Nick Temple Ottawa Canada September 2007

Canadian Laws

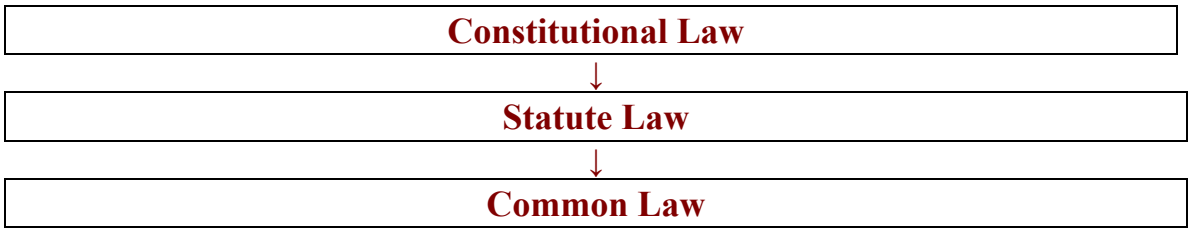
Contents

Because the legal system affect almost all aspect of our life, it is very important that everyone understand how the system works and what you rights and responsibilities are as a Canadian citizen.
We all Canadians have the right to understand the laws that affect us every day. Complicated legal terms and the enormous volume of laws have always made it extremely difficult for people to get the information they need.
Understanding Canadian laws will provide you with a useful foundation of your rights as well as the skills to interpret and use that information correctly.
I choose a free way presentation of the material with some repetitive material for clear demonstration and understanding of Canadian laws.
Sources of Law in Canada

In Canada laws originate from three sources: from Canadian Constitution (constitutional law), from elected government representatives (statute law), and from previous legal decisions (common law).

1. Classifying Law

As Figure shows, each source of law has different level of authority: constitutional law can override statute law, and statute law can override common law.



Common Law

Common Law can be traced to the ancient, unwritten laws of England. It is called "common law" because it is common to all and has a general and universal application. Common law is also called "case law" because its sources include decisions made by judges in previous cases. Case law or common law is sometimes referred as judge-made laws.
Common law is constantly evolving as judges decide new cases based on previous judicial decisions. Today, Canadian court continue to follow the legal principal known as stare decisis, relying on the decisions made by other courts when determining the outcome of similar cases. The rule of precedent is not the only way Canadian courts judge cases. What would happen if the judge disagreed with the decision made by another judge, or the precedent was set some time ago and is no longer applicable in today's society? Or support the current case involves new technology and is so unique that no previous case law exists. In all this situations, the presiding judge may reject previous decisions and create a new precedent. This process is called **distinguishing a case.** In common sense it looks like there is not laws at all. How it is works you can see in movie "Nothing, but trouble (1991)".

Statute Law

Another source of Canadian law is **statute law**, which consist of laws that are passed by elected representatives in the form of acts. Acts become law when they pass through a formal procedure in Parliament or provincial legislatures. Many of our laws today are actually statutes common law decisions that have been codified. Each level of government – federal, provincial, and municipal – has the power to indict legislation in its own area of political jurisdiction (authority and control). Indian Bands and Aboriginal group with self-government agreement also have the authority to enact legislation.

The Federal Government enacts laws within his own jurisdiction, which includes criminal law, federal penitentiaries, employment insurance, banking and currency, marriage and devoice, and postal services.

Provincial Government have the authority to make laws with in their provincial jurisdictions, such as laws affecting hospitals, police forces, property rights, highways and roads, and provincial jails.

Local Government or municipal make laws called **bylaws,** witch are regulations that deal with local issues, such as a how high the backyard fence should be, who should clear the snow from sidewalk, or how often the garbage should be collected.

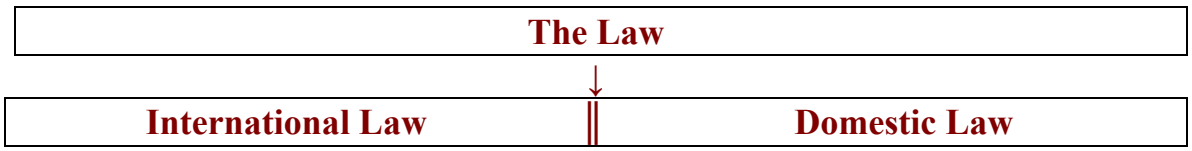
Aboriginal Governing Structures. Indian bands established under the federal Indian Act are like local government. Each Indian band has some authority to make bylaws that apply to each band's reserve lands.

Constitutional Law

The third source of Canadian Law is Constitution, a document that determines the structure of the federal government and divides law-making powers between the federal and provincial governments. **Constitutional Law** also limits the powers of government by setting basic laws, principals, and standards that all other law must adhere to.

CATEGORIES OF LAW

Categories provide distinctions that help to clarify and organize a complex body of laws. Broad categories of law include international and domestic law, substantive and procedural law, and public and private law.



International Law

International Law includes laws that govern the conduct of independent nations in their relationship with one another. Without any one global, law-making authority, international law is generally created by custom. Custom means consistent and general practice among states and the acceptance of this practice as law by the international community. Nation that signs treaties, or international agreements, considers these treaties as binding as any law. Treaties can also contain provisions that codify customary international law. Canada has entered into many agreements with other countries: extradition treaties (agreements that arrange to send persons to other countries to be tried for crimes committed there); free trade agreements that reduce or remove trade barriers; defense treaties such as NATO.

But practice shows up that sometimes international Law do not work at all. Canada played a major role in creating the International Criminal Court, which was approved by over 60 countries on April 11, 2002. The mandate of this court is to try individuals accused of crimes against humanity, eliminating the need for temporary tribunals such as the one set up to try Slobodan Milosevic. (Slobodan Milosevic died at the time of trial in prison, presenting his own defense, without required medical help). **Every case in International Laws is distinguish** and the top of USA politicians and government executives, who are responsible for engaged the USA in Vietnam war, destroyed Somali, setup war in Iraq, now trying to begin new wars in the Middle East and Caucus region (Georgia Republic) creating and providing fake war reasons, are not scared the International Criminal Court, and feel very comfortable and secure in our days.

And finally massive terror attack averted in Canada:

(SASHA NAGY Globe and Mail Update and Canadian Press June 3, 2006)

A counterterrorism sweep Friday (summer 2006) resulted in the largest arrest ever made by the nation's anti-terrorism forces and raised, for the first time, the spectre of homegrown terrorists striking Canadians from within our borders. RCMP Assistant Commissioner Mike McDonell announced the arrest of 12 Ontario men who were to appear in court later Saturday in Brampton, west of Toronto. The men ranged in age from 19 to 43, and are residents of Toronto, Mississauga and Kingston.

1. Fahim Ahmad, 21, Toronto;
2. Zakaria Amara, 20, Mississauga, Ont.;
3. Asad Ansari, 21, Mississauga;
4. Shareef Abdelhaleen, 30, Mississauga;
5. Qayyum Abdul Jamal, 43, Mississauga;
6. Mohammed Dirie, 22, Kingston, Ont.;
7. Yasim Abdi Mohamed, 24, Kingston;
8. Jahmaal James, 23, Toronto;
9. Amin Mohamed Durrani, 19, Toronto;
10. Steven Vikash Chand alias Abdul Shakur, 25, Toronto;
11. Ahmad Mustafa Ghany, 21, Mississauga;
12. Saad Khalid, 19, of Eclipse Avenue, Mississauga.

Five youths who cannot be identified under the Youth Criminal Justice Act have also been arrested. The arrests were carried out in the Toronto area by police from several forces acting in partnership with Citizenship and Immigration Canada known as Project Thread, according to a four-page summary of the case by the federal government. Scores of officers, many heavily armed, took the suspects into custody at a police station in

Pickering, Ont., following the raids. The court appearance culminated two remarkable days of police raids conducted by the Integrated National Security Enforcement Team, or INSET. These arrests were the largest ever made since the inception of INSET. In the process, they seized enough ammonium nitrate fertilizer to build an explosive device three times more devastating than the one used in the 1995 Oklahoma City bombing (but they unlucky gang did not build it). And in the end of this: there have been no criminal charges laid, finally the RCMP has said, and federal officials said there's no indication any of the arrested were about to commit a terrorist act when apprehended. But the RCMP is continuing their inquiries into possible terrorist threats, a spokesman for Solicitor General Wayne Easter said.

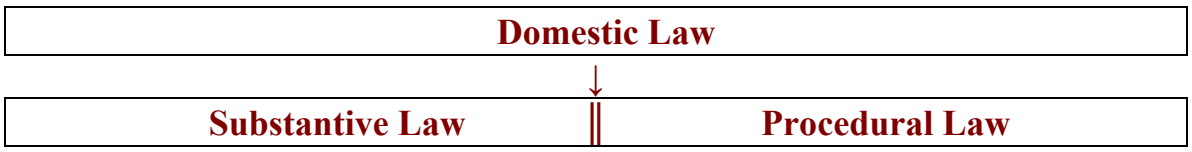
Carlos the Jackal sneers at Al-Qaeda's 'amateur' killers.

(John Follain, Paris**.** July 15, 2007)

"FOR two decades until his capture in 1994, Carlos the Jackal murdered, bombed and kidnapped his way to infamy, retaining the title of world's most dangerous terrorist before Osama Bin Laden stole his crown. But speaking from the Clair-vaux prison in northeast France last week he berated terrorist cells said to have targeted Britain, criticizing them for plotting to kill ordinary people. In his first telephone interview with a newspaper, the Venezue-lan-born Vladimir Ilich Ramirez Sanchez, 57, said he was saddened by any loss of life in London, where he lived as a young man. He also attacked what he called a lack of professionalism in some cells linked to Al-Qaeda."

Domestic Law

It defined boundaries, a nation law-making authority comes from the power of govern – usually from monarchy or a constitution. Law and enforced within a nation's borders is known as **domestic law,** and includes both case law and statute law. When you cross the border of another country, you enter a sovereign nation that has its own laws and legal system, which may be very different from the laws familiar to you. In fact you can break a law in another country even knowing it. Laws in some Middle East countries prohibit certain types of dress or forbid the drinking alcohol. When you travel outside the Canada, you do not have protection of Canadian Law. If you break a law in another country, there is a very little that the Canadian government can do to help you.



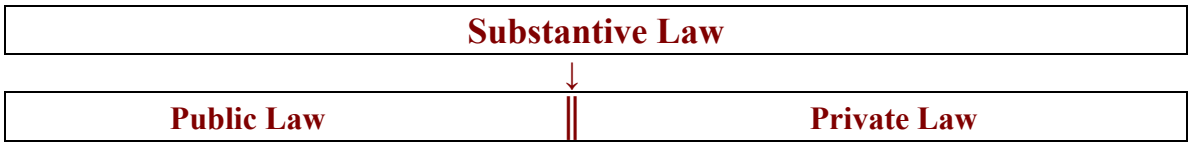
Substantive Law

Substantive Law defines the rights, duties and obligations of citizens and levels of government. Examples include the right to own and protect property, to into a legal contract and to seek remedies if contract is broken. The definitions of a charge such as "failing to remain at the scene of an accident" or "careless driving" are substitute law. As a citizen, your conduct is governed by substitute law. Should you be accused of an offence, your lawyer (definitely it is better to do it by yourself) will examine the law to determine if your actions did, in fact, fall within the meaning of the substantive law.

