Robson Crim Legal Blog
Canada's Criminal Law Blawg

Against the Clock: Criminal Law and the Legal Value of Time

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June 17, 2019

Time is often a ubiquitous entity in our lives. So much so that we can frequently overlook the myriad (and often significant) roles it plays in shaping and governing our daily existences – both individually and at the societal level. Related to the subject of time, over the past several months, I have been reading and absorbing a recently published book authored by Dr. Elizabeth F. Cohen (@alixabeth) entitled *The Political Value of Time: Citizenship, Duration, and Democratic Justice*.[1] Dr. Cohen is a political scientist and full professor at the Maxwell School of Citizenship and Public Affairs at Syracuse University.[2]

Drawing from *The Political Value of Time*, in this "blawg" post, I want to examine the value and significance of time in law. I focus specifically on Canadian criminal law and procedure and do so through a number of examples. I should add a caveat – the examples I explore are by no means exhaustive, nor are time's value and significance limited to this particular subfield of law. However, they do give samples of time's value to the life of the law. But first, a bit more about Dr. Cohen's book.

The Political Value of Time

In *The Political Value of Time*, Dr. Cohen undertakes, successfully, to foreground the value of time in liberal democracies. Specifically, she examines how and why scientifically measured durational time (clock and calendar time) has become a critical part of the architecture of every democratic state.[3] Durational time not only applies to strictly political processes (e.g. elections), but extends to various administrative and legal-related processes created and mandated by the state. Such processes include the determination of prison sentences, acquisition of citizenship (and associated rights), eligibility for social welfare benefits, restrictions on accessing abortion, statutes of limitations regarding the availability of bringing a legal action or engaging in an administrative process, as well as a variety of

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[1] Elizabeth F Cohen, *The Political Value of Time: Citizenship, Duration, and Democratic Justice* (New York: Cambridge University Press, 2018).

[2] Dr. Cohen's Syracuse University web profile and list of publications can be found here: https://www.maxwell.syr.edu/psc/Cohen,_Elizabeth_F_/.

[3] Cohen, *supra* note 1 at 2.

probationary periods.[4] Dr. Cohen rightly identifies that while scientifically measured durational time may have a seemingly objective quality to it, different peoples' experiences of time and the limits imposed on them can be deeply inequitable. As an example of this, she draws attention to vulnerable minorities who endure disparities in sentencing following a determination of guilt in court proceedings. If time has value, then when the state imposes unjust temporal burdens on those subject to its jurisdiction, it engages in a form of political time theft.[5] In the criminal justice realm, this can impact on a person's basic liberty in connection with the length of time a person has to serve while incarcerated, and consequently time spent away from earning a salary, being with family and friends, and/or any number of other pursuits.

Dr. Cohen's work provides a rich account of the ways that time is valued and plays a role in a variety of political and legal processes and the philosophical bases for this. Having read the whole book, I can assure anyone that the foregoing was by no means anywhere close to an adequate summary that does justice to her valuable work and the insights she provides. Unfortunately, a broader analysis/review is beyond the scope of what I want to undertake in this blawg post.[6] This brings me next to the point of this writing.

Finding Time in Criminal Law

Inspired by her work, I have been reflecting on the ways that time is featured in numerous legal (and administrative) processes beyond the examples that Dr. Cohen helpfully identifies in connection with scientifically measured durational time. Indeed, time is implicated in a variety of ways that are not limited solely to scientifically measured durational time. Certainly, in some legal processes, it may be impractical and perhaps unjust to impose a precise and scientifically measured duration of time, while in others it is entirely appropriate to do so. Accordingly, in this post, I shall highlight a few of the ways in which time acquires a "legal value" or assumes a certain legal significance within the context of Canadian criminal law. In addition to scientifically measured durational time, time also carries tremendous meaning where scientifically measured durational time cannot be employed practically or justly. Thus, the several examples explored below also

[4] *Ibid*.
[5] *Ibid* at 5, 141-152.
[6] Though, given the broader implications of her work and their relationship to my other research and teaching interests, I hope to engage with various facets of her study in other writing.

illustrate the use of a non-scientifically measured but nevertheless contextually sensitive consideration of time.

