

Criminal Law

Intro

- *What is Criminal Law?*
 - Criminal law is an area of law involving people accused of committing a crime.
 - Criminal law is separate from other areas of law, such as family law, immigration law, civil law.

Intro

- Offences in *The Criminal Code* of Canada, or drug offences under the *Controlled Drugs & Substances Act*
 - Common questions about
 - Examples: assault, mischief, uttering threats, impaired driving
 - Police powers
 - First appearance in court (arraignment)
 - Peace Bonds
 - Sentencing basics
 - Prison law issues like habeas corpus
- Crimes are different from other less-serious offences (for e.g., parking tickets, noise complaints, etc.).
These are Summary Offence Tickets (provincial ‘SOTs’)

Intro

- Elements: Actus rea and mens rea
- Actus reus (act itself)
 - Acts (mostly) or omissions
 - External elements: Voluntary conduct, circumstance, and results/consequences

Intro

- Actus reus - Common law excuses & defences:
section 8(3)
 - Failure of proof
 - Denial
 - Alibi
 - Involuntariness
 - Automatism/mental disorder
 - Accident/causation (defence of accident)

Intro

- Mens rea (fault or mental element)
 - Intent
 - Knowledge
 - Recklessness
 - Wilful blindness
- Generally: Subjective awareness, conscious choice to commit the prohibited act

Intro

- Mens rea – Defences basics:
 - Honest mistake of fact
 - Voluntary intoxication (specific intent/general intent)
 - Honest and reasonable mistake

Intro

- Justifications and Excuses
 - Necessity
 - Self-defence
 - Exercise of lawful authority
 - Immaturity
 - Mental disorder (section 16)
 - Intoxication
 - Automatism
 - Duress
 - Provocation (murder to manslaughter)

Intro

- Indictable – more serious
- Summary – less serious
- Hybrid – Crown chooses indictment or summary

Summary	Indictable	Hybrid: many
Less serious	More serious	Examples: theft, assault causing, assault with a weapon, uttering threats, criminal harassment. Up to 18 months jail for many offences if Crown proceeds summarily
6 months (except s. 786)	No limitation period	
Usu. 6 months jail or \$5000 fine or both s. 787(1)	Max. term of imprisonment – life, 14 years, 10 years, 5 years, 2 years	

Offences

Assault

- intentional application of force, directly or indirectly, to the person of another without consent
- Consent is a question of fact.
- Crown always has the burden of proving lack of consent – beyond a reasonable doubt

Offences

Mischief

- destroys or damages property
- Interferes with lawful use, enjoyment of property, etc.
- Destroys or alters data...

Offences

Impaired Driving offences

- 1) Driving while impaired by alcohol or drugs
- 2) Operating vehicle with over 80mg of alcohol in 100ml of blood.

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Accused:

Rights include:

- the right to be silent
 - the right to a lawyer (retain & instruct)
 - the right to know about the charge
 - the right to be presumed innocent
- They may be released or held in jail
- They can choose to plead “guilty” or “not guilty” to a judge

Common questions

Interim release

- **Release by police**, with or without conditions (review of conditions – s 499(3) or 503(2.2); or
- Bail hearing (show cause):
 - starting point is accused will be released (exceptions, eg. 469 serious offences), just show up in ct
 - Show cause – ensure show up in court, public safety
 - **Release by judge** on conditions – s. 515

Common questions

- Laying an Information
 - Starts both summary (6 months) and indictable (no time limit)
 - A written complaint on oath – usually police – reasonable & probable grounds to believe a person has committed a particular offence (ss. 504, 788)
- Private prosecutions

Common questions

Arraignment

- First court appearance
- Enter a plea. Get legal advice first!
- General process: name called, charge read out loud (unless waive reading), ask accused to enter plea
 - May request adjournment to get legal advice

Common questions

Lie detector test (polygraph)

- police are trying to obtain evidence
- Useful investigative tool for police
- Right to remain silent
- **Get legal advice**
- Results are not admissible in court, but answers to questions are a statement!

Common questions

What Happens when the Police Finish their Investigation?

- If the police feel a crime was committed and they have enough evidence, they may arrest and charge a person with committing a crime
 - Police must tell an Accused why they are being charged or arrested and the Police must tell them that they can speak with a lawyer, free of charge.
- Police may interview an Accused, although an Accused does not have to speak with police.

Part III: A Typical Case

- *What happens prior to Trial?*
 - The Accused is entitled to see all evidence against them before making any decisions
 - The Accused must plead guilty or not guilty, unless Crown withdraws or offers “diversion”
 - If an accused pleads guilty, they agree that they committed the crime
 - If an accused pleads not guilty, a trial will be held to determine if the Crown Attorney can prove the charges against the Accused

Part III: A Typical Case

- *What happens at Trial?*
 - Trials are held at Provincial Court or Supreme Court, depending on the seriousness of the charges
 - The Judge must presume the Accused is innocent until the Crown Attorney can prove their guilt

Part III: A Typical Case

- *Continued: What happens at Trial?*
 - The Crown Attorney and Defence lawyer will take turns presenting witnesses and other evidence
 - Each side will be given a chance to ask questions of all witnesses
 - The Accused can be a witness, but they are not required to do so

Part III: A Typical Case

- *The Judge's Decision after Trial*
 - Once all the evidence has been presented, the Judge (or jury) decides if the Accused is “guilty” or “not guilty” of each charge
- *What happens if an Accused is Found Not Guilty?*
 - All conditions on the Accused disappear
 - No sentence or punishment

Part III: A Typical Case

- *What Happens if an Accused is Found Guilty, or Pleads Guilty?*
 - The Accused will be sentenced by the Judge to an appropriate punishment
 - Sentences depend on the seriousness of the crime and the circumstances of the Accused
 - Sentences vary and include discharges, fines, community-based sentences, and jail.