Procedural Law

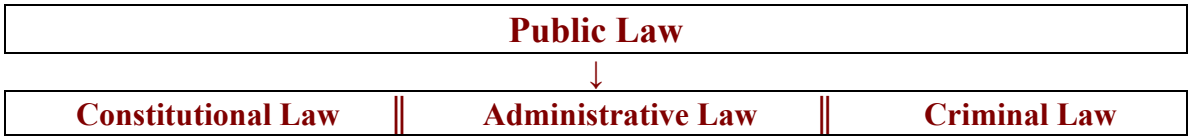
While substantive law is the content of the law, the procedural law is the law that prescribes methods of enforcing the rights and obligations of substantive law. For example, procedural law refers to gathering evidence properly, following the legal requirements for a lawful arrest, and adhering to correct trial procedures. Police officer cannot simply arrest people on made-up charges and put them in jail because they do not approve of their actions. All persons with lawful authority must follow certain procedures, a requirement that creates a level of predictability. Procedural law helps ensure that all citizens are treated fairly and neither the police nor the courts act arbitrarily.

Substantive Law divided into the categories: public law and private law.



Public Law

Public Law regulates the relations between the government and its citizens. In addition to constitutional law, which you read about earlier, public law includes administrative law and criminal law and criminal law. All public laws are ultimately subject to the Canadian Chapter of Right and Freedoms, which is part of the Canadian Constitution.



Administrative Law

Administrative Law refers to the many of government departments, boards and tribunals that play a role in regulating the relationship between people and government agencies: the Labour Board, Worker's Compensation Board and Victims' Compensation Board. Public administrations make legal decisions every day, ranging from who receives welfare to that gets access to medical services. If citizens disagree with any of these decisions, their recourse through administrative law is to approach administrative tribunals and then, ultimately, the courts.

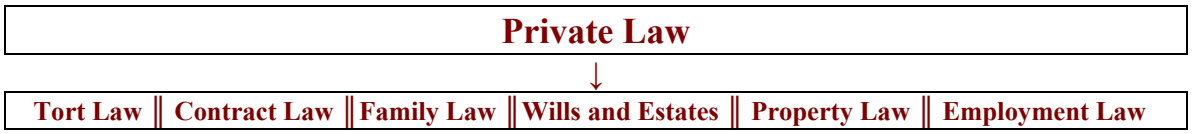
Criminal Law

Criminal Law prohibits and punished behavior that causes harm to others, such as murder, robbery, or assault. All crimes are described in the Criminal Code of Canada and related federal statutes, such as the Controlled Drugs and Substances Act. In Canadian law, a crime is carried out not only against the individual, but against society as a whole, which is represented by the Crown. In Canada only the Crown attorney can lay a criminal

charge and the crime must be one that can be found in the Criminal Code or a related statute. Only the federal government has the authority to pass criminal legislation. For Example, Ontario cannot pass an act called the Ontario Criminal Code. However, all provinces and territories have the authority to administer, or implement, criminal law. In this capacity, they appoint provincial trial court judges, employ Crown attorneys, and manage the running of the criminal courts.

Private Low

Private Low or **Civil Law** is governing the relationship between private individuals and between individuals and organizations (excluding the government). The main purpose of private law is to regulate conduct and compensate individuals who have been harmed by the wrong actions of others. Private law refers to torts (civil injuries), contract and family law, wills and estates, property and employment law.



Private law also known as civil law deals with disputes between persons and between individuals and companies, although individuals can also sue the state for matter of a private nature. For example, a government employee may sue the government for a breach of employment law; an individual can sue the government in tort law if he or she suffers personal injury while visiting government-owned premises; and an individual who has a business relationship with the government can sue contract law when a dispute arises. To settle such disputes, the state provides forum such as courts and tribunals.
A "civil lawsuit" or "action" is a legal proceeding that deals with private or civil rights and obligations. It is different from a criminal action, which involves rights and obligations that affect not only individuals but society as a whole. While there might be criminal aspects to someone's harmful action, the legal system also recognizes there is often a need to right wrongs that arise in our private dealing with others.

Civil lawsuit must be "filed" or brought to civil courts. The complexity of the procedures that need to be followed to start a lawsuit, and the place where your case will be heard, will depend largely on the amount of your claim. For example, a small claims court action goes to a civil court that deals with problems below a certain dollar value according to province. Capable of handling claims up to $5,000, $10,000, or even $25,000 (depending of your province), a small court action offers low-cost filing and document services. Your small claim court action can be heard without the use of the lawyer.

Canada's civil court system deals with all types of disagreements and areas of "private law", ranging from auto accidents to contract disputes. In many cases, the court system apply the principals of "tort" law, which provide a remedy for anyone who has been harmed intentionally or unintentionally through the fault of another such as personal injury or acts of negligence.

Tort Law

Tort Law the branch of civil law that holds persons or private organizations responsible for damage they cause another person as a result of accidental or deliberate action. When someone is injured or harmed as a result of the negligent or deliberate action of others, the injured party seeks compensation from the wrongdoer; the action will be decided under the principles of **tort law. Tort law** recognizes we all may have a duty toward others at times, whether it is imposed y legislation or through centuries of common law. As you will see, a successful lawsuit required proof that another individuals, business, or government owed a duty, that duty was violated, and that the individual, business, or government was directly or indirectly at fault for your loss. The civil courts and tort law cases also deal with interesting issues, such as whether the damage to you foreseeable and whether the other party met a standard of care expected of a "reasonable person" in the circumstances.

Contract Law

Contract Law the branch of civil law that provides rules regarding agreements between people and businesses. Contract Law deals with everyday transactions in which people purchases or the provide goods and services. If people satisfied with their purchases or the level of service provided, and they pay that owned. However, if one party fails to uphold the terms of the agreement, the other may seek the court assistance to have the term enforced.

Family Law

Family Law covers such matters as marriage, property division upon separation, custody and support of children, and divorce.

Wills and Estates or **Succession Law**

Wills and Estates or **Succession Law** deals with the division of property after death.

Property Law

Property Law regulates ownership rights in all property including the ownership and transfer of real estate.

Employment Law

Employment Law covers relationship between employers and employees.

Unlike the criminal court system, the objective in civil courts is not usually to punish someone. Instead, the arm is to compensate those who have suffered a loss or injury and return them, if possible, to the position they in before the harm was caused. Civil courts also use different words and phrases than criminal courts. In civil lawsuits, the one starting the action is known as the "plaintiff", the "defendant" on the other hand, is the one accused of the wrongdoing. It is important to remember in civil case that, even though illegal acts may be alleged by one side or the other, no one is charged with anything or subject to criminal penalty. No one is found "guilty' in civil courts. You simply win or lose.

Civil lawsuit

A civil lawsuit is often started when a dispute arises over the private rights or obligations of two or more people or "parties' and one or all sides refuse to settle the disagreement. A civil lawsuit can be brought against a person, business, organization, or even a government that has caused you injury of financial loss. Your right to sue is not affected by whether the injury or loss was intentional or unintentional. You may, however receive more compensation from the courts or in an out-of-court settlement if the damage was caused intentionally.

Starting a lawsuit is a vary serious endeavor with real consequences for all sides. You are accusing the person you suing of either failing to take the care or precautions that should have been taken, or doing something that that should have been taken, or doing something that should not have been done. While it is possible to bring a lawsuit without legal representation, in most cases it is advisable to seek the assistance of a lawyer.

You should be also aware that if a court views your lawsuit as frivolous, an abuse of the legal system, or knowingly initiated without merit, you could be held financially responsible not only for the court's expenses, but also for the legal costs incurred by the other parties.

There are three common categories of civil lawsuits:

1. Financial loss from a broken contract. This happens when you have an oral or written agreement with someone who fails to perform certain tasks or obligations. You may also sue for financial lass caused by a defective product arising from implied promises of its quality or performance.
2. Personal injury. You may have been injured in an automobile accident, slipping and failing in a store or on a sidewalk, ill-treated by a doctor or other healthcare professional, or by a defective product or person that hurt you either intentionally or accidentally.
3. Defamation (libel or slander). If you reputation and what of you business was damaged arising from a false statement someone made about you to other, you may sue for damages. Libel is defamation by way of the printed word or some other permanent form, while slander is spoken.

There are some legal requirements for a successful lawsuit.

Under the law, you or your lawyer must satisfy four requirements to bring a successful civil lawsuit:

1. You must prove that the person you are suing had owed you a "duty of care". This means the person you are suing had some obligation to actively avoid or prevent your injures or financial loss.
2. You must prove that person knowingly or recklessly violated a standard of care that would be recognized by the "reasonable person."
3. You must prove his or her failure to take proper care actually caused your injury or loss.
4. You must prove that you actually suffered an injury.

For most types of civil lawsuits, regardless of how negligent someone was, you will not recover any money through the courts if you did not suffer an injury or loss as a result of his or her action or inaction.

If your lawsuit is successful, the court may order the person you are suing to pay you money as compensation for you loss or injury. Or, a court may order that specific actions be taken, such as fulfilling a contractual obligation. What or how much you are awarded

will depend on a number of factors, including the severity of your injury or loss and the impact the injury has had on your life.

A civil lawsuit in Quebec is subject to a substantially different system of law than that in the rest of Canada. Quebec relies on its Civic Code, which can trace its origins back to the time of Napoleon in France.

The Civil Code is comprised of "Articles" or rules that help judges and citizens interpreted the law. More of the legal principles in Quebec's Civil Code are quite similar to those found in the common law system, but there can be significant differences that will require the help of a practicing Quebec lawyer to understand.

Quebec law required that a plaintiff prove three elements and each element must be proven on the balance of probabilities:

* The plaintiff must first prove is "fault" on the part of the defendant. The courts presume fault once the plaintiff proves the circumstances existed for it. It is unnecessary to prove the defendant intended his act or omission. Fault is defined as a mode of behavior of a person, who is capable of realizing the nature and consequences of an act or omission, and does something contrary to law or fails to meet a standard of care set out by the courts. It can be proven with evidence of malice, imprudence, neglect, or want of skill.

1. The plaintiff must also prove hat he or she has suffered damage.
2. Even if fault is proven, a plaintiff will not succeed unless he or she can prove the casual link between the fault and damage.