This exercise will, in part, be descriptive. As Dr. Cohen observes, there is worthiness in the social sciences describing ordinary and even obvious human activity in ways that offers insights into the causes, consequences, and meaning of social and political life.[7] Here too, there is a value in legal scholarship (which can straddle both the social sciences and humanities) identifying common and seemingly ordinary modes of practice to extrapolate identifiable causes, consequences, and meanings within the life of the law.

Examples of Scientifically Measured Durational Time in Canadian Criminal Law

Sentencing and Mandatory Minimums

As noted throughout Dr. Cohen's book, scientifically measured durational time is implicated in sentencing practices, including the legislative imposition of mandatory minimum sentencing regimes. Mandatory minimum sentencing processes mandate that individuals convicted of certain crimes must serve at least a specific set of years in confinement before being released or before parole eligibility commences. In a typical sentencing regime, judges will account for the principles of sentencing (e.g. denunciation, rehabilitation, deterrence, etc.) along with a variety of aggravating and mitigating factors to arrive at a proper sentence. Mandatory minimum sentencing regimes are a legislative interjection into the sentencing process and have been criticized by courts (which have struck them down on various occasions as being unconstitutional)[8] and academics.[9]

A Time For Trials

Scientifically measured durational time is also a significant factor in other circumstances, for example, when considering the length of time that an individual must wait until obtaining a trial after formal processes have commenced. Under

[7] Cohen, *supra* note 1 at 120.
[8] See e.g. *R v Nur*, 2015 SCC 15, online: http://canlii.ca/t/gh5ms; *R v Lloyd*, 2016 SCC 13, online: http://canlii.ca/t/gpg9t; *R v Vu*, 2018 ONCA 436, online: http://canlii.ca/t/hrx2x; and *R v Hills*, 2018 ABQB 945, online: http://canlii.ca/t/hw5xb.
[9] See e.g. Debra Parkes, "Mandatory minimum sentences for murder should be abolished" *The Globe and Mail* (25 September 2018), online: https://www.theglobeandmail.com/opinion/article-mandatory-minimum-sentences-for-murder-should-be-abolished/.

section 11(b) of the *Canadian Charter of Rights and Freedoms*: "Any person charged with an offence has the right […] to be tried within a reasonable time."[10] While the text of the *Charter* itself does not explicitly furnish a precise time period for what constitutes "reasonable time", the Supreme Court of Canada has mandated more scientifically measurable indicators. In *R v Jordan,* the Court concluded that there was a presumptive temporal ceiling for determining whether an offence was tried within a reasonable time – though the presumption may be overcome in exceptional circumstances.[11] The presumptive temporal ceiling for cases tried before a provincial court is 18 months from the time of formal charge and 30 months for cases tried before a superior court (or as well, a provincial court where a preliminary inquiry is involved).[12]

This is the Dawning of the Age of…

Scientifically measured durational time is also crucial in determining issues concerning age and its relevance in criminal legal processes. For instance, from what age may an individual be deemed criminally liable for a criminal offence? Under the *Criminal Code* of Canada, no person "shall be convicted of an offence in respect of an act or omission on his part while that person was under the age of twelve years."[13] The legal significance of that ostensibly precise measure (assuming one can be certain of that person's date of birth and supporting documentation is available), that children who have not reached the age of 12 when an alleged act was committed are to be shielded from criminal liability. Where an individual has reached the age of 12 but has not reached the age of 18, there is a special process set out in the *Youth Criminal Justice Act* to govern prosecutions involving individuals in that age group.[14] The age of a complainant is of significant importance regarding the age of consent to various sexual activities. For many *Criminal Code* offences, and subject to certain exceptions and the defence of mistake of age, the minimum age of consent is 16 years of age.[15] In connection with anal intercourse, Parliament set the minimum age at 18 years for when an individual may consent.[16]

