

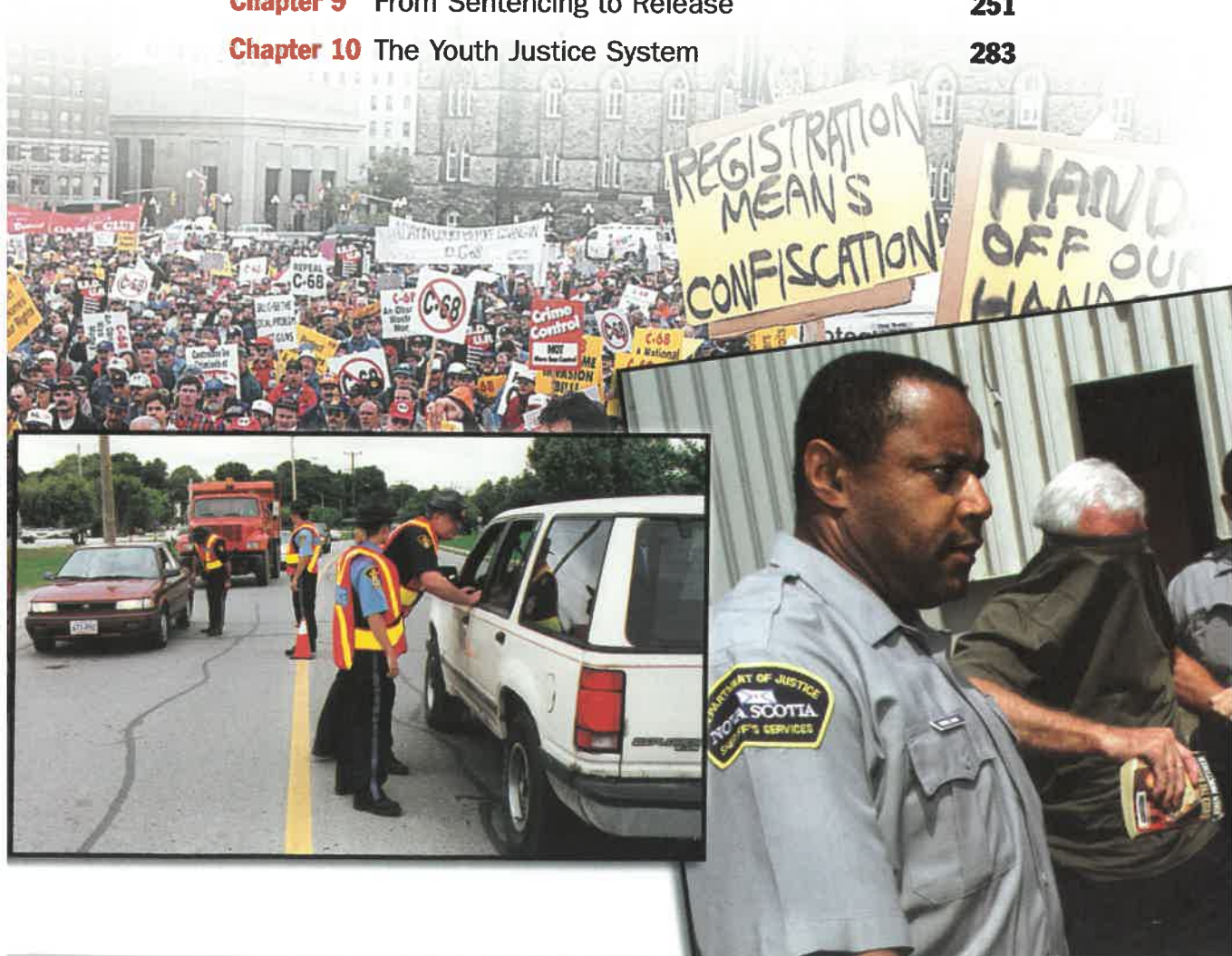
Ignorantia legis neminem excusat
Ignorance of the law, which everyone is bound to know, excuses no one.

Legal Maxim

Unit 2

Criminal Law

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Chapter 4

Criminal Law and Criminal Offences

Focus Questions

- What is a crime?
- What is the difference between summary and indictable offences?
- What elements or conditions must exist for an action to be considered a crime?
- What criminal courts exist to interpret and apply the law?
- How are crimes handled in the courts?