In many circumstances, you must give notice to a potential defendant soon after you have suffered an injury or even suspect you have been hurt. This gives the opposite party opportunity to investigate your claims. So-called "**notice period**" are set out in various pieces of legislation, so you will need to contact a lawyer as soon as possible to ensure you have the legal right to sue. For example, when suing a municipality in Ontario for injury caused when slipping on a sidewalk, you must give written notice within seven days of your injury. In case of a claim against the provincial Crown, the notice period can range from 10 days after the injury to at least 60 days before the commencement of your action.

In additional no notice periods, there may also be limitations on how long you can wait before starting a lawsuit. You may be prevented from suing if you begin your lawsuit after the **limitation period** has expired. You therefore will not be compensated for your injury or loss. Limitation periods can be quite different among the provinces and territories: they also tend to vary depending on specific kind of injury or loss suffered. Limitation period can also differ depending on who caused the injury. For example, if you are suing a physician, surgeon, architect, engineer, dentist, or other regulated professional the limitation period in some provinces may be just one year from the date you knew or ought to have known about the injury.

Ontario recently changed its mixed bag of limitation periods. The **Limitation Act, 2002** now creates just one basic limitation period of two years from the date a claim is "discovered." The two-year limitation period is applicable to almost all claims, except any specifically excluded by the legislation. To avoid situations where an injury or omission might be "discovered" 30, 50 or 100 years latter, the statute also has an ultimate limitation period of 15 years from the date the act or omission occurred.

In Quebec, the Civil Code has "prescriptions" setting out limitation periods. A lawsuit to remedy an injury or enforce a person right must be brought within three years and in cases where no prescribed limit is, the limitation period is 10 years.
Again, if you suffered an injury or loss and are considered bringing a lawsuit, consult a lawyer as soon as possible to ensure you do not miss important deadlines.

Right, Freedoms and Responsibilities

A right is a legal, moral or social claim that people are entitled to, primarily from their government. For example in Canada, a person accused of committing an offence is entitled to a fair trail. **Freedom,** on the other hand, is a **right.** It is the right to live your life without interference by the government. For example, you have the right to seek employment in any part of Canada.
You can find a copy of the Canadian Chapter of Rights and Freedom at **www.rearsoned.ca/law.** The first attempt to codify rights and freedoms across Canada was the Canadian Bill of Rights, a statute enacted by Parliament in 1960.

Jurisdiction, Enforcement and Guarantee
Jurisdiction
The Canadian Chapter of Rights and Freedom has 34 sections that define the relationship between people, organizations, and companies in Canada and the government. Jurisdiction – the area of authority set out in s. 32(1) – includes the legislative, executive, and administrative branches of government as well as Crown corporations, federally incorporated companies, banks and other organizations regulated by the federal government. The Chapter also applies to all provincial governments. The Chapter does not have jurisdiction to protect your rights if discrimination or other injustices occur in situations that do not involve the government.

Enforcement
The Supreme Court of Canada has often been called the "guardian of the Constitution." The chapter of Right and Freedom was written in general language, and he nine justices that make up the Supreme Court of Canada are responsible for interpreting and enforcing its items.

Guarantee
Section 1 of the Chapter guarantees our rights and freedoms while, at the same time, making it clear that these rights and freedoms are not absolute but are subject to "reasonable limits." For instance, if province wishes to pass a law that limits a Chapter right, it must show that this limitation can be justified in a free and democratic society.

Human Rights
A "right" is a legal, moral, and social claim that people are entitled to, primary from the government.
Human Rights include the right to receive equal treatment, to be free from prohibited discrimination and harassment, and to have equal access to places, services and

opportunities. Discrimination occurs when an individual is treated unfairly because he or she is a member of certain group.
Canadians' rights are protected at a number of levels. At the federal or national level, Canadians are protected from abuses y government or its agencies through the ***Canadian Chapter of rights and Freedoms.*** The Chapter is Canada's most important rights document; however, it does not provide legal protection for citizen if they are discriminated against by other individuals or by private organizations. Remedies for such acts are found in provincial **human rights codes,** which protect individuals from prohibited discriminations. What is considered "prohibited" differ from province to province; however, it generally includes discrimination based on race, national or ethnic origin, religion, age sex, sexual orientation, mental or physical disability, and family or marital status.

Administrating Human Rights Legislation

To administer and enforce various human rights codes, provincial government has appointed commissions. Most complaints are settled by commissions, but the 4 percent that cannot be resolved at this point must go on to boards of inquiry or tribunals, which have the power to make the ultimate decision about a complain.

Filling a Complain

Those who feel they have been victims of discrimination must follow the procedures established by they province's human right code. Some provinces have a Commission's Inquiry Services Unit, in other provinces; individuals can contact a complaints analyst at the provincial Human Right Commission. Individuals do not need a lawyer to fill a complaint, and they can choose to withdraw their complaint at any time after the file is opened. All inquiries made to the Human Rights commission are completely confidential. If you are the **complainant** – the person making the allegation of discrimination – you will be provided with a package of information to assist you in filling complaint.

Dismissing a Complaint

At this stage the Human Rights Commission may dismiss the complaint for a variety of reasons. For instance, in the Ontario Human Rights Code, the reasons for dismissal are set in s. 34:

34. (1)(a) where there is another legislative at that can more appropriately deal with the issues raised in the complaint.

The final section dealing with time limits varies from province to province, and in some jurisdictions the time period is one year. Check your province's human rights code to determine the time limit for filing a complaint. The response to your inquiry will inform you whether your complaint s covered by your provincial code. If so, the Commission will serve your complaint upon the respondent (organization or person you are alleging discriminated against you). The Respondent is asked to formally respond to the allegations of discrimination.

Role of the Commission

If you complaint is not dismissed, you move on the next step. The Commission will ask you and the respondent to enter into mediation. A mediation process was introduced

as a means of settling disputes prior to a formal investigation. The parties are assisted by a mediation officer in an attempt to resolve the problem themselves.
If the parties do not agree to meditation, or if no settlement is reached in mediation, the complaint is referred to investigation services for a formal investigation by human rights officer. This process involves gathering evidence relevant o the complaint; inspecting documents, records, and correspondence related to the case; examining the facilities; and interviewing witnesses.
After the investigation, the human rights officer writes a report to inform the parties of the results of the investigation. The officer may also try to resolve complaint through consolation – bringing the parties to a resolution of their differences. If no resolution is reached, the case is referred to the commissioners. The commissioners are a group of people who oversee the Human Rights Commission and make decision about cases.
If the commissioners do not believe that there is enough evidence to prove discrimination, they will dismiss the complaint. The complaint has 15 days to appeal this decision by formally requesting a review in writing. If the commissioners turn own the review, then the decision is final.
However, if the commissioners believe that there is evidence of discrimination, the complaint is referred to a board of inquiry or human rights tribunal – formal bodies that will hear the case and make a decision based on the evidence. He hearing is similar to a trial in that witnesses are called to testify under oath and are cross-examined by lawyers for both the Commission and the respondent.

Remedies
Possible remedies include the following:
* ordering the person or organization who contravened the human rights code to stop the practice
* compelling the respondent to issue a letter of apology
* ordering the respondent to pay the complaint for mental anguish or for any losses suffered in pay or benefits
* compelling an employer to give the complaint back his or her job or to grant the promotion that that was denied
* ordering the organization to adopt programs designed to relive hardship or economic disadvantage, or to assist disadvantaged groups in achieving equal opportunity in the organization
* requiring an organization o provide human rights and anti-discrimination training for all employees, to develop comprehensive policies to eliminate discrimination ad prevent harassment, or to undertake other similar remedies.

Lawyers and Clients
Truly speaking, a working relationship with a lawyer is no different than any other business relationship. As the bill-payment client, it is up to you to take charge of relationship you have with your lawyer and ensure that you get value for you money. You must ask questions, learn enough about your legal issue to be a smart consumer, and most important, understand what your lawyer can and cannot do for you.

Lawyers have a duty to provide objective advice about a problem and to defend your interests as you wish. Lawyers must maintain confidentiality in their communication with clients, and must be candid and honest. Lawyers cannot put themselves in a conflict of interest.

Barrister and Solicitor

A barrister is proficient in litigation and can represent your interests in courts, administrative hearings, arbitrations meditations, and dispute settlement negotiations. The **solicitor** is skilled in all non-litigation aspects of legal practice, ranging from advising on the best legal structure for your business, to drafting contracts, to creating a personal estate plan. In Canada, al practicing lawyers are both barristers and solicitors. They are qualified to operate in either capacity.

Problems between lawyers and clients can arise when there is a clash between the lawyer's duty to the client and the lawyer's duty as an officer of the court. In the simplest form, the lawyer-client relationship is similar to other business dealing. Your instructions to your lawyer are to be followed closely, even if the lawyer disagrees with your decision. It's your money and you are the boss. But not all your instructions must be followed. For example, a dishonest client may instruct his or her lawyer to lie, hide, or , required by their own rules of professional conduct to disclose any criminal or fraudulent act by a client.

Fees for lawyers

Lawyers calculate fees in one of three ways – a set hourly rate for the time they spend working on your matter, a flat fee for a specific service, or in many provinces, a contingency fee based on the outcome of your case. Most lawyers ask for some money in advance, a down payment of sorts known as a "retainer." The lawyer may also ask you to pay the cost of the court fees, document feeling fees, and other out-of pocket expenses known as "disbursements.'

In some circumstances, provincial laws allow people who are not lawyers to act on your behalf in a legal matter. These people are usually called **paralegals or agents.** There are circumstances where unsupervised paralegals can be helpful.

How can one become a lawyer?

The roughly two dozen law schools across Canada accept a limited number of new students each year. Demand for legal education is high. In resent year, there have been three to four applicants for every position in first-year classes. Law school tuition fees have also risen dramatically. In most cases, law schools require students to have completed most or all of a full-time university degree. Generally, there are no preferred undergraduate degrees. Law students therefore come from science, business, fine art, or other backgrounds. In most law schools, a very few sports are held open for so-called "mature" students who may not have a resent university degree but do have significant life or work experience. Law schools rely heavily on common selection criteria, such as the Law School Admission Test (commonly referred to as the LSAT). Schools also rely on academic scores or grades from undergraduate programs as a guide to future performance. Other factors, such as letter of recommendation, work experience, and interviews may also affect admission. The LSAT involves five 35 –minute sections of multi-choice questions, including reading comprehension, analytical reasoning, and logical reasoning sections. A 30 minute writing sample is administrated at the end of the

test. The writing sample is not scored, but a copy is sent to any law school that you apply to. The score scale for the LSAT is 120 to 180.

Graduating from the law school isn't enough to qualify someone as a practicing lawyer. Admission to the practice of law required successful competition of the provincial Bar admission course, which teaches and test law school graduates on local laws and the rules of the province's justice system. The Bar admission program runs throughout up to two years of instruction and on-the job work experience before a lawyer is admitted or "called" to the provincial's Bar.

