AN INTRODUCTION TO THE PRINCIPLES AND PURPOSES OF CANADIAN CRIMINAL LAW

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Introductory Overview

Criminal offences in Canada are created by the federal government. While most crimes are found in the *Criminal Code of Canada*,[1] the law continues to be influenced by the common law and by the constitutional document known as the *Canadian Charter of Rights and Freedoms* (the "*Charter*").[2]

In Canada, crime is considered to be a legal wrong that is punished because it is an offence against the state. This means that criminal law is generally limited to offences that are serious enough to affect the interests of the community. Moreover, the notion that crimes are committed against the state means that Canadian criminal law is the product of a constant attempt to balance the state interest in the prosecution of offences, against the individual rights of its citizens. The state interest in prosecuting offences (1) in order to reduce injurious conduct, (2) to penalize past transgressions, and (3) to restore the social harmony of the offender, the community and any victims, is therefore limited by individual rights concerns, protected both by established criminal law principles and through the *Charter*.

First, Canadian law has principles designed to limit what can be made criminal. These principles encourage Parliament to exercise restraint in defining crimes, and to do so only as a last resort when other means of social control have failed. In some cases, the *Charter* can even invalidate crimes that do not respect fundamental freedoms, such as the freedom of expression or the freedom of association.

Second, there are three key principles that limit how criminal conduct is defined. The first is the "principle of legality" which can be used to limit or invalidate unclear or overbroad offences. The second is the "principle of fault," which both encourages and sometimes requires Parliament and the courts to avoid defining and applying the criminal law in a way that will catch those who are not sufficiently responsible for their actions, or who did not have a blameworthy state of mind when committing the prohibited act. The third is the "principle of an act," which prevents prosecuting

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1 *Criminal Code of Canada*, R.S.C. 1985, c. C-46.

2 *Canadian Charter of Rights and Freedoms,* Being Part I of the *Constitution Act, 1982*, enacted by the *Canada Act 1982* (U.K.), c.11.

individuals for their thoughts alone, precludes convicting individuals for the acts of others, discourages making the failure to act criminal, and for many offences requires proof before conviction that the actions of the accused caused the prohibited consequences.

Third, principles impose significant limits on what sentences can be imposed to achieve the goals of criminal prosecution. The fundamental principle of sentencing limits sentences imposed to those that are proportionate to the harm caused and the degree of responsibility of offenders, given their capacity, the blameworthiness of their state of mind and the circumstances in which they acted. Moreover, the principle of restraint ensures that sentences that deprive individuals of liberty be used only as a last resort, and that all sentences other than jail be considered before incarceration is resorted to. The following discussion elaborates on this overview.

The Sources of Criminal Law in the Canadian Federal System

Politically, Canada has a federal system, consisting of a national government (the federal government) and thirteen regional governments, one for each of the ten provinces and three territories. Unlike in the United States and Australia, the power to make criminal law in Canada falls to the federal government.[3] While the provinces can pass "regulatory" offences within their own sphere of jurisdiction, including offences that can carry minor jail penalties, only the Government of Canada can create "true crimes." When we in Canada speak of "criminal law," we therefore tend to refer only to the true crimes[4] that fall within federal jurisdiction.

In 1892, the Government of Canada adopted a "criminal code" which purported to codify or assemble the criminal law. It was not a comprehensive code. The pre-existing "common law" continued to operate unless altered by legislation. Gradually, it came to be accepted that it was undesirable for judges to create new criminal offences using their common law power, both because this left judges with too much discretion and made the criminal law uncertain. Moreover, fairness requires that if the law is going to be used to punish anyone, the law should be clear and knowable in advance.[5] As a result, all criminal offences in Canada, with the anomalous historical exception of contempt of court, are codified.[6] The current

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[3] *Constitution Act 1867,* U.K. 30 & 31 Victoria, c.3, s.91(27).

[4] See *R v. Wholesale Travel Group Inc.* [1991] 3 S.C.R. 154, for a description of the difference between true crimes and regulatory offences.

