groups of people or certain behaviours and bring pressure on legislators to enact criminal statutes. Historically, and recently, moral entrepreneurs have tended to be most active in the area of victimless crimes, such as drug and alcohol use and prostitution. Examples of moral entrepreneurs include Mothers Against Drunk Driving (M.A.D.D.) and pro-choice and pro-life groups.

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

### Social construction of crime

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

### Moral entrepreneurs

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