For an individual to be admitted to practice of law in Canada, all provincial law societies require a law degree from a recognized law school, successful competition of the Bar admission course, and a period of "articling." Articling is an apprenticeship under the supervision of a qualified member of the law society. It usually involves working on a full-time basis in a law firm, a court, or the legal department of the government or corporation.

Financing Legal Actions

You should know that Canadians who cannot afford a lawyer can sometimes turn to a provincial legal aid system for help. However, the ability to access legal aid differ depending on the province you live in. According to Statistic Canada, more than $593 million is spent on legal aid annually. Legal aid plans receive over 800,000 applications for funding, of which about 500,000 are approved. When it comes to spending, civil cases use 55 percent of the legal aid budget, while criminal law cases use the remaining 45 percent.

Legal aid is a program that helps law-income Canadians receives legal representation and advice. If you met your province's financial eligibility requirements, legal aid will pay for a lawyer to represent you or assign one to you from a legal aid clinic or legal aid plan. Depending from your situation, legal aid may cover all or some of your legal costs.

To apply for legal aid you will need to contact the local office, where you live. For example legal aid Ontario: www.legalaid.on.ca; Quebec: www.csj.qc.ca

If you not qualify for legal aid, a Community Legal Clinic may still be able to help you. Community legal clinics are run by lawyers and non-lawyer workers who can help you with various legal issues. You will have to complete a financial test to make sure you qualify for this service. Check the Yellow Pages of your telephone book for community legal clinics.

Self-Representation

There is no law in Canada that says a person has to have a lawyer for a dispute. On the advantage side, if you represent yourself the preparation is easier – no one knows the case better then you. On the disadvantage side is that you are to find the system a little hostile. Lawyers do not like dealing with people who are represent themselves. Self-representation is not for everyone, but with the right attitude and in certain kinds of disputes, there is absolutely no reason why you cannot represent yourself in the Canadian justice system. Here are some guidelines for anybody considering self-representation:

1. Be reasonable, ask people for help from time to time.
2. Representing yourself does not mean that everyone is going to give you the benefit of the doubt. People are not going to ignore deadlines, paperwork requirements, and legal procedure and so on.

3. If there is a lawyer on the other side of your case, there are not going to be very willing to talk to you.
4. Be polite and respectful with everyone in the system. Always refer to the judge as "You Honour" and refer to the other lawyers in the case as "Mr." Or "Ms." And use their full surname. Keep copies of all documents and make copies of important evidence.
5. Be patient. The justice system does not work quickly.
6. In the court remember the judge knows very little about you and your case. Judges can have a lot of cases or may be he or she just lazy to read you file. People from this system are not going to look forward to having to spend time explaining the procedures to you Their first reaction is going to be one of caution in dealing with self-represented person
7. Always consider consulting with a lawyer from time to time during the course of you self-presentation. Try to find useful information from internet and books.

Canada's Justice System
Small Claims Actions

The small claim court system is available in every jurisdiction of Canada and it is one place where people can resolve their own minor legal problems. Common types of claims include someone breaking a legal agreement, damaging your personal property, owing you money, or causing you to suffer a physical injury.

Small court is a faster and less expensive way of resolving legal problems then going to the other courts. You do not a lawyer or any special training to make or defend a claim. Small claims courts hear cases for small amounts ranging from less than $3,000 in Newfoundland and Labrador to $25,000 in Alberta.

There are four common types of small claims and each has specific time limits for starting a lawsuit:

1. Cases involving a broken agreement or contract normally must be started within six years from the day when the agreement was broken
2. Cases involving damaged property or a personal injury suffered through somebody else's negligence normally must be started within six years from the day that the damage or injury occurred
3. Cases involving an assault or thread of violence have a four-year time limit from the day the injury or thread happened
4. Libel and slander cases, where one person has written or said something harmful about someone else, normally must be started within two years.

Certain types of legal actions have even shorter time limits. For example, if you are bringing a lawsuit against an insurance company for refusing to pay your claim, you must start the legal action within one year of making your claim.

If you want to take legal action against a municipality or a government agency, you may have to give them notice of your claim.

Before you start a lawsuit you will also need to know the proper legal name and address of the defendant.

To start a lawsuit in small claim court, you must fill out a special form called a"Statement of Claim". The Statement of Claim form is available at the small claim court in your area. Usually, you must go to the court building n person and pay a required fee. To verify that

your claim has been filed and that the lawsuit is underway, the small claim officer will give you a claim number to use whenever you are referring to your case.
In most provinces, the plaintiff is responsible for delivering a copy of the statement of claim to the defendant. This knows as "serving" the defendant. The best way to serve you statement is to mail it to the defendant's last known address. In some province, you will require a receipt indicating that the document was received, so it is best to use registered mail.

What happens if I am being sued in small claim court?

If you are received a Statement of Claim from small claim court, it means someone is suing you for the reason stated on the form.
First, do not ignore a statement of claim. If you do not respond to a statement of claim, plaintiff may win the case automatically when he or she appears before the judge. Second, read the all the papers you receive very carefully to find out that the lawsuit is about and how long you have to respond. To fight a lawsuit, you must fill out a special form called a Statement of Defence. This form is available at the small claims court office. There are time limits for responding to the claim against you. If you have received a statement of claim but do not file a statement of defence, the judge may assume you are agree with the claims in the statement of claim and may sign in a default judgment. A default judgment usually allows the plaintiff to win the lawsuit because you did not fight it. After you have filled out the statement of defence, you will need to file it at the small claims court office and pay a fee. The court will then notify you of a trial or pre-trial conference. In most provinces, a judge can order a pre-trial conference be held before a lawsuit goes to trial. The purpose of a pre-trial conference is to resolve or simplify the issue in the lawsuit, to speed up the lawsuit, to help reach a settlement instead of going to trial, to prepare each side if there is going to be a trial, and to ensure that everyone in the lawsuit knows all the important facts and evidence. If the person does not show up at the pre-trial conference, the judge can also strike that person's claim or defence and immediately give judgment for the other side.
Sometimes before or during a trial, issues arise that need to be resolved before the trial can continue. To resolve such issues, one of the parties can make a motion or a request to the court for the judge to make a decision about the issue. For example, during a trial one of the parties involved might discover that somebody else might be responsible for the plaintiff's loss and should be added to the lawsuit. That party would then make a motion to the court and ask the judge to allow them to serve a claim on that person. To make a motion, you need to fill out the appropriate forms: a Notice of Motion and an Affidavit n Support of Motion.

On the day my case is heard.

When you first arrive, find the courtroom where your trial will take place. Look at the posted lists outside the door of each courtroom to find out your name. Once the doors of the courtroom open, tell the clerk at the front of the room that you are present and ready for trial. When your name is called, walk to the front of the courtroom. If you are the plaintiff, stand at the right. If you are the defendant, stand on the left. State your name for the judge, who should always be called "Your Honour." If the plaintiff or defendant does not show up for trial, the judge will decide where the case will go ahead without that person, or whether the trial date will be moved ahead. Generally, plaintiffs present their side of the case first. If the plaintiff is testifying for his or her own case, the court clerk

will ask the plaintiff to swear to tell the truth. The plaintiff will then begin by explaining his or her position. The plaintiff should then tell the judge all important facts in her order that they happened and show the judge any evidence. The defendant will then be allow to ask the plaintiff questions. Once a plaintiff has finished making his or her case, it the defendant's turn to ell the other side of the story, show evidence, and call witnesses just as plaintiff did. One may interrupt the other side only when making an objection to a question that was asked of a witness. Stand up and tell the judge you object to the question and explain why. For example, if the question has nothing to do with this case, or if the other side is yelling at your witness, you may object. The judge will consider your objection and decide what will be done about it. Before making a final decision on who wins the case, the judge will usually ask both the plaintiff and the defendant to summarize their positions. If you lose a lawsuit, you may have the right to appeal; you do so within the permitted time frame, which is normally 30 days. An appeal from small court goes to higher provincial court. Appeal can be expensive and time consuming.
Sometimes, a small claim court will award you damages or decide in your favor, but opposing party will still make it difficult to collect your money or enforce your right. Enforcing a small claim judgment sometimes takes a great deal of patience.

Resolving Disputes without Courts: Meditation and Arbitration
It is possible to resolve a dispute over money, a broken contract, and even matrimonial property right without the considerable costs, time, and stress of going through a court trial. It most certainly is and that's why everyone involved in a legal disagreement needs to know about consider using meditation and arbitration.
Meditation is a structural and facilitated process to help solve disagreement between people, businesses, and even countries without the need of going to court. It is actually a form of negotiation, chaired by a neutral person called a mediator. The mediator has no personal interest in the outcome.
Often, the mediator is a trained professional who has learned to help people who have disagreements listen to one another, to understand the dispute from the other's perspective, and to help them work out solutions tailored to their needs. Meditation is an alternative to litigation that is actually encouraged by lawyers, social workers, or psychologists. Unlike a lawyer in litigation, the mediator does not represent one side or the other. A mediator's job does not involved giving legal advice. The mediator's role is tried to bring the parties to agreement. Generally, the parties split the cost of mediation equally. That means both parties are splitting the cost of one professional, which is considerably lass expensive than each side paying for its own lawyer. As well, the mediation process is generally outside the realm of courtroom, which is another cost saver.
The meditation profession is not regulated in any province. Mediators do not have to take required courses or pass any tests to practice mediation.
There are many different courses that a mediator may have attended, including courses offered by local universities. Some educational programs offer diplomas or certificates. Organizations such as Family Mediation Canada certify mediators who have completed the requirements established by that organization.
Arbitration

The definition of arbitration: the submission of a dispute to one or more impartial persons for a final and binding decision. Arbitrations are usually legally binding. That is, the parties of or various sides in a dispute agree beforehand, usually by signing an agreement, to have any dispute settled by an impartial third person and to be bound by the decision. In many cases, even a court cannot interfere with the decision.
That third person is often referred to as a third party neutral, arbitrator, or arbitral tribunal. In many provinces, there is legislation governing such arbitrations. In Ontario, for example, the Arbitration Act, 1991 governs private "domestic" or commercial arbitrations, and arbitrations conducted in accordance with other statues.

The Nature of Crime
Crime and Criminal Offences

A crime is any act or omission of an act that is prohibited and punishable by federal statute. "Omission of the act" means that some crimes are not acts in the strict sense, but rather the failure to act in certain situations. For instance, if you failed to stop at the scene of an accident in which you were involved, you could be charged with an offence under s. 252(1) of the Criminal Code of Canada.
The Law Reform Commission of Canada has said that, n general; four conditions must exist for an act or omission to be considered a crime:

1. The act is considered wrong by society.
2. The act causes harm to society in general or to those (such as minors) who need protection.
3. The harm must be serious.
4. The remedy must handled by the criminal justice system.

As we see what society considers wrong vary over time and from place to place.