[5] *Frey v. Fedoruk* [1950] 1 S.C.R. 517.

[6] *Criminal Code of Canada*, *supra note* 1, section .9.

Criminal Code of Canada is still not comprehensive, however. The Government of Canada has created other criminal offences in other statutes, including, for example, the *Controlled Drugs and Substances Act*,[7] and the *Firearms Act*.[8] Still, the *Criminal Code of Canada* is by far the main source of criminal offences. It creates hundreds of offences, which are divided in the *Code* into "offences against the public order," "firearms and other weapons," "offences against the administration of law and justice," "sexual offences," "invasion of privacy." "disorderly houses, gaming and betting," "offences against the person," "offences against property," "wilful and forbidden acts in respect of certain property," "offences relating to currency," "proceeds of crime" and "attempts, conspiracies and accessories."

It is important to understand that even though judges cannot create new crimes these codified offences are interpreted using common law canons of construction. The process of common law interpretation can change the nature of criminal offences dramatically. For example, in *R. v. Jobidon*,[9] using common law interpretation, the Supreme Court of Canada held that no-one can consent to being assaulted if the assailant intends to cause them serious injury. In effect, all "consensual" but serious fights became assaults, even though there is no language in the *Criminal Code of Canada* suggesting this.

Moreover, courts are still free to use the common law to recognize new criminal defences.[10] The most recent example was the development of the defence of "officially induced error" that enables accused persons to avoid conviction if they act in reasonable reliance on erroneous official advice that their proposed conduct would be legal.[11]

While statutes prevail over inconsistent common law rules in the Canadian legal system, Canada has the *Canadian Charter of Rights and Freedoms* which, as a constitutional document, is part of the supreme law of Canada. Any statutory or common law rules that are inconsistent with the *Charter* are of no force or effect.[12] The *Charter* has had significant influence on the scope and application of the criminal law in Canada.

It is within this system that Canadian criminal law developed and operates.

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7 S.C. 1996, c.19.

8 S.C. 1995, c.39.

9 [1991] 2 S.C.R. 714.

10 *Criminal Code of Canada*, *supra note* 1, section 8(3).

11 *City of Levis v. Tetreault; City of Levis v.2629-4470 Quebec Inc.* [2006] S.C.J. No. 12.

12 *Canadian Charter of Rights and Freedoms, supra note* 2, s.52.

The Essential Character of Canadian Crimes

While it is universally recognized that crimes are legal wrongs that may be punished,[13] in Canada the concept of crime has another central feature; the "'essence of criminal law [in Canada] is its public nature."[14] More specifically, crime is considered to be a wrong "against the entire community."[15] In Canadian law, crime can therefore be defined as a legal wrong that is punished because it is committed against the state. While this can include offences against the person or property of individuals, those actions are criminal because this kind of conduct harms the peace and stability of the community at large.

This conception of crime has a number of important consequences. First, it means that crimes are almost invariably prosecuted by Crown prosecutors acting in the public interest in the name of the Canadian head of state, Her Majesty the Queen. Crimes are not prosecuted by or on behalf of crime victims, and Crown prosecutors are not the victims' lawyers. They are to be guided in their decisions by the broader public interest.[16]

Second, although things are changing in important ways in the face of a "victim's rights movement,"[17] the notion that crimes are committed against the state means that "the [Canadian] criminal justice system was never designed or intended to heal the suffering of victims of crime."[18] The criminal trial has traditionally been about whether the accused is guilty and warrants punishment, and, with the exception of recently adopted minor powers to award restitution to victims during sentencing,[19] the criminal trial does not lead to financial compensation for victims.[20] If a crime victim wants to be compensated by the offender for injuries suffered, a separate civil suit has to be brought.

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13 See Williams, G, *Criminal Law*, London, 1983 at page 15.

