

# Towards a Crim Community – Here We Go Again

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Robson Crim, Robson Hall’s criminal law research cluster and Canada’s criminal law blog (Robsoncrim.com), is now in its third year of operation. With the publication of our latest peer-reviewed volumes we have published over 30 refereed articles in the areas of criminal law, criminal justice and criminology. Further, having now partnered with almost 40 academic peer collaborators at Canada’s top universities and law schools we have ensured a robust network of peer reviewers and have fostered a nationwide *Crim* community. This is a community that is evidenced by our publication of more than 250 blawgs,<sup>1</sup> with bloggers from across Canada, the USA and Europe.

Robson Crim has developed as a hub for national Crim research and now accepts many more submissions than we can accommodate. Further, we have recently tapped into the CanLII Connects system and are excited by the drive towards open access in legal scholarship and authorship. We have made connections with Emond Publishing who have graciously provided editorial assistance to us in these two latest volumes. Our commitment to open access publication, as well as our presence on the usual legal databases and Academia.edu contributes to making our resources easy

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<sup>1</sup> See for example Leon Laidlaw, “A Meagre Outlook for Bill C-16: The Case of Transgender University Students” (19 June 2017), Robsoncrim (blog), online <<https://www.robsoncrim.com/single-post/2017/06/19/A-Meagre-Outlook-for-Bill-C-16-The-Case-of-Transgender-University-Students>>; James Gacek, “Judicial Dissensus is not a Disservice to Justice: The Importance of Dissent in the ‘Court of Last Resort’” (5 June 2017), Robsoncrim (blog), online <<https://www.robsoncrim.com/single-post/2017/06/05/Judicial-Dissensus-is-not-a-Disservice-to-Justice-The-Importance-of-Dissent-in-the-%E2%80%98Court-of-Last-Resort%E2%80%99>>; Rebecca Jaremkow Bromwich, “Sex, Women’s Mental Illness, and Videotape” (26 September 2016), Robsoncrim (blog), online <https://www.robsoncrim.com/single-post/2016/09/26/Sex-Women%E2%80%99s-Mental-Illness-and-Videotape>.

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to access. As part of our commitment to advancing legal research and disseminating knowledge in the fields of criminal law, criminal justice and criminology, we present you, this year, with two additional volumes of the Criminal Law Edition of the Manitoba Law Journal.

Thanks to extremely insightful and valuable contributions, last year's special edition Criminal Law volume of the Manitoba Law Journal achieved a ranking in the top 0.1 percent on Academia.edu, amassing over 2500 downloads there alone. Similarly, Robsoncrim.com received over 3000 paper reads on the journal pages and the journal received thousands more downloads on the paid legal databases. From articles as diverse as Mr. Big operations,<sup>2</sup> bestiality law,<sup>3</sup> and the Tragically Hip in the context of wrongful convictions,<sup>4</sup> we achieved more readership than we could have expected. As part of our commitment to open access fundamentals, these and future pages will remain open and accessible on Robsoncrim.com, themanitobalawjournal.com, CanLII, Heinonline, Westlaw-Next, and Lexis Advance Quicklaw. Additionally, submissions from academics, readers, practitioners and students will continue to be considered, as these offer unique and important insights into the field of criminal law and cognate disciplines.

Indeed, the Manitoba Law Journal has a rich history of hosting criminal law analyses.<sup>5</sup> Yet, following the release of our last call for papers, we were overwhelmed with the volume of submissions for a special edition on criminal law. When we saw the quality of the work, we knew it would be appropriate to consider publishing two volumes. This year, after a significant increase in the number of submissions and an arduous double-

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<sup>2</sup> Amar Khoday and Jonathan Avey, "Beyond Finality: R v Hart and the Ghosts of Convictions Past" (2017) 40(3) Man LJ 111.

<sup>3</sup> James Gacek and Richard Jochelson, "'Animal Justice' and Sexual (Ab)use: Consideration of Legal Recognition of Sentience for Animals in Canada" (2017) 40(3) Man LJ 335.

<sup>4</sup> Kent Roach, "Reforming and Resisting Criminal Law: Criminal Justice and the Tragically Hip" (2017) 40(3) Man LJ 1.

<sup>5</sup> See for example David Ireland, "Bargaining for Expedience? The Overuse of Joint Recommendations on Sentence" (2014) 38 Man LJ 273; Richard Jochelson et al, "Revisiting Representativeness in the Manitoban Criminal Jury" (2014) 37-2 Man LJ 365; Amar Khoday, "R v Creighton Twenty Years Later: Harm versus Death Revisited" (2013) 37 Man LJ 162.

blind peer review process, we accepted and put together twenty papers into two special volumes, each containing three to four thematically organized sections.

The first section in this volume confronts issues of *Terrorism, National Security, and Transnational Crime*.

This section begins with Rebecca Bromwich's article, "(Where is) the Tipping Point for Governmental Regulation of Canadian Lawyers? Perhaps it is in Paradise: Critically Assessing Regulation of Lawyer Involvement with Money Laundering After *Canada (Attorney General) v Federation of Law Societies of Canada*". She discusses the Supreme Court of Canada's decision in *Canada (AG) v Federation of Law Societies of Canada*, and whether law societies truly have the capacity to combat money laundering in the legal profession.

Next, Jonathan Avey explores potential threats to Military Police independence in "Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces". He argues that despite steps taken towards preserving police independence, the *National Defence Act* still contains provisions that make interference with Military Police investigations possible. To prevent such interference, he contends that several changes to the legislation are required.

