

Criminal law

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Criminal law is that branch or division of law which deals with crimes and their punishment. A crime may be described as an act against society, as distinct from a dispute between individuals. It has been defined as any act done in violation of those duties which an individual owes to the community and for the breach of which the law has provided that the offender shall be punished.

Canada's criminal law has as its foundation the criminal law of England built up through the ages and consisting first of customs and usages and later expanded by principles enunciated by generations of judges. There is no statutory declaration of the introduction of English criminal law into those parts of Canada that are now New Brunswick, Nova Scotia and Prince Edward Island. Its introduction there depends upon a principle of the common law itself by which English law was declared to be in force in uninhabited territory discovered and planted by British subjects, except insofar as local conditions made it inapplicable. The same may be said of Newfoundland although the colony dealt with the subject in a statute of 1837. In Quebec, its reception depends upon the Royal Proclamation of 1763 and the Quebec Act of 1774. In each of the other provinces and in Yukon and Northwest Territories, the matter has been dealt with by statute.

The criminal law systems of the provinces as they exist today are based on the British North America Act of 1867. Section 91 of the act provides that "exclusive legislative authority of the Parliament of Canada extends to . . . the criminal law, except the constitution of courts of criminal jurisdiction but including the procedure in criminal matters." By Section 92, the legislature of the province exclusively may make laws in relation to "the administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and criminal jurisdiction and including procedure in civil matters in those courts." The Parliament of Canada may, however (Section 101), establish any additional courts for the better administration of the laws of Canada. The Statute of Westminster, 1931 effected important changes, particularly by abrogating in part the Colonial Laws Validity Act, 1865 (British) and confirming the right of a dominion to make laws having extraterritorial operation.

At the time of Confederation each of the colonies had its own body of statutes relating to criminal law. In 1869, in an attempt to assimilate them into a uniform system applicable throughout Canada, Parliament passed a series of acts, some dealing with specific offences and others with procedure. Most notable of the latter was the Criminal Procedure Act, but other acts provided for the speedy trial or summary trial of indictable offences, the powers and jurisdiction of justices of the peace in summary conviction matters and otherwise, and the procedure in respect of juvenile offenders.

Codification of the criminal law through a criminal code bill founded on the English draft code of 1878, Stephen's *Digest of criminal law*, Burbridge's *Digest of the Canadian criminal law*, and the relevant Canadian statutes was brought about by the justice minister, Sir John Thompson, in 1892. This bill became the Criminal Code of Canada and came into force on July 1, 1893. However, the criminal code was not exhaustive of the criminal law. It was still necessary to refer to English law in certain matters of procedure and it was still possible to prosecute for offences at common law. Moreover, Parliament has declared offences under certain other acts such as the Narcotic Control Act, to be criminal offences.

An examination and study of the criminal code was authorized by order-in-council in February 1949. The commission revising the code presented its report with a draft bill in February 1952. After coming before successive sessions of Parliament it was finally enacted in June 1954 and the new criminal code (RSC 1970, c.C-34) came into effect in April 1955. Since then a number of important amendments have been made. These include inter alia, a statutory definition of obscenity and authorization of the seizure and condemnation of offending material without a charge necessarily being laid against any person; crimes of genocide and public incitement of hatred; offences committed in aircraft in flight over the high seas; procedures relating to the invasion of privacy and interception of communications; the forbidding of publication in a newspaper or