14 Mewett A.W. and Manning, M., *Criminal Law* (2nd ed), Toronto, 1985 at pages 14-15.

15 McIntosh, D., *Fundamentals of the Criminal Justice System* (2nd ed), Toronto, 1995 at page 21.

16 *Boucher v. R.* [1955] S.C.R. 16; Canadian Bar Association's Code of Professional Conduct (2004), Commentary 9.

17 See Roach, K., *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice*, Toronto, 1999.

18 *R. v. Sweeney* (1992), 11 C.R. (4th) 1 at page 15 (B.C.C.A.).

19 *Criminal Code of Canada*, *supra note* 1, sections 738 – 741.

20 Restitution is rare but not unheard of. In 1999-2000, 5% of criminal cases included a restitution order (Statistics Canada 2001). Even where restitution is ordered, however, it not to be a substitute for a civil suit because criminal courts are much more limited in the kinds of losses they can compensate than civil courts are.

Third, the notion that crimes are committed against the state means that in all matters affecting criminal law Canadian courts are engaged in a crucial balancing exercise between the criminal law goals of the state, and the liberty interest of its citizens. In its 1976 report "Our Criminal Law," the Law Reform Commission of Canada observed that "criminal law – the state against the individual – is always on the cutting edge of the abuse of power. Between these two extremes justice must keep a balance."[21] That balance has long been achieved by relying on common law principles – legal standards of fairness, justice or morality that have come to be recognized – and since 1982, has also been pursued using constitutionally required standards imposed by the *Canadian Charter of Rights and Freedoms*.

Fourth, the theory that a crime is a wrong against the state means that Canadian law accepts that criminal law should be reserved for conduct that is serious enough to affect public order or to threaten the interests of the community at large. This notion, coupled with the idea that criminal law is the most serious tool the state can bring to bear on its citizens, gives support to the central idea that the criminal law should be used with restraint, and only as a last resort where other means of social control are inadequate.[22] While this thinking does have influence, the reality is that it is not always adhered to, and some conduct that is arguably not serious enough to satisfy that theory has been made criminal. For example, "placing a bet on behalf of others,"[23] or "failing to keep watch on [water-skiers]"[24] are criminal offences. Still, by and large in Canada the criminal law is reserved for serious misconduct.

The General Purpose of Prosecution in Canadian Criminal Law

With this essential background, it is now possible to explore the general purpose of prosecuting offences in Canadian criminal law. Essentially, the prosecution of offences by the state fulfils three functions.

As intimated above, the primary role of criminal prosecutions is generally understood to be the "reduction of injurious conduct"[25] or the attainment of "social control"[26] by imposing penal sanctions. While no statute describes the purpose of criminal law *per se*, section 718.1 of the

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21 Law Reform Commission of Canada, *Our Criminal Law*, Ottawa, 1976, at page 1.

22 Law Reform Commission of Canada, *Our Criminal Law*, *supra note* 20 at pages 16-22, and page 33.

23 *Criminal Code of Canada*, *supra note* 1, section 203.

24 *Criminal Code of Canada*, *supra note* 1, section 250.

25 Colvin, E., *Principles of Criminal Law* (2d ed), Toronto, 2001 at p. 25.

26 Pink, J.E. & Perrier, D.C, *From Crime to Punishment* (5th ed), Toronto, 2003, at page 1.

Criminal Code of Canada does list the fundamental purposes of sentencing as including "the maintenance of a just, peaceful and safe society by imposing just sanctions." Sentences are meant to "reduce injurious conduct" by deterring the offender and others, by rehabilitating offenders so they will not re-offend, and, where required, by removing offenders from the community so that they are incapable of harming it further.