Chapter at a Glance

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Figure 4-1

This Vancouver house was the scene of a home invasion. A home invasion involves several people who determine that the residents are home and devise a plan to confront, attack, and subdue them. Robbery is the goal. What kind of evidence might officers be looking for at this crime scene to determine if a home invasion occurred?

4.1 Introduction

The law exists to protect society and individuals and to keep order. **Criminal law** deals with offences committed against society. **Civil law** deals with offences committed against individuals.

The distinction between criminal law and civil law is obvious in the following example. Suppose Ron decides to break into Kathy's house to steal her electronic equipment. He breaks the door lock with a crowbar and enters the house when no one is home. He leaves with a laptop computer, a stereo-CD player, a DVD player, and a digital camera. The *Criminal Code* describes Ron's offence as "**break and enter**" and sets a penalty for committing the offence (see The Law, below).

For breaking and entering, Ron would be charged under criminal law because he has done something that society considers unacceptable. People have the right to live safely in their own homes and to keep their own possessions. If Ron is found guilty, he may have to pay a fine, do community work, and/or be imprisoned. All these penalties will result in a cost to him—either paying money and/or being deprived of his time and freedom. However, none of these penalties compensates Kathy for her personal property losses. For this, she must sue Ron for damages under civil law. This case would be heard at a different time and in civil court. (For information on the civil courts, see Chapter 11.)



Figure 4-2

Ron escapes with Kathy's stereo-CD player. Breaking and entering is a criminal offence, a crime against society.

The Need for Criminal Law

Criminal law helps to keep order in society. Penalties for crimes help to deter (prevent) people from committing crimes. Criminal law emphasizes prevention and penalties. It does not place much emphasis on compensating victims for the losses suffered because of a crime. It is difficult, if not impossible, to compensate victims for certain crimes. The victim of a murder can never be brought back. The victim of a penniless thief will not be repaid.

The Law

The Criminal Code

Excerpts from the *Criminal Code*

348.

- (1) Every one who
 - (a) breaks and enters a place with intent to commit an indictable offence therein ...is guilty
- (d) if the offence is committed in relation to a dwelling-house, of an indictable offence and liable to imprisonment for life, and
- (e) if the offence is committed in relation to a place other than a dwelling-house, of

an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.

For Discussion

1. Why do you think that the punishment for breaking into a dwelling-house (private residence) is more severe than for breaking into a business or store?

Most people believe that criminal law should protect people and property. Some want harsh penalties to discourage potential offenders or to punish people for wrongdoing. Others want the criminal justice system to rehabilitate, or help, those who have already harmed society. Some think that criminal law should have all these functions.

4.2 The Nature of Criminal Law



Figure 4-3
Former federal Health Minister Allan Rock is shown with the government's legal marijuana crop. Canada's new medicinal marijuana policy came into effect in August 2001. It allows people who require marijuana for medical reasons to be exempt from narcotics laws. They can grow marijuana, or have someone grow it for them, and use it without fear of prosecution.

Parliament decides what is a crime and regularly passes laws to change the *Criminal Code*. At any given time, the *Criminal Code* reflects the values of society by declaring certain actions to be criminal. Reform of the *Criminal Code* usually reflects a shift in these values and may occur because of public pressure. For example, in Canada, there has been some public pressure to decriminalize the use of marijuana, which means that smoking marijuana would no longer be a crime. However, not everyone agrees with this proposed change, and the issue is the subject of heated debate.

Criminal Actions

Because different people have different values and beliefs, they may disagree on which actions are criminal. Law makers, lobbyists, and members of the general public often

debate such topics as euthanasia (mercy killing), gun control, abortion, and pornography. In a healthy, democratic society, such debates can help to determine what changes are needed in the law. In general, Parliament will reexamine laws if the public is overwhelmingly in favour of reform, if an issue does not “go away,” or if an interest group that opposes an existing law has gained enough support to force a parliamentary debate.

The Law Commission of Canada has suggested that certain conditions must exist for an act to be subject to criminal penalties. These are as follows:

- The action must harm other people.
- The action must violate the basic values of society.
- Using the law to deal with the action must not violate the basic values of society.
- Criminal law can make a significant contribution to resolving the problem.

Any reforms to the *Criminal Code* must take these conditions into consideration.

Svend Robinson is the NDP representative of British Columbia's Burnaby–Douglas constituency. First elected to the House of Commons in 1979 at 26, Robinson began his political career as the youngest member of the NDP caucus. He has been reelected six times.