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[10] *Canadian Charter of Rights and Freedoms,* s 11(b), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, online: http://canlii.ca/t/ldsx [*Charter*].
[11] *R v Jordan*, 2016 SCC 27, online: http://canlii.ca/t/gsds3.
[12] *Ibid* at paras 5, 46-59.
[13] *Criminal Code*, RSC 1985, c C-46, s 13, online: http://canlii.ca/t/53jff.
[14] *Youth Criminal Justice Act*, SC 2002, c 1, online: http://canlii.ca/t/53gzd.
[15] *Criminal Code*, *supra* note 13, s 150.1(1).
[16] *Ibid*, s 159.

Context-Sensitive Determined Time

As the foregoing (but non-exhaustive) examples suggest, there are many places where scientifically measured durational time plays a role, whether under constitutional law or legislation concerning criminal law and procedure. But as noted above, time's role is also present when scientifically measured durational time is not employed. In such cases, the relevant measure of time must be assessed on the basis of a contextually sensitive and fact-specific determination. Such assessments will come into play in various circumstances, including when determining criminal liability for the commission of offences, the availability of a legal defence, or the scope of constitutional and common law rules in connection with the admissibility of incriminating statements. Below, I show how time is a crucial component of determining liability regarding forms of first degree murder, the availability of several defences like necessity, provocation and self-defence, and the admissibility of incriminating statements under the common law confessions rule and the right to counsel situated within the *Canadian Charter of Rights and Freedoms*.

First Degree Murder

Context-sensitive determined time is very much alive in situations where a court must ascertain if an act of murder should be characterized as first degree murder as opposed to murder in the second degree. The *Criminal Code* sets out a series of circumstances where culpable homicide will be considered first degree murder. Perhaps the most paradigmatic version of first degree murder, as understood more popularly, is when a murder is planned and deliberate. While the *Criminal Code* does not explicitly mention time or the need for temporal considerations, the Supreme Court of Canada has defined "planned" as meaning that "the scheme was conceived and carefully thought out before it was carried out…."[17] The notion of a murder being deliberate embraced the idea of a murder that was "considered, not impulsive."[18] Both planning and deliberation implicate time but are not susceptible to precise scientific measures. The Court illustrated the importance of time by deploying a quote from a lower court judgment (*R v Widdifield*) that it characterized as a "classic" jury instruction regarding planned and deliberate first degree murder:

[17] *R v Nygaard*, [1989] 2 SCR 1074 at 1084, online: http://canlii.ca/t/1ft11.
[18] *Ibid*.

> I think that in the Code "planned" is to be assigned, I think, its natural meaning of a calculated scheme or design which has been carefully thought out, and the nature and consequences of which have been considered and weighed. But that does not mean, of course, to say that the plan need be a complicated one. It may be a very simple one, and the simpler it is perhaps the easier it is to formulate.
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> The important element, it seems to me, *so far as time is concerned*, *is the time involved in developing the plan*, not the time between the development of the plan and the doing of the act. One can carefully prepare a plan and immediately it is prepared set out to do the planned act, or, alternatively, you can wait an appreciable time to do it once it has been formed.
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> As far as the word "deliberate" is concerned, I think that the Code means that it should also carry its natural meaning of "considered," "not impulsive," "slow in deciding," "cautious," implying that the *accused must take time* to weigh the advantages and disadvantages of his intended action.[19]

The explicit references and the emphasis on time in connection with both planning and deliberation underscore time's value (in this specific context) as a protective device against an overly harsh sentence. The ramifications of a guilty verdict for first degree murder in Canadian law are that a person must serve at least 25 years of a life sentence before parole eligibility begins (which in turn circles back to scientifically measured durational time with respect to a mandatory minimum sentence). A conviction for first degree murder should be restricted to what Parliament has deemed to be one of the most heinous forms of killing. In part, this is reserved for those who not only intended to kill someone, but they also spent enough time to both plan *and* deliberate – including to weigh the advantages and disadvantages of killing. The Court recognized that time is inherent to the process of deliberation. To quote Dr. Cohen: "To be deliberate, one must deliberate, and deliberation requires time."[20] This specific type of murder is considered more egregious and chilling because of its very premeditated and deliberative nature. The Supreme Court of Canada has articulated: "Throughout history the idea that one human being could cold bloodedly plan and deliberate upon the killing of

