



Canadian Law 4

Introduction to Criminal Law

90

Dimensions of a Crime

- The main source of criminal law in Canada is the *Criminal Code*. It describes which acts are **offences** and also explains their **punishments**.
- The Law Reform Commission has outlined 4 conditions that must exist for an act to be considered a crime:
 1. The act must be considered immoral by most Canadians.
 2. The act must cause harm to individuals and society.
 3. Harm caused by the act must be serious in nature.
 4. The person must be punished by the criminal justice system.

Immoral Behaviour

- Governments regularly change laws to reflect the views of society. As societies change, so do many laws.
- When determining whether or not an act is "immoral," the following terms are important to understand.
- **Legal**: any action that does not harm others and is not against the law
- **Illegal**: an action that is considered immoral; not legal but also not criminal
- **Criminal**: an action that is considered immoral and potentially harmful to others; included in the *Criminal Code*

Procedural Justice

- The Law Reform Commission has also defined seven principles of **procedural justice**, or fairness in the justice system:
 1. Fairness (no bias toward accused)
 2. Efficiency (process is timely; no lengthy delays)
 3. Clarity (accused understands the process)
 4. Restraint (officials are disciplined and professional)
 5. Accountability (officials are responsible for actions)
 6. Participation (process must be open for scrutiny)
 7. Protection (accused is not abused by officials)

Categories of Offences

- In Canada, there are three types of criminal offences which are classified and prosecuted according to their severity:
 1. **Summary Conviction**: a less serious criminal offence, also known as misdemeanours (e.g. shoplifting).
 2. **Indictable**: a more serious criminal offence with a severe punishment (e.g. murder – life imprisonment).
 3. **Hybrid**: a criminal offence in which the Crown decides how to treat the charge (summary or indictable).

Offences & Punishments

- Maximum penalties for summary, indictable, and hybrid offences:

Summary: \$2000 fine and/or 6 months in prison

Indictable: Life in prison

Hybrid: 2-10 years in prison

Statute of Limitations

- A time limit to lay charges is known as a statute of limitations.

Summary: Charges must be laid within 6 months of the alleged incident.

90

Indictable: No time limit or statute of limitations; charges can be laid several years after the alleged incident.

Hybrid: Depends on whether the case is tried as summary or indictable.

Elements of a Criminal Offence

- There are two basic elements required for a person to be guilty of a crime.

Actus Reus – "a wrongful deed" or guilty act

Mens Rea – "a guilty mind" or the mental element

"Actus non facit reum nisi mens sit rea"

Latin phrase for "The act will not make a person guilty unless the mind is also guilty."

Intention

- Once a prosecutor establishes that an accused person physically committed the crime (***actus reus***), they focus on proving what the accused's intention or state of mind was at the time of the offence (***mens rea***).
- Common types of *mens rea*:
 1. Recklessness or Willful Blindness
 2. Knowledge
 3. Motive
 4. Attempt
 5. Conspiracy

Recklessness & Willful Blindness

- **Recklessness** is the careless disregard for the possible results of an action.
- Example: A person who knows they have a sexually transmitted disease has unprotected sex with someone; they may not intend to hurt that person, but their actions are **reckless**.
- **Willfull Blindness** occurs when someone purposely ignores certain facts or information; "turning a blind eye" to something.
- Example: Delivering an unknown package for a known drug dealer without asking what is in it.

Knowledge & Motive

- The **knowledge** of certain facts, or *simply knowing* something can lead to *mens rea*.
- Example: Using a credit card that you know is expired or invalid.
- An accused's reason for committing a certain act is his or her **motive**.
- This is not the same as **knowledge** and is considered circumstantial evidence, but understanding *why* a person would commit a crime is helpful to police and can be used effectively by a prosecutor.

Attempt & Conspiracy

- A person who intends or **attempts** to commit a crime but fails to complete it can still be found guilty of a *mens rea* offence.
- Example: If John tries to kill Jennifer but fails to do so, he is still responsible for his actions and is charged with attempted murder.
- An agreement between two or more people to commit a crime is a **conspiracy**.
- Example: Linda and Nathan plan to break into a house and steal electronics.

Parties to an Offence

- It is possible to be a part of, or to contribute to a crime, without directly participating in it.
- Being a party to an offence is also a crime:
 1. Aiding or abetting
 2. Accessory after the fact
 3. Organized crime

Aiding or Abetting

- A person may be charged with **aiding** if he or she assists or helps someone to commit a crime.
- Example: Troy robs a store while Raj keeps a lookout for the police. Raj can be charged with **aiding** Troy in this crime.

90

- The act of encouraging a person to commit a crime is known as **abetting**.
- Example: Tara complains about how much she hates her boyfriend and Sheila encourages her to hurt him. Sheila can be charged with **abetting** if Tara actually hurts her boyfriend.

Accessory After The Fact

- If a person knows a crime has been committed but helps the person who committed the crime escape or hide from the police, he or she may be charged as an **accessory**.
- Example: James kills someone and runs to his best friend Nick's house for help. Nick gives James some food, money, and the use of his car. Nick is an **accessory after the fact** for helping James evade the authorities.

Organized Crime

- A group of three or more people with a common identity for criminal purposes are considered **organized crime**.
- This typically includes street or biker gangs, but may also involve the mob, political protestors, or even members of an online social network like Facebook or MySpace.
- If a person helps to organize a gang-related offence, he or she may be found guilty of an **organized crime**, or **criminal organization offence**.

The Courts

- Outside of civil law, there are mainly five types of courts in Canada:
 1. Provincial Court – Criminal Division
 2. Provincial Superior Court – Appeals & Trials
 3. Provincial Court of Appeal
 4. Federal Court
 5. Supreme Court of Canada

Provincial Court - Criminal

This court...

- Arraigns the accused (reads charge; enters plea)
- Holds preliminary hearings for very serious indictable offences⁹⁰
- Hears and tries summary conviction offences and less serious indictable offences (e.g. theft under \$5000)
- Judges are appointed by provincial governments.

Provincial Superior Court

This court...

- Tries the most serious crimes (murder, robbery)
- Hears criminal appeals in summary offences
- Sets provincial precedent; new decisions must be followed by other judges in that province
- Can be a judge alone or judge and jury
- Judges are appointed by the federal government.

Provincial Court of Appeal

This court...

- Is the final court of appeal in the province
- Sets provincial precedent for other judges to follow
- Has three to five judges to hear appeals
- Judges are appointed by the federal government.

Federal Court

This court...

- Is divided into two parts: Federal Court and Federal Court of Appeal
- Hears legal disputes that involve the federal government (e.g. jurisdiction, immigration, copyright issues)
- Decisions of this court may be appealed to the Supreme Court.

Supreme Court of Canada

This court...

- Is the highest court of appeal in the country
- Hears appeals but only under certain conditions:
 - issue must be of national importance
 - a law must be interpreted
- Has unlimited jurisdiction and usually sets national precedents when issuing a decision
- There are nine judges on the Supreme Court; they are appointed by the federal government and can serve until they reach the age of 75.