Criminal Law

A crime is considered to be an offence not just against the direct victim of the crime, but against the public, or society as a whole. When a thief steals a player from the electronics store, it is not just the owner of the store who is affected. The owner will increase prices to compensate for lost merchandise, which means the customers who have to pay those higher prices will pay less money to spend on other things. The repercussions of the theft will carry through the rest of society.

Because crime has an impact on society as whole, it is government's responsibilities to investigate and act against people who commit crimes. Criminal Paw is the body of laws that prohibit and punish acts that injure individual people, property and the entire community. The min purpose of criminal laws is to

- protect people and property
- maintain order
- preserve standards of public decency

As citizen of Canada and members of society, we have the responsibility to participate in crime-prevention programs that have been developed over the years. These programs include Crime Stoppers, Neighborhood Watch, and Block Parent.

The Criminal Code

The Criminal Code of Canada (From the Department of Justice http://laws.justice.gc.ca/en/C-46 or it can be downloaded as a single text file from http://www.efc.ca/pages/law/cc/cc.html) is a federal statute that contains the majority of the criminal laws passed by the Parliament. The Criminal Code lists not only the offences, but also the sentences to be improved and the procedures to follow when trying those accused of crimes. The Code is means to reflect the social values of the majority of Canadians. When a new issue becomes important for society, or when national security and public safety are at risk. Parliament amends the code to reflect this change in values or to ensure the protection of Canadian society.
In spite of the original intention of Canadian lawmakers to include all crimes in the Code, several other federal laws now contain criminal offences. These laws include the Controlled Drug and Substances Act.

The elements of the a Crime

To convict a person of a criminal offence in Canada, the Crown must usually prove that two elements existed at the time the offence was committed: the act itself and the intention to commit the act. In law, this two elements are identified by the Latin terms ***actus reus*** **(**in English mean **"*the guilty action*")** and ***mens rea*** **(**in English mean **"*the guilty mind*")**

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The criminal equation can be written as

The guilty act demonstrates a voluntary action, omission, or state of being that is prohibited by law (forbidden by the Criminal Code).	+	***The guilty mind*** demonstrates that the act was intentional, knowing, negligent, reckless, or willfully blind.	=	**Crime**

The guilty act

Most criminal offences involve an action that causes: 1.harm or loss to a person or group of people or 2. Damage to property. The guilty action referring to the physical act involved in committing the offence described by the criminal law. Section 265(1)(a) of the Criminal Code defines the wrongful act n a clear and precise fashion so that we understand exactly what is prohibited by law.
In some cases, failing to do something can be considered a wrongful act under the Criminal Code. This is called an "omission." For example can be the case of parents who do not give their infant child enough food to eat. As a result the child dies of malnutrition.
The criminal Code also contains offences for which the guilty act not an omission but a "state of being." Being in possession of stolen goods, being in possession of break-in tools and being found in a gaming or betting house are three offences for which the wrongful act is a state of being.

The guilty mind

The guilty mind implies moral guilt – that the accused person deliberately did something he or she knew to be wrong, with reckless disregarded for the consequences. The Crown establishes the guilty mind by showing that the accused had indented to commit an offence or knowledge that what he or she did was against the law.

Intent

To say a person had the intent to commit a criminal act means that he or she meant to do something wrong, was reckless regarding the consequences, and knew or should have foreseen the results of the wrong act. In describing offences, The Criminal Code often uses words such as willfully or intentionally to signify intent.

I Canadian criminal law there are two kinds of intend. **General intend** means that a person commits a wrongful act for its own sake, with no ulterior motive or purpose. If Bob strikes Bill because he is angry with him and wants to vent his anger physically, when he has general intent to commit assault. To establish the guilty mind, the Crown must simply prove that Bob did in fact strike Bill. **Specific intent** applies when someone commits one wrongful act for the sake of accomplishing another. According to s. 343I of the Criminal Code, "Every one commits robbery who assaults any person with intent to steal from him". So if Bob strikes Bill with the intention of taking something valuable from him, then he has committed an assault for the sake of accomplishing a theft. To prove the guilty mind to commit robbery, the Crown has to show not only that he assaulted Bill, but that he did so with the specific intent of stealing from him.

General intent, for the most cases, is easier to prove and often the Crown decides to prosecute someone for manslaughter (unplanned and unintended homicide), which is a general intend offence, rather than for murder (planned and deliberate homicide), which is a specific intent offence.

Note that intent is not the same as motive. A **Motive** is the reason a person commits a crime, while intent refers to that person's state of mind and willingness to break the law.

Knowledge

In some cases, the Crown can establish the guilty mind by showing that the accused had knowledge of certain facts. For example, s. 368(1)(a) of the Criminal Code states: "Every one who, knowing that a document is forged, uses, deals, or acts upon it," is guilty of the offence of circulating a forget document. To establish guilt, the Crown only has to establish that the accused knew the document he or she used was forged. In this case, the Crown does need to demonstrate the defendant's intent to do something either general or specific.

Criminal Negligence

In some cases, the crown can establish that guilty mind existed by providing that the accused showed negligence. This means that the accused failed, under certain circumstances, to take precautions that any reasonable person would take to avoid causing the harm to another person. In s. 219(1) of the Criminal Code, criminal negligence is defined in the following matter:

Every one is criminally negligent who

(a) is doing anything, or

(b) in omitting to do anything that it is his/her duty to do, shows wanton or reckless disregard for the lives or safety of the other person.

If Sam leaves a loaded pistol on the top table and his son Bob takes the pistol and accidentally shot his friend. Sam is guilty for criminal negligence the "wanton or reckless disregard".

Recklessness

The Crown can also establish guilty by providing that the accused demonstrated recklessness. Recklessness involves consciously taking an unjust able risk that a reasonable person would not take. You require prescription glasses to operate an car safely and you decided to drive without our glasses. The police can charge you with the dangerous operation of a motor vehicle.

Willful Blindness

Finally guilty can be result of willful blindness, which involves deliberately closing your mind to the possible consequences of your actions. You are considered willfully blind when you are aware of the need to make an inquiry but fail to do so because you do not wish to know the truth. If you fellow offers to sell you a TY for a really good price. Oddly enough, the company name is painted on the side of the TY. You know you should ask why this fellow is selling a television set that obviously belong a company.. In this case you could be charged with possession of stolen goods.

Involvement in Crime

Many crimes are not work of a single person. A successful bank robbery, for instance required careful planning and co-operation among several people. How does the law divide blame among the various offenders in a single criminal case?

The Perpetrator

The perpetrator is the person who actually commits the criminal offence. When more then one person is directly involved in the crime, they are called "co-perpetrator." If two people rob the bank, one holding the gun and the other collecting the cash, they are known as co-perpetrators. In very case, the person actually has to be present at the scene of the offence to be identified either a perpetrator or a co-perpetrator.

Aiding

In some situations, people are not directly involved in committing a crime but may be considered partly responsible for it. Such individuals are **parties to an offence**. They are linked to the crime because they have somehow assisted the perpetrator. In criminal law, aiding means helping a perpetrator commit the crime. To aid the perpetrator, one does not have to be present when the offence is committed.

Abetting

Abetting means encouraging the perpetrator of a crime without actually providing physical assistance. Note that a person is not guilty of aiding or abetting just because he or she has knowledge of a crime or is present at the scene. The party must be aware that a criminal action was intended and must have committed some action that assisted the

perpetrator. Presence at the time of the offence however can be used as evidence of aiding and abetting if it as accompanied by other factors such prior knowledge of the perpetrator's intention to commit the offence.

Counseling

The crime of counseling involves advising, recommending, or persuading another person to commit an offence. As with aiding, a person who counsels does not have to be o the scene of the crime to be guilty.

Accessory After the Fact

Even after a crime takes place, it is possible for someone who did not participate in it or help plan it to be held responsible for that crime. A person is considered to be an accessory after the fact if he or she knew that someone was involved in an offence and received comforted, assisted that person in escaping from the police.

Party to common intention

Consider a situation in which two or more people set out to commit a crime and, in the process; end up committing several additional crimes. All the participants in the original crime will be held responsible for any other offences they committed in the process. The shared responsibility is known as party to common intention, which means that the participants can be charged with all of these additional crimes even though they were not directly involved in them.. or instance if six people hijack a track and one of them shoots and kills the driver, all six can be charged with murder.

Incomplete crime; Criminal Attempt and Conspiracy

When we discussed act and intent we see that a criminal act must be completed for a crime to exist. But there are two major of incomplete crimes: criminal attempt and conspiracy.

Criminal Attempt

Even when a person is unsuccessful in the commission of a crime, that person can be charged with criminal attempt. This means that he or she had to intent to commit the crime, for some reason, failed to carry it through. An attempt does require criminal act, but technically the guilty act begins the moment where preparation turns into an action required to commit the offence. To prove someone guilty of criminal attempt, the Crown has to show is that the accused had the necessary intend and took some obvios steps toward to committing the crime.

Conspiracy

Conspiracy is an agreement two or more people to perform an illegal act. It does not matter whether the act is actually carried out. Even if the conspirators change their mind r do not get a chance to commit the offence, there are still guilty of conspiracy because there once agreed to commit the crime.

In Canada, if you charged with a crime it usually means you have been accused of a specific offence under a federal law, usually the *Criminal Code.* The three categories of criminal offences are: summary **conviction offences, indictable offences, and hybrid**

offences. Each category has different penalties and different kinds of trial. Whenever you or someone close to you is dealing with an alleged criminal offence, it is critically important that you speak with an experienced criminal lawyer before making any decision or engaging the justice process.

Summary conviction offences, such as committing an indecent act, are the least serious type of offences. If you charged with a summary conviction offence you will not have a preliminary hearing and you trial will be held in the local provincial court, likely before a judge only without a jury.

Indictable offences, such as murder, are the most serious type of offences. The specific indictable offence you have been charged with will determine whether you have the choice of having a preliminary hearing and whether you will have the right to select a trial by judge and a jury. It also determines which court your trial will be held in. Because of the serious nature of indictable offences, you will require a lawyer to represent you if you are charged with such a crime.

A third kind of offence is called a hybrid offence. For hybrid offences, such as assault, the Crown prosecutor chooses whether the offence will be treated as a less serious summary conviction offence or a more serious indictable offence. The prosecutor decision will affect where the trial takes place and which penalties apply.

Police: Level of Police in Canada

Although Canada has intricate network of courts and costly prisons that house thousands of criminals, the most expensive component of the criminal justice is policing. Canada's police forces cost about $6 billion annually and include almost 60 000 police officers at three different levels: federal, provincial and municipal. Since the 1970s, arrangements have also been made for Aboriginal police forces to service many of the Aboriginal communities in Canada.

Federal Police

The Royal Canadian Mounted Police (RCMP) was formed in 1873 as the North-West Mounted Police. The RCMP or "Mounties" as they are popularly known make up the federal police force of Canada. They provide investigative and protective services to the federal government and serve as the provincial police (as well as the municipal police in some communities) in all provinces and territories except Ontario and Quebec. In Nunavut, the Yukon, and the Northwest Territories, the RSMP is the only operating police force, although this arrangement may change if Aboriginal forces are established in these territories.