[19] *Ibid* [emphases added].
[20] Cohen, *supra* note 1 at 75-76.

another has been repugnant to all civilized societies and has tended to be considered as the most reprehensible of violent crimes."[21]

Though planned and deliberate murder was perhaps once, traditionally, the most paradigmatic form of first degree murder, governments have expanded the scope of first degree murder to include other situations that may warrant a harsher penalty than that which might be deserved under second degree murder. In Canada, Parliament has legislated that notwithstanding that a murder is not planned and deliberate, it will still be considered first degree murder while committed in specialized circumstances.[22] In these circumstances too, context-sensitive determined time is in play. However, in contrast to section 231(2) where the Crown has to demonstrate, in part, that sufficient time was taken for planning and deliberation, thus favouring some defendants, the generous temporal boundaries in play in other provisions of section 231 will not necessarily be as favourable. For instance, under section 231(5) of the *Criminal Code*, the provision states:

> Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person *when the death is caused by that person while committing or attempting to commit an offence* under one of the following sections: (a) section 76 (hijacking an aircraft); (b) section 271 (sexual assault); (c) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm); (d) section 273 (aggravated sexual assault); (e) section 279 (kidnapping and forcible confinement); or (f) section 279.1 (hostage taking).

With respect to time, the operative words are italicized above. How should the temporal scope be measured in such situations? The Supreme Court of Canada has rejected a restrictive interpretation that would narrow the temporal window requiring the commission of the murder to be simultaneous with the commission or attempted commission of one of the enumerated offences. A restricted interpretation would exclude consideration of murders (*qua* first degree murder) that may have occurred very soon after the underlying act was committed even if there was an otherwise strong temporal and contextual connection. Instead, the Court has held that as long as the murder and underlying act of domination took place as part of a continuous sequence of events forming a single transaction, this would satisfy the temporal requirements of the provision. Under this formulation,

[21] *Nygaard*, *supra* note 17 at 1085.
[22] *Criminal Code*, *supra* note 13, ss 231(4)-(6.2).

for example, an accused who murdered another person within minutes after sexually assaulting that person would not necessarily escape liability for first degree murder.[23] Taking a purposive view of the provision, the Court determined that the objective of the provision was to punish those who murdered another in connection with an underlying act of domination or its attempt. It is worth noting that while strict simultaneity is not required, the Court's formulation still indicates that a close temporal connection is significant, though one that cannot be scientifically measurable.

I have used two subsections from section 231 of the *Criminal Code* to illustrate how the relevance, if not materiality, of time can play a role in the analysis of offences. There are undoubtedly many others. But I want to turn next to the connection between context-sensitive durational time and legal defences.

Defences

There are instances where a context-sensitive assessment of time is an essential element of a defence and other circumstances where it is an important factor to consider but not determinative on its own. Examples of where time is a crucial component to defences include necessity and provocation.

Necessity is a common law defence[24] where an individual engages in an unlawful act to prevent another harm, of greater or equal degree from occurring. The three elements for the necessity defence are: (1) the existence of an imminent peril or danger; (2) "the accused must have had no reasonable legal alternative to the course of action he or she undertook"; (3) "there must be proportionality between the harm inflicted and the harm avoided."[25] A key feature of this defence is that an individual is placed in a circumstance where they have no effective choice but to engage in their unlawful act. Among these elements, time is most intimately tied to the first element where the danger or peril that is faced must be "imminent". As the Supreme Court of Canada has explained: "[the] disaster must be imminent, or harm unavoidable and near. It is not enough that the peril is foreseeable or likely; it must be on the verge of transpiring and virtually certain to occur."[26] While this