Part II: A Typical Case

- *Examples...*
 - Example 1: Theft from Walmart...
 - Example 2: Armed Robbery....

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- Section 7 Life, Liberty, Security of the Person
- Not easily saved by section 1
- Examples
 - Abuse of process
 - Right to silence
 - Pre-charge delay
 - Self-incrimination
 - Full answer and defence, right to disclosure (R. v Stinchcombe [1991] 3 SCR 326). Disclose unless clearly irrelevant, privileged

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- Section 8 Unreasonable search
 - Application to exclude evidence –alleging violation of right to be secure against search or seizure
 - Reasonable expectation of privacy, in all the circumstances?
 - Privacy: spatial (home, vehicle), personal (frisk, bodily samples), informational (personal, confidentialia)
 - If no reasonable expectation of privacy, s. 8 not engaged

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Valid search (section 8):

- (1) authorized by law (includes common law like consent search or search incident to arrest);
- (2) the law must be reasonable; and
- (3) Search carried out in a reasonable manner.

The clearest example of legal authorization is a valid search warrant.

Exceptions to warrant requirement:

- Consent
- Incident to lawful arrest or detention (special case law on laptops, cellphones, IP address, texts)
- Searches by school officials
- Dog sniff
- Garbage
- Emergency responses to 911 calls
- Officer safety searches (imminent risk to police or public safety)

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Section 9 Right not to be Arbitrarily detained or imprisoned

- Detention – suspension of liberty by significant physical or psychological restraint (SCC - *R. v. Grant*)
- No general power to detain for investigative purposes, but police may detain where
 - reasonable grounds to *suspect* a person is connected to a particular crime
 - Detention reasonably necessary based on objective view of circumstances, and detention no more intrusive than reasonably necessary

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Section 10 Rights on arrest or detention

- Reasons for arrest/detention
- Right to counsel
- Habeas corpus

Right to counsel in every situation where there is a duty to comply with police officer's demand.

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Section 11. Rights when charged with offence

Section 11(b) Trial within reasonable time (R. v. Jordan 2016 SCC 27, R v. Cody 2017 SCC 31)

- 18 months in Provincial Court
- 30 months in Supreme Court) or Provincial Court after prelim.
- Defence delay does not count
- Crown may rebut unreasonableness – exceptional circumstances

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- Section 24 remedies for breaches
 - Stay a prosecution where no other remedy appropriate (eg. Abuse of process, unreasonable delay)
 - Exclusion of evidence

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See [Charterpedia](#) for further information, as a basic overview.

Aboriginal considerations

Section 718.2(2) – jail a penalty of last resort, particularly with aboriginal offenders. Restorative approaches, systemic issues.

Gladue Report or Sentencing Circle (Mi'kmaw Legal Support Network). At least must look at Gladue factors unless waived.

Mi'kmaw Legal Support Network.

Plea Bargains

- Code of Professional Conduct - Chapter 5.1.7-5.1.8 NSBS Ethical Guidelines for plea bargains. And NS PPS Crown Manual & PPS Canada Deskbook
- Self-rep can talk with Crown (not required to have lawyer)
- Voluntarily admit necessary facts and mental elements of the offence
- Section 606(1.1)(b)(iii) judge not bound by plea bargain

Appeals

- Summary conviction appeals: to Supreme Court (s. 813), or if issue of law alone, Court of Appeal (s 830); Rule 63 CPR
- Indictable – Court of Appeal (ss. 675, 676); Rule 91 CPR

Peace Bonds

- Section 810 Criminal Code
- Apply to Provincial Court
- Reasonable fear for own safety, safety of family or property
- Go to legalinfo.org/criminal-law/peace-bonds

And courts.ns.ca

Domestic Violence

Pro-arrest, pro-prosecution, zero tolerance policy.

Only the Crown can change or drop charges (not a complainant/survivor).

Domestic violence courts in Sydney and Halifax.
trauma-informed, collaborative approach

Mental Health Court

- Halifax area only
- Must accept responsibility or plead guilty
- Have a qualifying mental disorder that is clearly related to the charge
- Attend court regularly, attend professional appointments
- Take all medications
- No drugs or alcohol and substance use testing if required
- 1 year minimum program involvement

Drug Treatment Court

- Kings County Only
- adults 18 years of age and older and have been charged with a criminal offence committed in Kings County.
- must accept responsibility for their criminal actions and have an addiction to cocaine (including crack cocaine), methamphetamines (also commonly referred to as meth, crystal, ice) and/or opioids (opioids are drugs like heroin, codeine, morphine, Percocet, etc).
- There must be a connection between the addiction and the alleged offense(s).
- Once accepted into the Program, they must plead guilty to the offence(s).
- The Crown Prosecutor in the Court Monitored Drug Treatment Program must consent to their participation.

Ways to get Criminal Law Advice

Getting Legal Advice

- Private Defence lawyer (eg. Lawyer Referral or just contact lawyer who does criminal defence)
- Nova Scotia Legal Aid lawyers - nslegalaid.ca - apply online or in-person
- Nova Scotia Legal Aid Duty Counsel – brief legal advice & limited court representation. Free, at most Provincial Court's province-wide
- **Brydges** Counsel – in custody – 24/7, 365

Survivors of Sexual Violence

- [Legal Advice for Sexual Assault Survivors Program](#) provides up to 4 hours of free, independent legal advice for sexual assault survivors who are 16 years of age or older. Do not have to report to police or take legal action if you use this service.
- Dial 2-1-1 for intake. Go to novascotia.ca/sexualassaultlegaladvice/ for more information.

Victim support

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Questions?

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