At the federal level, most of the RCMP work focuses on the following eight areas:

1. **Custom and Excuse** investigates cases of international smuggling and enforced the Custom Act in isolated areas of the country where there are no other federal custom officers. Excuse duties are tax collected on goods produced within Canada, such as cigarettes and alcohol. The Canada Customs and Revenue Agency imposes these taxes, and the RCMP investigates violations of the Excuse Act.

2. **Drug Enforcement** enforces the law identified in the Controlled Drugs and Substances Act. This branch of RCMP consists of about 1000 offices that give the highest priority to cases involving international and inter provincial drug smuggling.
3. **Economics Crime** focuses on commercial fraud, organized crime, technological crime, and securities fraud. This branch also works with the Bank of Canada to deliver early warnings to local police of currency counterfeiting activity.
4. **Federal Policing** enforces 286 federal laws and 17 set of regulations that cover such areas as hazardous waste transportation, environmental law, and other public safety and consumer protection issues.
5. **Immigration** gathers information on the smuggling of aliens into Canada and counterfeiting of passports and visas. This Branch is also works with Immigration Canada to screen out immigration applications who are members of criminal organizations or perpetrators of war crimes and acts o terrorism.
6. **Proceeds of Crime** division identifies and confiscates money or property that has been acquired through criminal activities.
7. **Criminal Intelligence s**pecializes in gathering intelligence, or information, on organized crime and terrorist group.
8. **International Liaison and Protective Services** provides security for federal officials and visiting head of the state. This division also co-operate with foreign police agencies such as INTERPOL.

It is important to note that policing in these eight areas is not done exclusively by the RCMP. Provincial and municipal police forces and other provincial and federal agencies often work together to enforce the law in these areas.

Provincial Police

Provincial Police forces have jurisdiction in rural areas and in unincorporated regions around cities. The largest of these forces is the Ontario Provincial Police (OPP), followed by the Surete du Quebec and Royal Newfoundland Constabulary. As noted previously, in all other provinces and in some part of Newfoundland and Labrador, the RCMP operates as the provincial police.

Using the Ontario Provincial Police as an example of a provincial police force, consider these responsibilities as outlined in the Police Service Act:

- policing municipalities that are not required by law to maintain their own police force;
- responding to municipal police requests for special assistance in emergencies;
- providing traffic control on all 400-series and major highways, including those sections that are in jurisdiction of municipal police forces;
- providing investigation services, on request, to the coroner's office and to other provincial ministries;
- performing other assigned duties, such as maintaining the provincial firearms registry, providing security at Queen's Park, and protecting Ontario government officials and dignitaries.

Municipal Police

Municipal Police forces have jurisdiction over policing in towns and cities thought Canada. Each municipally funds its own police force. Smaller towns or cities that do not have municipal funds for their own forces use the services of the provincial police or the RCMP.

A municipal police force is usually organized into numbered divisions that service the local community. The divisions, in turn, are divided into squads that specialize in certain types of crimes. Examples of these squads or units can include the Gang Crime Unit, the Robbery Squad, and the Homicide Squad.

A municipal police officer's duties may include any or all of the following:

- preserving the peace
- preventing crimes from occurring
- assisting victims of crime
- apprehending criminals
- laying charges and participating in prosecutions
- executing warrants
- enforcing municipal bylaws

Aboriginal Police

The First Nations Policing Policy is administrated by the Department of the Solicitor General and provides for a partnership among the federal government, provincial/territorial governments, and Aboriginal peoples to develop police services for Aboriginal communities. Each First Nations can enter into an agreement with the federal and provincial governments to establish stand alone Aboriginal police forces or to develop First Nation contingents within existing forces. The goal of such police forces is to offer services that are both professional and sensitive to the needs of the community.

Canadian Security Intelligence Service: www.csis-scrs.gc.ca/en/index.asp.

The Canadian Security Intelligence Service (CSIS) plays a leading role in protecting the national security interests of Canada by investigating and reporting on threats to the security of Canada. Guided by the rule of law and the protection of human rights, CSIS works within Canada's integrated national security framework to provide advice to the Government of Canada on these threats.

Definitely the top secret of CSIS is his current budget. In Canada, operating funding for federal government agencies with a security or intelligence role in fiscal year 1989-90 was $463.9 million and in this time (2007 year) CSIS budget supposes to be calculated in a few billions of Canadian dollars.

To file a complaint about an activity conducted by CSIS:

1. Gather as much documentation and other information as possible about the circumstances of your complaint.

2. File your complaint in writing with the Director, CSIS, at the following address:

   Director

Canadian Security Intelligence Service
PO Box 9732 Stn T
Ottawa ON K1G 4G4

3. If you are not satisfied with the Director's response, or if you do not receive a response within 30 days, you may submit your complaint, as well as the Director's response, to the Security Intelligence Review Committee (SIRC) at the following address:

   Security Intelligence Review Committee
   PO Box 2430 Stn D
   Ottawa ON KlP 5W5
   You can also fax your complaint at: (613) 990-5230

Agents of the Police

Guidelines for Agents and Peace Officers designated by the Minister of PSEPC: http://www.publicsafety.gc.ca/prg/le/gapo_psep-1-en.asp#appa

When can the police stop and question me?

The police can stop you under three general circumstances:

1. If they suspect you committed on offence
2. If they actually see you committing the offence
3. At any time while you are driving to determine whether you have consumed alcohol or drags, whether you are insured, whether the car is mechanically fit to be driven.

In all cases, once you are stopped by the police, you have the right to know why and the right to speak to a lawyer within a reasonable period.

What should one do if stopped by the police?

Although you have the right under the law to remain silent when questioned by police, it is the best to co-operate by at least identifying yourself. In some circumstances, you could be charged with the offence of obstructing the police if you fail to tell them your name. You could also be charged with an offence if you give the police a false name. If the police continue to ask you questioning and they do not allow you to leave, in law it means they are detaining you. When you are detained, you have the right to know why they are detaining or arrested you, and you have the right to talk to a lawyer.

Can the police search me?

The police generally search you, your closing and anything you are carrying in five circumstances:

1. You agree to let the police search you
2. The police have some reason to believe you have committed or you are in the middle of committing an offence involving weapons
3. You are in a place where the police are searching for drugs and they believe you have drugs
4. You are in car where there is alcohol

5. You are arrested

In all these situations, you have right to consult a lawyer and you do not have to respond to any police question, other than providing your name.
If the police find something related to a different offence while they are legally searching you, they can charge you with that offence as well.

Can the police enter and search your home?

The police enter and search your home in two general circumstances. First, they can enter and search your home if you give them permission. Second, they can enter and search your home if they have a search or arrest warrant. The police also have the power to enter, but not search your home in certain emergencies.

Entry with your permission

Permission means that someone who lives in the home allows the police to enter. Generally, only an adult can give permission. If the police ask to enter your home without a warrant, and you do not want them to come in, you should tell them clearly that you do not want them to enter. Otherwise they may think you have agreed to let them in. Note that if you give the police permission to enter and they do not have a search warrant, you can ask them to leave at any time you change your mind.

Entry with a search warrant

A search warrant gives the police the right to search for and take the things listed in the warrant. The police must have the search warrant with them and you have a right to see it. While searching, the police cannot destroy things unnecessary. They can also search in places where the things listed in the search warrant might be found. Once the police have found the things listed in the search warrant, they must leave your home. They cannot continue to search. Ask for the name and badge number of the officer who appears to be in charge of the search.

Entry with an arrest warrant

An arrest warrant gives the police the right to enter a home to arrest the person whose name is listed on the warrant. An arrest warrant also gives the police a limited power to search a home. If an arrest is made in your home, generally the police can only search the immediate surroundings.
If the police enter your home with a search warrant or an arrest warrant, they can also take other illegal things or evidence of crime that they find during their search. For example, if the police have a search warrant to look for a gun and while they are searching, they find illegal drugs, the drugs can be taken and used as evidence for a drug charge against you.

Entry in emergences

The police also have the power to enter your home in certain kind of emergencies. There are three general circumstances that are considered emergencies:

- The police follow someone into your home if that person has just committed an offence or if the police believe that person is about to commit an offence.

- The police can enter if they believe someone in your home is about to harm another person.
- They can enter to give emergency aid to someone inside.

This power to enter your home in an emergency does not give the police the right to search your home. Nonetheless, while they are in your home the police can seize anything illegal or any evidence of a crime they see.
If during a search the police take something from your home, you may be entitled to get it back. Consult a lawyer for further assistance.

Can anyone lay a criminal charge against someone else?

Although the police will generally lay charges hen they believe that an offence as been committed, in some circumstances they may reluctant to proceed with legal action. If an offence is alleged to have been committed and the police will not lay a charge, any member of the public can take steps to have a charge laid by swearing information before a Justice of the Peace. Information is simply a legal document that contains the details of the offence and chronicles the progress of the case through Provincial Court.
If, for whatever reason, law enforcement authorities will not lay a charge against someone you believe has committed a crime, you may be able to do it yourself. You will, however, have to convince a Justice of the Peace that the charge is justifiable.
You will have to arrange to meet with a justice of the Peace in the jurisdiction where you live or the alleged crime occurred. You will have to explain to the Justice of the peace what happened and swear an oath that you have good reason to believe a criminal offence has been committed.
If the Justice of the peace is satisfied that an offence was committed, the Justice will issue a "summons," which is a document that orders the person you accused to come to court on a certain day. The Justice may also, in some circumstances, issue a warrant to arrest that person.
At court, the Crown prosecutor will step in and take over prosecution of the person you charged. If you are an essential witness you could receive a subpoena requiring you to attend Court to give evidence on the matter. The subpoena will contain information about the date and relevant courtroom.

Under what circumstances can I be charged or arrested?

The police can charge you they see you committing an offence or if they have a reasonable belief that you have committed an offence. You could also be charged if a member of the public can satisfy a Justice of the Peace that you have committed an offence.

Being charged

Although the police will usually both charge and arrest you, for some minor offences you may only be charged, and not arrested. If you are only charged, the police might not take you to the police station. Instead, they will give you a piece of paper that has two dates: one date for fingerprinting and photographs, and the other date tells you when and where to go to court to set a date for trial. If you do not appear for either of these two dates you can be charged with the separate offence of failure to appear.

Being arrested

If the police arrest you it usually means the offence is more serious. The police will read you your rights and take you to the police station where you will be fingerprinted and photographed. When you are arrested, the police also have the power to search you. Even if you are charged with an offence that is not considered serious, the police may still decide to arrest you in addition to charging you. This will happen if you do not identify yourself, if the police believe you might destroy evidence, or if the police believe you might repeat the offence.

Do the police need a warrant to arrest someone?