[23] For factual examples, see *R v Paré*, [1987] 2 SCR 618, online: http://canlii.ca/t/1ftl2; and *R v Harbottle*, [1993] 3 SCR 306, online: http://canlii.ca/t/1fs0z.
[24] *Criminal Code*, *supra* note 13 (stating: "Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of proceedings for an offence under this Act or any other Act of Parliament except in so far as they are altered by or are inconsistent with this Act or any other Act of Parliament" s 8(3)).
[25] *R v Latimer*, 2001 SCC 1 at para 28, online: http://canlii.ca/t/523c.
[26] *Ibid* at para 29.

element is assessed on a modified objective standard – that is, "an objective evaluation, but one that takes into account the situation and characteristics of the particular accused person" – it is clear that the Court intended for the defence to apply in rather restrained circumstances where an individual has strikingly limited time to deliberate and act.

Provocation is another defence where time is an essential ingredient. It is a partial defence, which reduces a murder conviction to manslaughter (thus reducing, but not eliminating the moral blameworthiness of an accused).[27] These are instances where a homicidal act occurs "in the heat of passion caused by sudden provocation."[28] The *Criminal Code* defines provocation as follows:

> Conduct of the victim that would constitute an indictable offence under this Act that is punishable by five or more years of imprisonment and that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section, *if the accused acted on it on the sudden and before there was time for their passion to cool*.[29]

Though contextually different from the circumstances that give rise to necessity, provocation also demands a very narrow temporal window in which the accused is permitted to act in a homicidal rage in order to reduce a conviction of murder to manslaughter successfully. The relevant temporal period may not be delimited to a scientifically measurable amount of time, yet the allowable quantum is likely to be considerably narrow. With respect to time, provocation may even be more restrictive than necessity in that provocation arguably leaves less time, if any, for reflection. One might argue that if an accused had time to think about what they were about to do, their heat of passion had enough time to cool, thus leaving them just a good old-fashioned and unreasonably outraged murderer.

There are other circumstances where time is not a required element but one of many factors. This includes self-defence and defence of others found in section 34 of the *Criminal Code*. Section 34(1) provides that:

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[27] *Criminal Code*, *supra* note 13, s 232(1).
[28] *Ibid*.
[29] *Ibid*, s 232(2) [emphasis added].

> A person is not guilty of an offence if
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> > (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
> >
> > (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; *and*
> >
> > (c) the act committed is reasonable in the circumstances.[30]

Subsection 34(2) then enumerates a number of non-exhaustive factors to assess whether an act committed in the context of self-defence or defence of another was reasonable in the circumstances. One of these factors is "the extent to which the use of force [against the accused or other person] was imminent and whether there were other means available to respond to the potential use of force."[31] While the imminence of an attack may play or seem to play a significant role in certain fact scenarios,[32] it may be the case that in others, an attack may not be imminent but nevertheless be foreseeable or predictable as in the case of abusive relationships where there is a cycle of violence.[33] Though it may also be that the existence of an imminent attack appears more persuasive to some triers of fact in supporting a finding that the use of force by the accused was reasonable, it would be unjust to require a narrow temporal scope as exemplified in instances of someone facing an assailant with an "uplifted knife" or gun pointed at the accused or other potential victim. Such a requirement would be especially problematic when a vulnerable accused may not have access to a weapon at the critical moment as an attack is in progress or imminent – a likely common occurrence.[34] In many cases, a person may not have the physical ability to fend off an attack as it is happening and may have to strike at a different time.

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[30] *Ibid*, s 34(1).
[31] *Ibid*, s 34(2).
[32] See e.g. *R v Knott*, 2014 MBQB 72 at para 147, online: http://canlii.ca/t/g6ktk.
[33] *R v Lavallee*, [1990] 1 SCR 852, online: http://canlii.ca/t/1fsx3.
[34] Though see *Knott* where the accused, a battered spouse who was able to access a knife while being attacked by her husband in the kitchen. *Knott*, *supra* note 18. One should note though that such access to a lethal weapon in the midst of an ongoing attack may not be available in each case.