Although it is rarely emphasized, Canadian criminal law is also used not just to prevent future harm, but to punish offenders for their past behaviour.[27] The Supreme Court of Canada has recognized that "retribution" is a proper goal of sentencing in appropriate cases, and that it differs from vengeance because retribution is a "reasoned and measured determination of an appropriate punishment."[28] In essence, retribution involves imposing deserved and proportional punishment on offenders for their past conduct, bearing in mind their "moral culpability, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct."[29] When section 718 of the *Criminal Code of Canada* was introduced to list the purposes and principles of sentencing, "retribution" was not included. Section 718.1, however, includes the Canadian notion of retribution as it requires that "sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender." Moreover, section 718 lists "denunciation" as one of the purposes of sentencing, and denunciation has less to do with reducing harm than it does with imposing a sentence that "communicate[s] society's condemnation of [a] particular offender's conduct."[30] In appropriate cases, punitive sentences are imposed to ensure that "just desserts"[31] and denunciation are achieved.

More recently, Canada has embraced a third purpose for criminal law, namely, restorative justice. Restorative justice is difficult to define concisely. In essence, it is an approach to "remedying crime" by trying to restore social harmony to the community that is most affected by the crime, including the offender and crime victims.[32] Efforts are made to "accomplish[ed] [this] through the rehabilitation of the offender, reparations of the victim and to the community, and the promotion of a

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27 Law Reform Commission of Canada, *Our Criminal Law*, Ottawa, 1976, at page 1

28 *R. v. M.(C.A.)* [1996] 1 S.C.R. 500 at page 557.

29 *R. v. M.(C.A.)* [1996] 1 S.C.R. 500 at page 557.

30 *R. v. M.(C.A.)* [1996] 1 S.C.R. 500 at page 558.

31 See Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach*, Ottawa, 1987 at page 143.

32 *R. v. Proulx* [2000] 1 S.C.R. 61 at para 18.

sense of responsibility in the offender and acknowledgment of the harm done to victims and the community."[33] In practice, restorative justice is generally attempted by either diverting cases from the criminal law system by structuring informal action plans agreeable to the parties and then withdrawing the charges when those action plans are in place (a process called "diversion") or by crafting sentences after conviction that have restorative goals in mind. Restorative action plans or sentences may include things such as apologies, meetings with victims, the payment of restitution to victims, performance of community service work by the offender, or substance abuse or behaviour counselling. In its purest form, restorative justice is often used in aboriginal communities through sentencing circles, where community members meet with the offender and a judge in an informal setting where a community-based action plan can be designed.[34]

Restorative justice is a relatively new phenomenon in Canada and puts pressure on the tradition in this country of thinking of crime as an offence "against the state." In spite of this, many restorative justice programs have developed, and restorative justice has become an important part of many criminal dispositions. Specialist courts dealing with the unique needs of addicted and mentally ill offenders operate in some large urban centres. While restorative justice advocates argue that it is the best way to deal even with the most serious of crimes,[35] Canadian criminal law tends to reserve pure restorative justice initiatives to more minor offences, or to use restorative justice initiatives to supplement more conventional sentences such as fines, probation or jail for more serious offences.[36]

Limits on Achieving the Goals of Prosecution

While Canadian law gives heavy importance to its criminal prosecution goals, it balances those goals against the need to protect individual liberties. As a result, there are a number of liberty regarding principles that limit the ability of the state to achieve its prosecution goals.[37]

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33 *R. v. Gladue* [1999] 1 S.C.R. 688 at paragraph 71.

34 Roberts, J.V. and Roach, K., "Restorative Justice in Canada: From Sentencing Circles to Sentencing Principles" in *Restorative Justice & Criminal Justice: Competing or Reconcialable Paradigms?* (von Hirsch, A., Roberts, J., Bottoms A.E., Roach K., Schiff, M., eds) Oxford, 2003, at pages 236-256.

35 Braithwaite, J., "Principles of Restorative Justice" in *Restorative Justice & Criminal Justice: Competing or Reconcialable Paradigms? Supra note* 33, at pages 18-19.