Concluding the first section, in "The Problem of "Relevance": Intelligence to Evidence Lessons from UK Terrorism Prosecutions", Leah West discusses barriers to using intelligence information as evidence in criminal proceedings against known terrorists. Comparing Canada's rules of evidence to those of the UK, she highlights changes that Canada should adopt in order to address the "intelligence to evidence" problem and ensure that terrorists who return to Canada are brought to trial.

The second section, *Delay and Sentencing Vulnerable Populations*, tackles sentencing issues including due process and proportionality.

Keara Lundrigan opens the section in "*R v Jordan: A Ticking Time Bomb*". Commenting on the Supreme Court of Canada's recent decision in *R v Jordan* and the issue of trial delay, she argues that the ceilings set in *Jordan* are insufficient to meaningfully address trial delays. Further, she criticizes the Canadian Senate's recommendation to implement a system of costs, concluding that only larger reforms will successfully reduce delays.

Then Haley Hrymak provides her analysis of the courts' response to the fentanyl crisis in "A Bad Deal: British Columbia's Emphasis on Deterrence and Increasing Prison Sentences for Street-Level Fentanyl Traffickers". Her

findings suggest that the courts have taken a punitive approach to sentencing fentanyl traffickers that focuses on deterrence, despite evidence that most involved are motivated by addiction.

Wrapping up the second section is Sasha Baglay's article, "In the Aftermath of *R v Pham*: A Comment on Certainty of Removal and Mitigation of Sentences". In *R v Pham* the Supreme Court of Canada held that immigration consequences may be considered by judges when deciding an appropriate sentence. Reviewing 63 sentencing decisions following *Pham*, Baglay argues that the courts have been inconsistent in their approach to doing so and makes several recommendations for a more structured framework.

The third and final section, *Judicial Fairness: Disclosure, Exclusion, and Instruction*, features four articles covering a broad range of issues for the courts.

Myles Anevich begins by examining three approaches to reforming American guilty plea disclosure obligations in "Disclosure in the 21<sup>st</sup> Century: A Comparative Analysis of Three Approaches to the Information Economy in the Guilty Plea Process". Noting the high number of guilty pleas and near non-existent disclosure obligations at this stage in the United States, he suggests that adopting a model similar to that used in Canada would be the most practical way to reform the system to protect the constitutional rights of accused individuals.

Then in "An Analysis of Third Party Record Applications Under the *Mills* Regime, 2012-2017: The Right to Full Answer and Defence versus Rights to Privacy and Equality", Heather Donkers analyzes Ontario Superior Court decisions on third party records applications in sexual assault trials. She finds that whether the record production order will be made depends largely on the deciding judge's focus on either the relevant provisions of the *Criminal Code* or the Supreme Court of Canada's guidelines for interpreting these provisions in *R v Mills*.

Patrick McGuinty provides an analysis of one-hundred cases involving the exclusion of evidence in "Section 24(2) of the *Charter*: Exploring the Role of Police Conduct in the *Grant* Analysis". Based on his findings, he argues that the police conduct inquiry plays the most important role for judges conducting the *Grant* analysis. Further, he contends that since "good faith policing" lacks a clear definition, this factor may be broadly applied; reducing the likelihood that a *Charter* breach will result in evidence being excluded.

The final article of this issue is Lisa A. Silver's "The *WD* Revolution", in which she explores the legacy of the Supreme Court of Canada's decision in *R v W(D)*. Reaffirming the decision's critical importance to Canadian jurisprudence, she covers the impact of the case that, in her words, "is synonymous with applying the reasonable doubt standard to the credibility assessment in a criminal trial."

Putting together a double volume was no small feat. We would like to thank our authors, who submitted highly relevant and thoughtful pieces of legal analysis, touching on fields of criminology, criminal justice and criminal law, amongst others. We would also like to thank our Robson Crim collaborators, and our peer reviewers,<sup>6</sup> all of whom helped put this project together for another round. The entire editorial team would like to extend an extra thank you to Rebecca Bromwich, Melanie Murchison, and James Gacek for their help and support, as well as to the Dean of the Faculty of Law, at the University of Manitoba, Dr. Jonathan Black-Branch.

Thank you for reading this special double volume of the Manitoba Law Journal's Criminal Law edition. We look forward to many more. We encourage you to peruse our latest call for papers in the pages that follow and at <https://www.robsoncrim.com/call-for-papers-mlj>.

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<sup>6</sup> Visit our collaborators at <https://www.robsoncrim.com/collaborators>. We thank our collaborators (new and old) including Sasha Baglay, Benjamin Berger, Michelle Bertrand, Steven Bittle, John Burchill, Erin Dej, Robert Diab, Ruby Dhand, James Gacek, Daphne Gilbert, Mandi Gray, Thomas S. Harrison, Chris Hunt, Adelina Iftene, Brock Jones, Rebecca Bromwich, Lara Karaian, Lisa Kelly, Lisa Kerr, Ummni Khan, Jennifer Kilty, Kyle Kirkup, Leon Laidlaw, Michelle Lawrence, Rick Linden, Garrett Lecoq, Lauren Menzie, Melanie Murchison, Michael Nesbitt, Debra Parkes, Nicole O'Byrne, Micah Rankin, Amar Khoday, David Ireland, David Milward, Richard Jochelson, Kristen Thomasen, and Erin Sheley. We also thank the many peer reviewers who assisted us through our digital peer review platform from across the world.