

Criminal Law Is Not An Island

Nora Rock

Ten years ago, the prospect of successfully bringing a civil suit for a criminal act was regarded as somewhat novel. Could a rape or sexual abuse victim recover from the perpetrator of an assault for damages under tort law? In other words, could a person sue his or her rapist? But even back then, there were a few reported cases in which a plaintiff had successfully sued civilly for a criminal act. If the evidence was there, and if the problem of limitation periods could be overcome (after all, many of these crimes were committed many years ago) judges were willing to award damages. But more important to these plaintiffs than the money (collection was a problem in many cases) was the experience of taking the abuser to task — being the “prosecutor” and driving the civil “prosecution” rather than a victim sitting in the witness box. The civil system offered plaintiffs a kind of vindication that a criminal trial could not. It was cathartic and empowering.

It was also probably intimidating, time consuming, and expensive — which explains why we don't hear about these sorts of cases more often, and why, if we're not lawyers, we're confused about why OJ had two trials, and how he could win one and lose the other. When asked, our lawyer friends mutter something about burden of proof, and explain that “criminal law and civil law

are different.” But are they any more so than, say, mergers and acquisitions law and health law? Surely not; and if cases reported in the media are any indication, the historical divisions between the civil law and the criminal law are becoming increasingly blurred. Just last month, the Ontario branch of the Canadian Bar Association delivered an educational program for lawyers entitled “Civil and Criminal Law: Increasingly Intertwined?” The program was designed to help lawyers grapple with issues such as civil sexual assault claims, the use of criminal evidence in civil cases, parental liability for children's criminal acts, and criminal prosecution of business/commercial wrongs such as fraud, which have traditionally been considered to belong to the civil law realm.

The CBAO program also covered malicious prosecution, a newly fashionable tort capable of striking fear into the heart of lawyers and police alike. Had there been room in the syllabus, it could probably also have covered suits for the improper use of force by police. There is a growing willingness, both within the legal profession and in the general public, to expand the list of wrongs capable of attracting civil (read: money) penalties instead of, or in addition to, criminal penalties (such as a fine payable to the state or a period of incarceration.)

And what about administrative sanctions? Highsticking Marty McSorley, fresh from a criminal assault conviction, just got stuck again — this time in the form of an extension of his suspension from NHL play. And as any police officer knows, escaping criminal liability for a use-of-force misstep does not guarantee immunity against sanction from within the police administration. Being bad on the job, it turns out, can now get a person into several different flavours of trouble.

As criminal acts become the civil system's business and vice versa, new and interesting legal and strategic issues arise: what *are* the rules when it comes to the civil use of criminal evidence? What influence, if any, does or should a criminal conviction or lack thereof have on a subsequent civil or administrative decision? What about the other way around — what evidentiary value does or should an administrative or civil court finding have in a criminal case (imagine a case in which jurors have read about an administrative sanction)? What the answers will be and what they mean for the police remains to be seen; all that is certain is that ours is an increasingly litigious society, and more than ever before, both the would-be criminals and those charged with catching them would be wise to watch their criminal, civil, and administrative backs. ■

Nora Rock is Acquisitions Editor at Emond Montgomery Publications.

Police Foundations Program Teaching Workshop

Last June, Emond Montgomery Publications hosted the first annual Police Foundations Program Teaching Workshop. The two-day session was not without its hiccups (parking at York University is a problem without the right pass!), but the majority of comments were very positive.

“Workshops were generally excellent in content and presentation. I look forward to next year’s refinements.”

“Excellent idea for this conference, both from a publisher’s standpoint and the educator (can’t believe it took this long for someone to think of — Emond Montgomery must have visionary thinking.)”

“Thoroughly enjoyed and great to meet Emond Montgomery staff.”

Many thanks for the comments and, yes, we will be hosting a similar teaching workshop in the spring of 2001. We’d especially appreciate your suggestions about the workshop format, the dates and the location as we begin planning for the second annual workshop. ■

Martin’s Annotated Criminal Code

Since assuming exclusive responsibility for marketing and selling this fine Canada Law Book product, we have broken sales records, largely as a result of your support. Thank you. Please remember that colleges that prescribe *Martin’s* receive a complimentary copy of the *Police Legal Access System (PLAS)* for the instructor’s use only, as well as instructor copies of the Code for all faculty members associated with the course.