36 See, for example, *R. v. Gladue, supra note* 32.

37 Colvin, E., *Principles of Criminal Law* (2nd ed), Toronto, 1991 at page 28.

Balance and What Can be Made Criminal

Generally speaking, the Government of Canada has the authority to make any conduct it wishes criminal, although, as described, it is broadly accepted that great restraint should be used in making conduct criminal, and crimes should be created only as a last resort when other measures would prove to be inadequate. While *Charter* jurisprudence has stopped short of requiring that, as a general rule, Parliament must limit the criminal law to conduct that causes actual "harm," the Supreme Court of Canada has stated that "the fact that most members of the community disapprove of conduct" should not suffice.[38] Moreover, unless the state can justify it on exceptional grounds, freedom of expression and freedom of association must be respected. It is unconstitutional for Parliament to create offences that make it criminal to communicate information in a non-violent way,[39] or to engage in non-harmful sexual acts with others.[40]

Balance and the Content of Offences

Liberty regarding principles also impose limits on the way criminal offences are constructed. These include the "principle of legality," the "principle of fault," and the "principle of an act."

The Principle of Legality

The "principle of legality" is protected under the Charter as a corollary of the "rule of law." Its essential mission is to ensure that citizens can be convicted only of violations of clear, pre-existing rules. Where laws are worded ambiguously, "strict construction" may apply. More specifically, where efforts at interpreting the law in light of its purpose lead to more than one reasonable construction, the interpretation most favourable to the liberty of the accused is to be taken.[41] Since Canada is a bilingual country in which the French and English versions of the *Criminal Code of Canada* are equally authoritative, translation problems can produce ambiguity. Where this occurs, the accused is entitled to the benefit of the more lenient version of the offence.[42] The principle of legality also means that laws that are too vague to interpret,[43] or that are worded more broadly than they need to be to fulfil their underlying purpose,[44] will be struck down as unconstitutional.

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38 *R. v. Labaye* [2005] 3 S.C.R. 728 at para 37.

39 *R. v. Zundel* [1992] 2 S.C.R. 731.

40 *R. v. Labaye*, *supra note* 37.

41 *R. v. Pare* [1987] 2 S.C.R. 618; *R. v. McIntosh* (1995), 36 C.R. (4th) 171 (S.C.C.).

42 *R. v. Daoust* [2004] 1 S.C.R. 217.

43 *R. v. Morales* [1992] 3 S.C.R. 711.

44 *R. v. Heywood* [1994] 3 S.C.R. 761.

The Principle of Fault

One of the classic principles imported into Canadian criminal law derives from the Latin maxim "*actus non facit reum nisi mens sit rea*," meaning that an act does not become guilty unless the mind is guilty. Originally, the maxim was meant to distinguish between culpable wrongdoing and blameless unfortunate accident.[45] Its effect has been to encourage legislators and courts to include "*mens rea*" elements in offences to ensure that those who are convicted have a guilty enough mind to bear "moral fault" for their actions.[46] Canada has a long history of including *mens rea* elements in criminal offences, although the "principle of fault" has not been rigorous in describing what kind of guilty mind will suffice. As a result, Canadian criminal law knows of many different *mentes reus*,[47] and criminal offences in Canada vary tremendously in the mental elements they require. For example, a first degree murder conviction requires "planning and deliberation," while second degree murder requires mere "intent" to kill, while still other offences, such as perjury or obstruction of justice require that the impugned act be committed for a specific improper purpose. Others, such as arson, can be committed where accused persons do not intend the act, but are "reckless" in the sense that they foresee that their conduct may cause a prohibited consequence yet they choose unjustifiably to go ahead and take the risk. In addition, most offences require that the accused must "know" of the relevant circumstances or be wilfully blind to them, in the sense that they suspect those facts exist but choose not to confirm it in the hope of denying knowledge in the event they are ever caught.[48] This means that for many offences, an accused person who is honestly mistaken about a material fact cannot be convicted. Not knowing or being wilfully blind to the fact that the cheque you transact was forged, for example, is a defence, to a "false pretences" charge.[49]

Generally speaking, while the principle of fault encourages Parliament to include *mens rea* elements in offences, that principle is not binding. Parliament can create offences that make offenders guilty even if they did not have a guilty mind. Parliament has done so for negligence-based offences such as dangerous driving and careless storage of a firearm. Courts nonetheless use the principle of fault to insist that if Parliament is going to impose criminal liability for

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45 Williams, G., *Criminal Law, The General Part* (2nd ed.), London, 1961 at page 30.