As seen with these examples, time carries an important value in legal defences. As it serves to exculpate an accused, in whole or in part, the imposition of certain time limits, or to at least consider time as in the case of section 34, seeks to ensure or make it difficult for an accused to misuse a defence. Assessing the appropriate length of the time is fact-specific contextual determination.

Time and the Admissibility of Evidence

In this final portion of the blawg, I will turn my attention to the significance of time in connection with certain police techniques employed to procure evidence. At various points throughout her book, Dr. Cohen raises the issue of the state's ability to make demands of people's time. Law enforcement agents can do this in a rather significant way through their investigative powers – for example when they arrest or detain someone. Arrest and detention involve both spatial and temporal states of existence. Not only is an individual's physical liberty encumbered, the state also lays claim to that person's time while they are detained. Arrests and detentions have beginnings and endings. The commencement of an arrest or detention is a triggering event, which, from a constitutional perspective has significant temporal implications. Once a police officer has detained or arrested someone, there are correspondingly time-sensitive obligations imposed on state actors under Canadian constitutional law.[35] Under section 10 of the *Canadian Charter of Rights and Freedoms*, upon arrest or detention, an individual has the right be informed *promptly* for the reasons thereof and in addition, one has the right to retain and instruct counsel *without delay* and to be informed of that right.[36] The Court has explained that:

> From the moment an individual is detained, s. 10(*b*) is engaged and, as the words of the provision dictate, the police have the obligation to inform the detainee of his or her right to counsel "without delay". The immediacy of this obligation is only subject to concerns for officer or public safety, or to reasonable limitations that are prescribed by law and justified under s. 1 of the *Charter*.[37]

The Supreme Court of Canada has been fairly diligent in requiring, once it is determined there was an arrest or detention, that state actors fulfill their

[35] It is important to note of course that in the case of "psychological detentions", the beginning point may be difficult to determine. See *R v Grant*, 2009 SCC 32 at paras 24-44, online: http://canlii.ca/t/24kwz.
[36] *Charter*, *supra* note 10, s 10(a)-(b) [emphasis added].
[37] *R v Suberu*, 2009 SCC 33 at para 2, online: http://canlii.ca/t/24kx4.

constitutional obligations before engaging in questioning that may elicit incriminating responses.[38] As noted this means informing accused of the reasons for their arrest or detention, and their right to retain and instruct counsel and to be informed of this right. Subject to an effective waiver, the *Canadian Charter of Rights and Freedoms* thus offers a suspect protection by imposing a protective temporal safe zone before the state subjects them to potentially lengthy interrogations.

Yet, once these obligations are discharged, the Supreme Court of Canada has clarified that there is no constitutional obligation imposed on police officers to permit an accused's lawyer to be present during an interrogation.[39] There is also no requirement to permit the individual to re-consult counsel unless there are changed circumstances.[40] These pose significant access to justice issues and enhance the dangers related to false confessions.[41] Without the protection that legal counsel can provide, police officers are not only permitted to make significant demands of an individual's time by subjecting them to lengthy interrogations, but they are able to do so without a lawyer's intervention. The experience of time during an interrogation is both quantitative and qualitative. The ultimate length of the interrogation can of course be measured in hours, minutes and seconds, assuming accurate records are maintained. However, the actual experience can feel much longer (and exhausting) when endured without the assistance of counsel and is compounded while isolated in a room with police officers skilled in interrogation using all manner of sophisticated and deceptive techniques including possibly lies, fabrication of evidence and other methods to elicit evidence.