Robinson is no stranger to controversy. He has engaged in civil disobedience and has taken legal risks to advance the causes he believes in. He supported Sue Rodriguez, a British Columbia woman suffering from Lou Gehrig's disease, in her attempt to convince the Supreme Court of Canada to legalize doctor-assisted suicide. Though Rodriguez's efforts to change the *Criminal Code* failed, she did die in 1994 with the help of an unidentified physician. Robinson was at her bedside and witnessed her death.

Following her death, a special Senate Committee on Euthanasia and Assisted Suicide was appointed on February 23, 1994. It undertook "to examine and report on the legal, social and ethical issues relating to euthanasia and assisted suicide." In 1995, the Senate committee voted 4 to 3 against legalization. It was split on whether the current laws should be rewritten.

In November 1997, Robinson tried to change the law with a private bill. His move, like most bills not sponsored by government, failed. Recent polls indicate there is growing support among Canadians for people being able to take control of their own dying process, but there is no clear consensus about what kind of rules are needed. Despite differences of opinion within its membership, the Canadian

Medical Association continues to state that members should not participate in euthanasia and assisted suicide.

See Issue on page 134 for more on euthanasia.

For Discussion

1. Identify information from this profile that suggests Canadian attitudes about euthanasia and assisted suicide are changing.
2. What is the position of the Canadian Medical Association?
3. Should courts decide on issues of euthanasia or assisted suicide or should legislators decide? Explain.



Figure 4-4
Svend Robinson

Review Your Understanding (Pages 103 to 105)

1. Explain the main purpose of criminal law.
2. Describe three functions of criminal law and provide brief examples to support your understanding.
3. When does Parliament decide to make certain actions criminal?
4. Why is it important to have a free and open debate about possible changes in the law?
5. According to the Law Commission of Canada, what conditions must exist for an action to be considered a crime? Express your opinion on whether you think each condition set out by the Law Commission is valid. Provide examples to support your opinion.

activity

Visit www.law.nelson.com and follow the links to learn about law reform and the work of the Law Commission of Canada.

4.3 The Power to Make Criminal Law

In 1867, when Canada became a country, the provinces gave jurisdiction (authority) over criminal law to the federal Parliament. This meant that Parliament had the authority to decide which actions were crimes and to set punishments for crimes (section 91 of the *British North America Act*). Today, this means that if you were to commit a criminal offence in any of the provinces and territories, you would receive the same treatment whether you committed the offence in British Columbia or in Nova Scotia.

Quasi-Criminal Law

Following Confederation, the provinces still had the right to pass some laws. Technically, laws passed by the provinces, territories, or municipalities are not considered part of criminal law. They are referred to as quasi-criminal law because they resemble criminal law but do not deal with actual crimes. Traffic offences that fall under the *Highway Traffic Act* of each province and bylaws passed by municipalities are examples of quasi-criminal law. Breaking these laws usually results in a fine.

The Criminal Code

The *Criminal Code* is the main source of criminal law in Canada. It describes offences that are considered crimes, as well as punishments for crimes. Other criminal offences are listed in statutes passed by Parliament, such as the *Controlled Drugs and Substances Act* (formerly the *Narcotic Control Act*). You will read about these statutes in later chapters.

Parliament is always reforming the *Criminal Code* to meet the needs of Canadian society and to reflect its values. The judiciary (the judges and courts) interpret the criminal laws and apply them to individual cases. Judges have the power to determine if a law trespasses upon a citizen's rights as outlined in the *Canadian Charter of Rights and Freedoms*. If this occurs, the law is ruled to be unconstitutional and no longer in effect. When judges make decisions on important cases, these decisions may become precedents and may be followed by other judges making decisions in similar cases. In this manner, the judiciary helps to influence criminal law in Canada. These precedents are often referred to in the *Criminal Code*.

Review Your Understanding (Page 106)

1. Why was the federal government given jurisdiction over criminal law?
2. Compare quasi-criminal law to criminal law and provide an example of each.
3. Identify the purpose of the *Criminal Code* of Canada.
4. When might a law be ruled unconstitutional?
5. How does the judiciary influence our criminal law?

Did You Know?

The *Criminal Code* does not allow accused persons to defend themselves on the grounds that they did not know they were committing an offence. Section 19 of the Code states that "ignorance of the law by a person who commits an offence is not an excuse for committing that offence."

Did You Know?

In 1993, the *Criminal Code* was changed to make harassment a crime in the wake of some well-publicized cases of stalking and harassment. Criminal harassment includes repeatedly following someone, repeatedly watching someone's house or place of work, and making threats of violence.