46 *R. v. City of Sault Ste. Marie* [1978] 2 S.C.R. 1299 at page 1309-1310.

47 See Paciocco, D., "Subjective and Objective Standards of Fault for Offences and Defences," (1995), 59 Saskatchewan. Law Rev. 271.

48 *R. v. Sansregret* [1985] 1 S.C.R. 570 at page 586.

49 *R. v. Currie* (1975), 24 C.C.C. (3d) 292 (Ont. C.A.).

negligence it must express its desire to do so clearly. Courts operate on the presumption that unless an offence indicates otherwise, it will require "intention or recklessness," and "knowledge or wilful blindness."[50] As a result, these mental states are "read in" as elements of many offences.

The *Charter* has put a gloss on all of this. *Charter* jurisprudence now requires that, because of its stigma and harsh penalty, as a matter of constitutional imperative no-one can be convicted of the offence of murder unless they intend to kill.[51] This resulted in a number of murder offences where Parliament had not required full intention being struck down as having no force or effect. Moreover, Parliament cannot use "absolute liability," or impose criminal fault based solely on proof that the accused committed a prohibited act. To be guilty of a crime, the accused must, at a minimum, act not only negligently, but in a fashion that is so negligent that the conduct is a marked departure from the standards that an ordinary prudent person would apply.[52] To be clear, not all offences can be committed using this minimum *mens rea*; the Crown must prove the particular *mens rea* that the offence being prosecuted requires.

The principle of fault has not just affected the design and reach of offences, it has also influenced the recognition of defences. It is because of this principle that Canadian law gives defences to those who are too mentally disordered to appreciate the nature and quality of their acts, or to know that their acts would be judged to be morally wrong by others.[53] Their mental illness removes their personal blameworthiness, so these offenders are found "not responsible" and are not punished. Instead they are hospitalized or even released into the community provided they do not pose a continuing danger. Similarly, Canadian law will not generally allow the conviction of those whose actions were involuntary because they were suffering severely diminished consciousness as a result of things such as blows to the head, or sleepwalking,[54] or even because of extreme intoxication.[55] Indeed, most defences, including self-defence, provocation, necessity and duress, are based on the notion that the accused is in such difficult circumstances that

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50 *R. v. Kerr* [2004] 2 S.C.R. 371 at paragraph 78.

51 *R. v. Vaillancourt* [1987] 2 S.C.R. 636.

52 *R. v. Creighton* [1993] 3 S.C.R. 3.

53 *Criminal Code of Canada*, *supra note* 1,. section 16; See, for example, *R. v. Oommen* [1994] 2 S.C.R. 507.

54 *R. v. Parks* [1992] 2 S.C.R. 871.

55 *R. v. Daviault* [1994] 3 S.C.R. 63. The defence of extreme intoxication cases this defence is extremely limited by the *Criminal Code of Canada*, *supra note* 1, section 33.1.

they had no choice but to act as they did; their "normative involuntariness" undermines their moral fault, thereby preventing conviction.[56]

Ideas about the moral fault and limited blameworthiness have also influenced the way Canadian criminal law treats offenders under the age of 18. Their immaturity, coupled with the goal of rehabilitating them before they embark on a long life of crime, has led to the development of an entirely different system for youthful offenders where restorative justice is emphasized and incarceration greatly discouraged.[57]