It should be noted that even where police conduct during an interrogation does not breach the *Charter*, state action that renders a confession involuntary (as determined by a court) will be deemed inadmissible under the common law confessions rule.[42] There are several sources that can make a confession involuntary (or unreliable). Connected to time, one identifiable source is an "atmosphere of oppression". The Supreme Court of Canada has explained this potentially capacious category in the following way: "Without trying to indicate all the factors that can create an atmosphere of oppression, such factors include

[38] See e.g. *R v Manninen*, [1987] 1 SCR 1233, online: http://canlii.ca/t/1ftmx; *R v Taylor*, 2014 SCC 50, online: http://canlii.ca/t/g836k.
[39] *R v Sinclair*, 2010 SCC 35 at para 42, online: http://canlii.ca/t/2cvjs.
[40] *Ibid* at paras 53-65.
[41] In *R v Oickle*, the Supreme Court addressed the various concerns about the dangers, types of false confessions, and the conditions that gave rise to them. *R v Oickle*, 2000 SCC 38 at paras 37-45, online: http://canlii.ca/t/525h.
[42] See *ibid* at para 30 (stating: "a violation of the confessions rule always warrants exclusion" at para 30); see also *The Queen v WS*, 2014 ONSC 3144, online: http://canlii.ca/t/g75b9.

depriving the suspect of food, clothing, water, sleep, or medical attention; denying access to counsel; and excessively aggressive, intimidating questioning for a prolonged period of time."[43] The explicit reference to time here indicates an extended temporal period in connection with excessively aggressive and intimidating questioning. However, there is surely an implied temporal component to the other listed factors. The lengthier the deprivation of the various factors the more likely a court may find the incriminating statements involuntary. One could imagine however, a circumstance where the need to provide medical attention within a shorter time frame and the failure to provide it could render a confession involuntary. As with other aspects of the confessions rule (and indeed many areas of the law), such determinations are context-specific and fact-intensive inquiries, but time will have a considerable role to play in the overall assessment.[44]

Concluding Thoughts – It's About Time!

In this blawg post, and following Dr. Cohen's work, I wanted to explore and illustrate the importance of time within law, using Canadian criminal law as a convenient and relevant point of focus. Expositions on the value, significance and impact of time on different areas of law and legal processes across numerous jurisdictions could occupy numerous pages. Through my selected examples, I have tried to demonstrate time's weighty position on an array of issues including the construction of offences, defences and evidentiary norms concerning the admissibility of evidence. Dr. Cohen's work was focused on the importance of scientifically measured durational time. In this post, I have sought to identify areas where such precise temporal measurements exist in Canadian criminal law and procedure. Building from her exceptional work, I also wanted to identify the ways in which non-scientific measures of durational time are also in play. I have referred to this as context-specific determined time. This is in no way intended to undermine or be critical of Dr. Cohen's focus on scientifically measured durational time in her work. It is to simply build on her study and to demonstrate time's crucial role in other respects.

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[43] *Oickle*, *supra* note 41 at para 60.

[44] See e.g. *R v States*, 2012 NSPC 72, online: http://canlii.ca/t/ftp30 (concluding: "I find that an atmosphere of oppression existed. *Waiting three hours* for a pair of pants, *having to wait* after requesting bathroom breaks, the *lengthy* detention which exceeded the *maximum time allowable* under the *Criminal Code*, and being *subjected to long interviews* that compelled Mr. States to listen to the officers for a *prolonged period of time*, created an atmosphere of oppression" at para 59) [emphasis added]. The court's consistent reference to time in this contextual analysis is worth observing, indeed it is central to determining whether the confession was voluntary.

As a final (and by no means original) point, scholars working in other disciplines can contribute important insights to the study of law, as well as spark new directions and themes for legal scholarship. There is much to be gained from reading the work of political scientists, philosophers, anthropologists and historians (and other disciplines) whose work is about law or closely connected to it. This is probably obvious enough to many legal scholars, but I mention this to encourage law students and others that there is a real value to spending time exploring the work of other disciplines and how they can develop our understandings of law and stir important and deeper reflections. Dr. Cohen's work is an important example of this.