The police are not required to have a warrant before arresting someone and are given broad power under the law to arrest people without a warrant. In some circumstances, however, an arrest warrant may be issued by a Justice of the Peace to assist the police in carrying out the arrest.

Being arrested without a warrant

The police can arrest you without a warrant in fife instances:

1. If you have committed a serious offence.
2. If you are in the middle of committing a serious offence.
3. If the police believe you are about to commit a serious offence
4. If the police believe there is a warrant out for your arrest.
5. Even if the offence is considered relatively minor, the police can still arrest you without a warrant if you refuse to identify yourself, or if the police believe you might repeat the offence or destroy evidence.

What are your rights when charged or arrested?

The Canadian Chapter of Right and Freedom established a number of rights to protect individuals who are arrested or detained by police. Some of the important rights are:

- You have the right to remain silent when questioned by police
- You have the right to be told why you have been arrested or detained
- You have the right to be told you can hire and instruct a lawyer
- You have the right to be told about availability of duty counsel and legal aid
- You have the right to speak with a lawyer, in private, as soon as possible

If the accused cannot afford a lawyer, it must be made clear that legal counsel is available at no charge. Once an arrested person decided to talk to a lawyer, the police must stop their questioning until the accused and the lawyer have a chance to talk privately. It is important to always remember that you have the right to remain silent and the police must inform you of that right upon your arrest. Regardless of whether you have been arrested or charged, anything you tell police can be used as evidence against you. This also applies to any physical tests you are asked to perform or any samples you are asked to voluntarily provide.

Even though you may think that what you are telling the police could not hurt you in court. What you say or write could later become evidence against you. To be safe, consider talking to a lawyer before making any statements to any police officer, or before performing any test or providing any sample.

What other constitutional rights do I have when charged with a Criminal Offence?

You also have rights when you have been actually charged with an offence, even if you were not arrested. Everyone who is charged with an offence is entitled:

- To have a trial within a reasonable period
- To be presumed innocent unless a prosecutor proves that he or she is guilty
- To be released on bail unless there is a valid reason to be kept in custody
- Not to testify at his or her own trial

If you have been charged or arrested, consult a lawyer to ensure that your legal rights are protected.

What happens after I am arrested?

Following an arrest, a person charged with an offence may appear in court a number of times before attending the actual trial. The accused may be required to attend court for a bail hearing, a set date, a preliminary hearing, and pre-trial hearing or motions.

Bail hearing

To begin, once you have been arrested and taken to the police station, the police will either hold you in custody or leave the police station. Contacts a lawyer immediately because it is very important to get legal advise as soon as possible. If the police decide to hold you in custody at the police station, they must bring you to a Justice of the Peace for bail hearing within 24 hours of arrest, or as soon as possible.

A complaint against the police

If you have a complaint against a police officer, there are several things you can do, including starting a civil lawsuit against the officer, laying a criminal charge, or complaining directly to the local police force that is responsible for the officer.

Lawsuit

Suing a police officer in a civil lawsuit generally involves preparing for a trial and going to court. If you are able to prove you complaint against the officer, the judge may order the officer to pay damages for the injuries you suffered. In most cases, it will be difficult to prove your complaint and your chances of success will be minimal. In addition, it will be time consuming and very expensive to cover the cost of a formal trial. However, if you decide to pursue this method, make sure you start a civil action against the police officer within six months from when the event happened.

Laying a criminal charge

If you believe a police officer has committed a criminal offence, you can have a criminal charge laid against that officer. To lay a criminal charge, you need to meet with a Justice of the Peace and swear an oath that a crime has been committed and explain the details of the events in question. Depending on the criminal offence in question, you may have a time limit for when charges can be laid.

Filling complaint with the police

Most provinces have legislation that oversees police and establishes a procedure for making a complaint. You must usually your complaint in writing to the local chief of police or a public complaints commission that has been established to oversee a force, such as the RCMP or Ontario Provincial Police.

In all jurisdictions, complaints should be made in writing and signed by the complainant. The complaint is then submitted to a special agency overseeing the police (known

variously as police services boards, municipal police boards, or police commissions). For you complaint to be investigated you need to: be directly affected by the police actions complained of; submit your complaint within six months of the incident in question; and your complaint must be brought in good faith.

Arrest or detain people by immigration authorities

Canadian immigration law provides that any person who is not a Canadian citizen can be detained while immigration decides if he or she can enter Canada. Individuals can be detained both when they are attempting to enter Canada and they are in Canada.

Arrest upon entry

Immigration officers have the right to question everyone who is attempting to enter through a Canadian border. You must answer the immigration officer's question if you want to enter. You answer may be written down or entered into their computers. Ay information you give can be used in subsequent immigration proceedings. Immigration officers may detain you if they believe that:

* You are not who you say you are
* You are not coming to Canada for some reason you say you are
* You were deported or excluded from Canada in the past, and you are attempting to re-enter without proper written permission from Immigration Canada
* You will not leave Canada as directed
* You will be dangerous to others or to yourself
* You do not meet proper immigration requirements, such as sufficient funds to visit Canada

Arrest while in Canada

Even if you pass through the Canadian border, immigration or police officers can arrest you once inside Canada for any number of reasons, include:

- They have reasonable grounds to believe you are a danger to others or yourself
- They believe you will not appear for a legally required examination or inquiry
- To fulfill an order for your removal from Canada
- You are working in Canada without a valid work permit
- You have stayed in Canada after your visitor's visa status has expired
- You entered in Canada illegally
- You entered in Canada with a false passport
- You did not notify Immigration of a change of address when you moved
- For another reason that your case has come to the attention of an immigration officer – you are charged with a committing a crime, for instance

Immigration officers and the police do need a warrant to arrest you if on order for your removal has been made or if they suspect you have valuated certain provisions of the immigration law and you are not a permanent resident. If you are arrested, the arresting officer must tell you why. The arresting officer can search you, but if an immigration or police officer asks you questions when you are not in an immigration inquiry, you do not have to answer them. That said, you, should identify yourself.

If you arrested while in Canada, you have the right to consult with a lawyer, and the immigration officer who arrests you must inform you of this right. You do not need to answer questions until you have spoken with a lawyer. Nevertheless, it may be a good

idea to explain the situation particularly if you are arrested because of a simple misunderstanding.

Detention at an immigration inquiry

I rare cases, you could be arrested at an immigration inquiry. All immigration inquiries are followed by detention reviews if needed. An inquiry is a hearing held before an immigration adjudicator to decide whether you can enter or stay in Canada. You have the right to legal counsel at an inquiry. The adjudicator has the power to detain you during you inquiry or when your inquiry ends.

Where are people held?

If you are detained by immigration authorities, you will be taken to an immigration office or police station for questioning. Later, you will be held at an immigration detention centre. If there is no immigration centre where you live you will be held in jail. You may be also detained in jail as opposed to an immigration detention centre if immigration authorities believe you are a danger to others or to yourself.

How can people get released?

There are two ways that a person can be realized from detention: after a review by a senior immigration officer or by an adjudicator at a detention review hearing or an inquiry. Soon after you are arrested or detained, a senior immigration officer will be notified. If this officer believes you are not danger to other or to yourself, and that you will show up for interviews, hearings, or removal. If senior immigration officer does not release you within 48 hours of immigration authorities becoming aware of you detention, you will get a detention review hearing before an adjudicator. This hearing is supposed to take place within 48 hours of your arrest. The adjudicator will review your case and the reason for your detention. A case presenting and review officer will make submission on behalf of immigration. You will also have the opportunity to present evidence and make submission. It is up to you to convince the adjudicator that you should be released. You will be released if adjudicator decides that:

- You are who you said you were when you arrived at the border
- There is no reason to believe you will not show up for hearings, interviews, or removal
- You are not a danger to others or to yourself

I most cases, you will need to post cash and a substantial bond and agree to certain condition to be released.

Typical terms and conditions upon release

You may have to agree to certain terms as:

- You must report any changes of address to immigration 48 hours before moving
- You must co-operate in obtaining travel documents needed for you removal
- You must agree to report to an immigration office regularly
- You must agree to be supervised by a third party

What if you are not released?

If you are not released at this point, another detention review hearing must be held within seven days. If you are not released then you detention must be reviewed every 30 days after that, until you are either released or removed from Canada. There is no limit on how long you can be detained. You have the right to legal counsel at every detention review haring, but legal aid certificates are not usually provided. You also have the right to a qualified interpreter who is provided by immigration.

Deportation

The Canadian government has the power to deport people who are not lawfully allowed to stay in Canada. Anyone who is deported cannot return to Canada without the written consent of the Minister of Citizenship and Immigration. Different deportation criteria apply to different categories of people. The main classifications are people who have been denied refugee status, permanent residents and visitors.

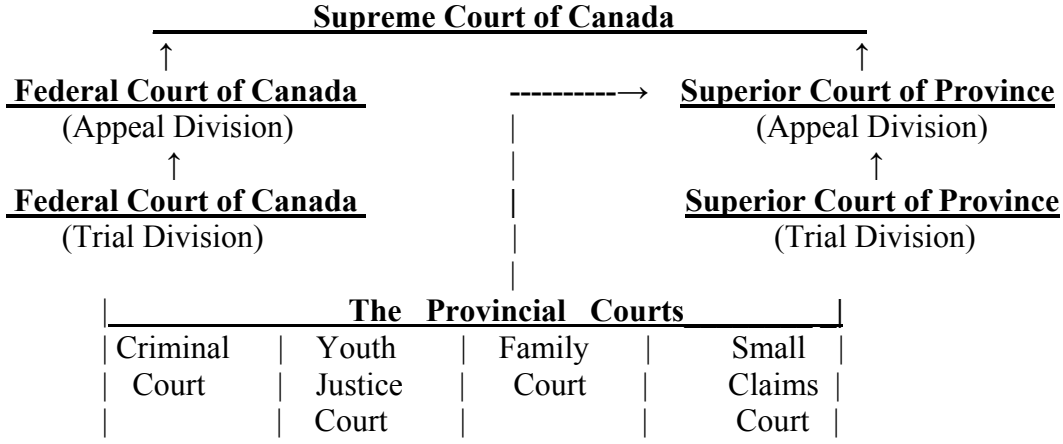
The Criminal Court System

The criminal court is complex administrative organizations. They oversee the entire process of prosecuting criminal offences and ensuring that the trial is conducted in accordance with the principle of fairness. The rules of procedure, rules of evidence, stationary laws have shaped the Canadian trial process into its present form.

The Criminal Court Structure

Constitutional Act 1867 divided the responsibility for Canada's criminal courts between the federal and provincial governments. The Federal Parliament is responsible for formulating criminal law and procedure, and it can establish courts for administrating various federal laws. Parliament has used this authority to create the Supreme Court of Canada, and the Tax Court of Canada. Provincial legislatures are responsible for organizing, administrating, and maintaining the criminal court system. Each provincial legislature appoints judges to the lowest level in the hierarchy of courts, simply known as the Provincial Court. The federal government appoints judges to the superior courts and to the provincial courts of appeal. The Chart is intended to apply to all of the provinces of Canada, but there are, in reality, significant differences from province to province. In some provinces, two or more of these courts are combined into a single court with various divisions. For instance in Ontario, the provincial Court is divided into family, criminal, and youth divisions; the small court is a division of Superior Court.