The Principle of an Act

The principle of an act is a central pillar of Canadian criminal law. It has at least four implications. First, no-one can be prosecuted for their thoughts alone.[58] "Throughout the history of the common law the conduct of the wrongdoer had to compromise the prohibited act. The *actus reus* had to be present."[59] Second, it is contrary to the *Charter* for one individual to be convicted vicariously, for the acts of another.[60] Corporations and other organizations can bear criminal responsibility for acts of corporate representatives on the theory that, as inanimate legal creations, the acts of their representatives are in fact the acts of the corporation or organization.[61] Third, the principle of an act means that Canadian law is reluctant to impose criminal liability for omissions. In order for a failure to act to be criminal, the offence must clearly make omissions culpable, and the offender must breach a legally imposed duty to act.[62] Fourth, Canadian law also insists that offenders can be prosecuted only for consequences their acts or omissions cause. For most offences, the conduct of the accused must be a significant cause of the prohibited consequence, but for first degree murder prosecutions the offender's act must rise to the level of a substantial operative cause of death.[63]

Balance and Sentencing

Given that the criminal law in Canada is meant to pursue so many different goals through sentencing, one of the key principles of sentencing is that judges

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56 See *R. v. Perka* [1984] 2 S.C.R. 233, and *R. v. Ruzic* [2001] 1 S.C.R. 687.

57 *Youth Criminal Justice Act*, S.C. 2002. c.1.

58 Stuart, D., *Canadian Criminal Law* (3rd ed.), Toronto, 1995 at pages 71-72.

59 *R. v. Burt* (1985), 21 C.C.C. (3d) 138 at page … (Sask. Q.B.), aff'd (1987), 38 C.C.C.(3d) 299 (Sask. C.A.).

60 *R. v. Burt*, *supra note* 58.

61 *Criminal Code of Canada*, *supra note* 1 at sections 22.1 and 22.2.

62 Stuart D., *Canadian Criminal Law* (3rd ed,), *supra note* 57 at pages 83-88.

63 *R. v. Nette* [2001] 3 S.C.R. 488.

have discretion in crafting a fit sentence.[64] Sentencing is a highly individualized process, and it is subject to two key principles that restrict what punishments can be imposed, even if this means compromising on the objectives behind criminal prosecution.

First, as indicated, the "fundamental principle" of sentencing is that the sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender.[65] This provision imposes strict limits on the severity of the sentences that can be imposed. In effect, sentences cannot exceed what is warranted given the harm the offence has caused, and the degree of moral blameworthiness of the offender determined in light of his or her capabilities, level of criminal intent and the presence of any mitigating circumstances. While Parliament can avoid the individualized sentencing practice by creating minimum sentences for offences, those minimum sentences will be unconstitutional if they produce grossly disproportionate penalties.[66]

The second principle limiting the sentences that can be imposed is the "principle of restraint." In keeping with the basic ideal that the goals of criminal law must not trammel unnecessarily on individual rights, the *Criminal Code of Canada* directs judges to avoid imposing sentences that will deprive offenders of their liberty unless less restrictive sentences would be inappropriate.[67] The "principle of restraint" also requires judges to consider all reasonable sanctions other than imprisonment when sentencing offenders.[68] Moreover, if an offender is already under sentence for other offences or is being sentenced for several crimes, a judge is obliged by "the principle of totality" to ensure that together, the sentences imposed are not unduly long or harsh.[69]

Conclusion

Canadian law prosecutes crimes in the expectation that this will reduce injurious conduct, hold offenders accountable for their past acts, and help restore the community that has been disrupted by the crime. As important as these goals are, Canadian law also imposes limits on how far Parliament can go in pursuing these objectives. Without question, the characteristic feature of Canadian criminal law is its readiness to balance the goals of criminal prosecution with a high regard for the protection of the individual rights.

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[64] *Criminal Code of Canada*, *supra note* 1, section 718.3.

[65] *Criminal Code of Canada*, *supra note* 1, section 718.1.

[66] *R. v. Wiles* [2005] S.C.J. No. 53.

[67] *Criminal Code of Canada*, *supra note* 1, section 718.2 (d).

[68] *Criminal Code of Canada*, *supra note* 1, section 718.2 (e).

[69] *Criminal Code of Canada*, *supra note* 1, section 718.2 (c).