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Justice Bills

With the federal election call, a number of important bills died on the order paper. Here are some that you may have been watching:

Bill C-3: (the *Youth Criminal Justice Act*) Although the Liberals promised to pass this bill by the end of 1999, federal/provincial wrangling and filibusters by the Bloc Québécois resulted in the bill dying at the report stage.

Bill C-17: A popular bill that would have increased fines and prison terms for cruelty to animals (up to 5 years in prison, a change from the current 6 month maximum term).

Bill C-36: An omnibus bill which contained changes to the preliminary inquiry and criminal procedure, such as requiring the defence to disclose in advance expert evidence to the prosecution. C-36 also boosted the penalty for criminal harassment to 10 years and identified home invasions as an aggravating circumstance to be considered by a judge at sentencing.

Some of the bills passed by the 36th Parliament, which began October 12, 1999:

Bill C-7: Compels pardoned sex offenders to reveal their pasts if they want to work with children or vulnerable adults.

Bill C-18: Raises the maximum penalty for impaired driving causing death to life imprisonment and authorizes blood testing for drugs.

Bill C-19: *The Crimes Against Humanity Act* replaces the war crimes provisions of the *Criminal Code*.

Bill C-22: The *Proceeds of Crime (Money Laundering) Act* requires lawyers to report their clients “suspicious” – and certain specified cash – transactions to a new central agency.

Bill C-23: The *Modernization of Benefits and Obligations Act* amended 68 federal statutes to extend benefits and obligations to same-sex couples on the same basis as for common law, opposite-sex couples.

Summarized from *The Lawyers’ Weekly*, November 3, 2000.

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“You Asked” answers questions from college coordinators and instructors about textbook publishing. If you have such a question, please contact David Stokaluk at Emond Montgomery Publications, 416-975-3925 or 1-888-837-0815 toll free, and we will try to answer it in an upcoming issue of APB. Visit our Web site: www.emp.on.ca. ■

Two New Summer Titles a Hit

Traffic Management by Larry Olivo and John Grime has won rave reviews from both instructors and police trainers. Over a year in the making and with scores of diagrams, this book turned out to be far more work than we had imagined. But the result is not only the first book on the subject in Canada, but also a book that is earning high praise from both academics and police officers, as well as meeting the learning objectives for the course that is part of the Police Foundations Program.

Foundations of Criminal and Civil Law in Canada promises to be a best-seller as an introductory first-term law text. An instructor from Nova Scotia described this new text workbook as “the first book that simplifies and clarifies the distinction between criminal and civil law. It is ideal for college level students who need a foundation in law as they begin preparing for a career in law enforcement.” Most Ontario colleges have either adopted the text or plan to adopt it for their course in Criminal and Civil Law. ■

Police Foundations Titles and Guides – Do You Have Yours?

If you have not yet received the appropriate text or instructor guide for the course you are teaching, please let us know.

Title	Author	ISBN
Canadian Political Structure and Public Administration (December 2000 publication) . . .	Booth/Roughley	1-55239-053-5
Community Policing <i>instructor guide available</i>	Hodgson	1-55239-040-3
Conflict Management in Law Enforcement	Pardy	1-55239-027-6
Contemporary Canadian Social Issues	Niessen	1-55239-001-2
Diversity Issues in Policing <i>instructor guide (exercise answers) available</i>	Kazarian	1-55239-020-9
Effective Communication for a Career in Law Enforcement <i>instructor guide available</i>	Collins/Olson	1-55239-033-0
Ethical Reasoning in Policing <i>instructor guide (exercise answers) available</i>	Evans/Butcher	1-55239-026-8
First Nations Peoples	Williamson	1-55239-028-4
Fitness and Lifestyle Management for Law Enforcement	Wagner Wisotzki	1-55239-003-9
Foundations of Criminal and Civil Law in Canada <i>instructor guide (exercise answers) available</i>	Rock/Simon	1-55239-037-3
Interpersonal and Group Dynamics in Law Enforcement <i>instructor guide and test bank available</i>	Bjorkquist	1-55239-060-8
Interviewing and Investigation	Euale/Turtle	1-55239-036-5
Martin’s Annual Criminal Code 2000		05277892
Principles of Evidence for Policing <i>instructor guide (exercise answers) available</i>	Euale/Martin/ Rock/Sadek	1-55239-044-6
Provincial Offences <i>instructor guide available</i>	Capy/McCarthy	1-55239-041-1
Sociology and Canadian Society <i>instructor guide (exercise answers) available</i>	Johnstone/Bauer	1-55239-022-5
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