

# Title: Defending Crime: Right to Counsel as a Natural Human Right

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## Slide 1:



- Good evening everyone. My name is Bogdan Maksimcev and I am a recent graduate of the Douglas College Criminology program.
- About a year or so ago, during my practicum placement at the criminal defence firm Myers & Co., I began to question myself regarding the source of my passion for the right of every person to be defended.

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- The reality is that this passion stems from a variety of sources. The first of those that I would like to draw upon is something that we all inevitably share - the experience of coming to adulthood.
- As we are all aware, that process is not necessarily such a straightforward one. We all know that youth may be fraught with difficulty from both sources without and within.

## Slide 3:



- Secondly, my family immigrated to Canada partially due to endangerment of our human right to legal defense due to warfare.
- Also professionally, I have encountered individuals whose very existence is jeopardized. Facing homelessness, forced to engage in drug trafficking, the sex trade, and marginalized due to HIV/AIDS, Indigenous, or LGBTQ status – their right to legal defense in jeopardy.

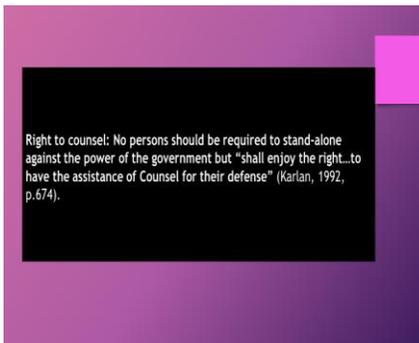
## Slide 4:



By gaining these 'practical' insights, I realized the power that defence counsel can have on:

1. People's lives.
2. Mitigating loss of freedom, dignity, and livelihood or loved ones.
3. Changing the law and, thus, on shaping the world we live in.

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1. Hypothetically – If you spent a moment accused of a crime, wouldn't you expect to have the right to be defended? Wouldn't you have some expectations from your counsel?
2. No one should be required to stand alone against the power of the government – you have the right to be defended by capable and effective legal counsel.
3. We as Canadians have four powerful rights.

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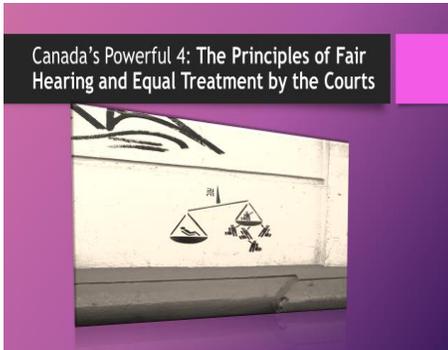


### CANADA'S POWERFUL 4s:

#### 1. The right to a fair trial:

- The defendant's right based on legitimate evidence produced in court.
- An international human rights legal norm preserving the right to life, liberty, and security of the person.
- In Canada, this right is reinforced by the Charter of Rights and Freedoms (Sharpe & Roach, 2009).

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**2. The right to a fair hearing and equal treatment by the courts is founded on two key beliefs:**

- **Equality of arms:** the accused may not be put at a serious procedural disadvantage with respect to the prosecutor (Sharpe & Roach, 2009).
- **Equality of parties:** persons charged with similar offenses will be prosecuted in a similar fashion (Sharpe & Roach, 2009).

## Slide 8.



**3. The right to equal access to courts & to justice** (Sharpe & Roach, 2009):

- Access to a court
- Standing to sue
- Access to legal services

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**4. The right to be treated fairly and to be assumed innocent unless proven guilty:**

- Legal process is fair only if it includes the right to a fair and public hearing by a professional and independent legal tribunal and features the presumption of innocence: one is considered innocent unless proven guilty (Lawyers Committee for Human Rights, 2000).

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**Role of defence counsel:**

- The role of defence counsel in Canada is to uphold these powerful rights and make them available to all of us.
- Often defence attorneys are portrayed in the media in a reckless or unethical manner – occasionally both. However, after contemplating the role they play, I hope that we can all walk away later on tonight without harboring any of those misconceptions.

## Slide 11.



- The right to counsel is a natural human right of any accused individual. Defence attorneys advocate for that right through:
  - Skillful cross-examination,
  - Challenging opposing counsel,
  - And by defending those four powerful rights
  - **It is the very cornerstones of our democracy.**

## Slide 12:



- Throughout life, our opinions are challenged – very much over issues of crime, fairness, cruelty, and corruption.
- Ideally, this should result in increased fairness, awareness, and openness to others' perspectives and an overall respect for humankind.
- Unfortunately, that is rather unrealistic.

## Slide 13:



- In August 2017, Chief Justice McLachlin, stated that lack of legal aid funding is the biggest barrier to legal defence, especially for the poor and marginalized (Bailey, 2017).
- **Result:** Aboriginal persons are exceedingly over-represented in the corrections system. Nearly 30% of all prison inmates are Aboriginal – at only 4% of Canada’s total population (Bailey, 2017).

## Slide 14:



The criminal justice process in isolated parts of Canada, such as in Nunavut, may falter due to (Nuffield, 2003):

- Lack of defence counsel availability.
- Circuit courts provide little time for client-attorney meetings.
- Local defence bar members may not do legal aid work.
- Options of counsel tend to be limited.
- Moreover, extensive travel affects availability of counsel.

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Cont: In addition...

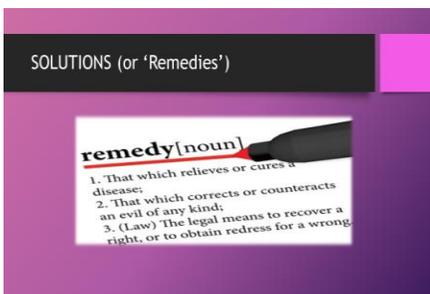
- Canadians living in isolated areas often experience a lack of continuous representation by the same lawyer.
- Serious cases require dedicated defence counsel but this is not always possible.
- Small town lawyers may not have the same level of specialized legal expertise involving mental health issues and cultural issues.

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- Presently, Saskatoon has 6 cases under review by Innocence Canada as wrongful convictions due to unfair legal claims and lack of connection with investigators (Bare, 2016).
- The case of David Milgaard is a reminder that innocent Canadians can end up behind bars. Milgaard spent nearly nine years in maximum-security prison and 23 years in jail in total, wrongfully accused of killing his wife (Bare, 2016).
- There are numerous other issues.

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- Legal remedies are measures that enable fair and professional representation of all people.
- **Continuous representation**, as the first example, can be more readily ensured by continuous, confidential, and free communication by the same attorney from assignment to sentencing.

## Slide 18:



- **The lack of availability of defence counsel** in isolated parts of Canada can be improved by workloads that match lawyers' experience, specialized training, qualifications, and employment, thus enabling them to represent diverse populations.
- **Unfair legal claims** can be alleviated by timely renewal of the case and provision of access to investigation files.



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