Canadian Criminal Court Structure and Avenues of Appeal



The provincial court system consists of the provincial courts and superior courts of the province. The provincial courts have trial divisions, while the superior courts have both trial and appeal divisions.

The provincial Court, Criminal Division

The Provincial Court is at the bottom of the hierarchy of Canadian courts. These courts are constituted under provincial statutes with judge appointed by the provincial government. Cases are tried by judge alone, not a jury. Each province divides this court into separate divisions such as criminal, civil (small claims), and family.

At first examine **the criminal division** of the Provincial Court. Provincial Court judges in the criminal division have the jurisdiction to hear summary conviction offences and certain indictable offences. Summary conviction offences are less serious crimes that carry lighter penalty, such as public nudity or causing a disturbance. Indictable offences are more serious crimes that carry a heavier penalty, such as offences in s. 553 of the Criminal Code (e.g., mischief or theft under $5000) or offences in s.554 (e.g., theft or fraud over $5000). For offences tried in Provincial Court, the accused cannot choose a trial by jury but must be tried by a judge alone. Both summary conviction and indictable offences will be discovered in detail later. The provincial Court also tries violations of provincial statutes or municipal bylaws. For example, person charged with careless driving (a provincial statute violation) or parking in a no-parking zone (a municipal bylaw violation) would have their cases tried in the Provincial Court.

An accused person's first contact with the criminal court system usually begins in the Provincial Court, Criminal Division, because this court also conducts all **preliminary hearings** to determine whether there is sufficient evidence to put the accused on trial by a higher court. The preliminary hearing serves to put the accused on trial by a higher court. The preliminary hearing services as a screening process and protects the accused person from an unnecessary trial; it also protects Crown and public from the expense of a trial that may not be required. In the words of the Supreme Court of Canada: "The purpose of a preliminary inquiry is clearly defined by the Criminal Code-to determine whether there is sufficient evidence to put the accused on trial."

An **appeal** from the Provincial Court regarding a summary conviction offence is hearing by a single judge of the Superior Court of the province. An appeal regarding an indictable offence is hearing by the appeal division of the Superior Court, which comprises a panel of three or five judges.

Superior Court of the Province

The **Superior Court of the Province** is the highest level of the provincial criminal and civil court system. It contains of a trial division and an appeal division. This court has jurisdiction in both civil and criminal matters that go beyond the jurisdiction of the lower courts. The superior court system is similar across Canada, although the names of the court are not the same for all provinces. The Supreme Court has jurisdiction to hear all offences in s. 469 of the Code. These offences must be triad by a judge and a jury unless the accused person and the provincial Attorney General consent to trial by judge alone. Section 569 offences are the most serious crimes, such as murder and treason. The Supreme Court may also try indictable offences in s. 554 of the Code in which the accused may choose (or elect) the mode of trial. For these offences, the accused may

elect to be tried by a judge along in Provincial or Superior Court, or by a judge and jury in Superior Court. Such offences include breaking and entering, robbery and attempted murder.
Appeals from the Superior Court, Trial Division, are heard in the Superior Court, Appeal Division of the province. Three or five judges hear the cases brought to this court, and the appeal is won or lost based on the majority decision of the judges.

The Federal Court System

The federal court system consists of the Federal Court of Canada, which has a trial division and an appeal division, and the Supreme Court of Canada – the country's highest **court of appeal.**

Federal Court of Canada

The Federal Court of Canada has a trial division and an appeal division. In its trial division, the court has jurisdiction to try civil claims involving the federal government. The Federal Court has also jurisdictions to hear appeals from federally appointed boards, commissions, and administrative tribunals, such as the Immigration Appeal Board and the National Parole Board.

Supreme Court of Canada

The Supreme Court of Canada is the highest court in the country. It consists of a chief justice and eight justices (judges), all of whom are appointed by the federal government. By law, three of the justice must come from Quebec. By tradition, three come from Ontario, two from Western Canada and one from the Atlantic Provinces. The Court sits in Ottawa for three cessions a year: winter, spring, and fall. Cases are heard by panel of five, seven or nine justices, depending on the type of appeal. Sometimes the Court uses teleconferencing to hear presentation from other part of Canada.
The Supreme Court of Canada is strictly an appeals court; it has no trial division. It can hear appeals of decisions made by different provincial courts of appeal and by the Federal Court of Appeal. However, it can be difficult to move a case to the Supreme Court of Canada because of the high volume of cases in the system. Generally, the Supreme Court grants leave, or permission to appeal, only for matters of national significance or when decisions conflict in the provincial appeals courts.
The federal government may ask the Supreme Court of Canada to provide advice or to rule on specific questions relating to constitutional issues or other federal matters.

Other Courts

In 1983, the Tax Court Canada was established to replace the Tax Review Board, an administrative tribunal. The Tax Court of Canada is primarily responsible for hearing cases dealing with income tax matters. Appeals of decisions made by the Tax Court are head by the Federal Court of Canada.
Another specialized federal court is the Martial Appeal Court. This court hears appeals from courts martial in the armed Forces. The judges who sit on the Martial Appeal Court are not members of the military, but are usually appointed from provincial superior courts or from the Federal Court of Canada.

The participants in a traditional courtroom

Canadian criminal justice system has two fundamental principles: an accused person is innocent until proven guilty, and guilt must be proven beyond a reasonable doubt. These principles mean that a judge or jurors cannot convict an accused person unless are satisfied that the Crown has proven the defendant's quilt to the extent that a reasonable person would conclude that individual did indeed commit the offence in question. If there is any doubt about the defendant's guilt, the person must be accused. Therefore, the evidence introduced by the Crown and defense attorneys, the testimony of the witnesses, and the role played by the judge, jury, and other court personnel are all critical in maintaining the integrity of the trial system. We will discuss the people involved in a typical criminal trial and the role of each person plays.

The Judge

Judge is the court official appointed to try cases in a curt of law and to sentence convicted persons.

The Judge makes decisions on the admissibility of evidence, controls the events in the courtrooms, and interprets the law pertaining to the case. In jury trial, the judge is known as the "trier of law" and the jury as the "trier of fact." The judge instructs the jury on points of law, the jury decides the verdict based on the judge's instructions and on the evidence of facts presented, and the judge sentences the convicted person. In a non-jury trial, it is the judge who decides on the guilt or innocence of the accused and then passed sentence.

Justice of peace is a court official who has less authority than a judge but can issue warrants and performs other judicial function.

A justice of the peace has less authority than a judge but can perform a number of judicial functions, especially in the preliminary stages of a case. A justice of the peace can issue arrest or search warrants and hear bail applications. In some jurisdictions, this court official can hear cases involving infractions of municipal bylaws and certain provincial statues, such as the *Highway Traffic Act*.

The Defence

The person charged with a crime is called the accused (or defendant). Defendants may represent themselves at trial, but sentence the law is so complex, it is usually advisable for defendants to seek trained legal assistance. Duty counsel, "on duty" in a police station or courtroom, is a lawyer hired through the legal aid system of the province. **Duty counsel** provides free legal advice to a person being charged or interrogated at the police station or appearing in Provincial Curt for the firs time. This lawyer can advice clients of the right to appeal guilty or not guilty and can help them apply for bail or seek an adjournment (or postponement). Sometimes a duty counsel can represent clients when they plead guilty or appear at a sentencing hearing.

The defence counsel is the layer who represents the interests of the accused. If the accused plead not guilty, the defence counsel will try to show that there exists a reasonable doubt of the defendant's guilt. If the accused pleads guilty or is found guilty after trial, the defense counsel will recommend an appropriate sentence to the judge. The Crown will also make a sentencing recommendation, one of that often differs substantially from that of defense. If both attorneys agree on appropriate sentence, they

will present a joint submission to the judge. After hearing the recommendations, the judge will make the decision.

The Prosecutions

The **Crown attorney (or prosecutor) is** the lawyer representing the government's interests in investigation and punishing criminal offences to ensure society's safety. The prosecutor must prepare the government's case by researching the law, assembling the evidence for trial, reviewing exhibits, and taken statements from witnesses. In 1995, the supreme court of Canada emphasized that the role of the prosecutor is not necessary to obtain a conviction but to brink forward credible evidence of a crime. **Evidence** is information that tends to prove or disprove the elements of an offence. An importance source of the Crown's evidence is the testimony of the arresting officer and other witnesses. Often the prosecutor submits physical evidence, which might include fingerprints, a weapon, or articles of closing belonging o the victim or the accused.

Other Court Personal

He court clerk assists the judge by keeping a record of the trial exhibits, administrating oaths, and announcing the beginning or end of the court session. Using an electronic monitoring system, the **court reporter** records verbatim everything that has been said during the trial. After the trial, the court reporter can produce a transcript of the trial if one is required. A **transcript** is a typed record of everything that was said in the court. In British Colombia, the positions of court clerk and court reporter are combined. The **court security officer** handles accused persons who are in custody and helps maintain security in the courtroom. The **sheriff** is usually responsible for jury management; that is, the sheriff will summon, pay, seclude, and guards as required. A **bailiff** is the court official who assists a sheriff. In British Colombia, the sheriff also performs the duties of the court security officer and the bailiff.

The Witnesses

Witnesses give evidence, under oath, concerning their knowledge of the circumstances surrounding a crime. The prosecutor or defense counsel may compel a witness to appear in court by issuing a **subpoena,** a court order requiring the witness to appeal on a certain date to give evidence. If the witness fails to appear on the specific date, he or she can be held in contempt of court for obstructing the course of justice. If found guilty of contempt (disobeying the court's authority), a witness may be fined a maximum of $100 and/or imprisoned for up to 90 days.

During the trial, witnesses called to testify must take an oath on Bible or make a solemn affirmation to tell the truth. Witnesses commit **perjury** if they knowingly make false statements in court while giving evidence under oath or affirmation. **Perjury** is knowingly making false statements in court while giving evidence under oath or affirmation. Perjury is a serious crime. The Criminal Code treats it as an indictable offence with a maximum penalty of 14 year's imprisonment.

The Jury

In a criminal trial, a **jury** is a group of 12 men and woman, chosen by the Crown and defense counsel from a pool of ordinary citizen in the community the court is located in.

The jurors listen to the trial, examine the evidence, and follow the judge's instructions about the law. At the and of the trial, they withdraw to the jury room to deliberate, considering all the evidence and deciding together whether the accused is guilty or not guilty. As mentioned previously, to convict in a criminal trial, the jurors must find the defendant guilty beyond a reasonable doubt. Their decision must be unanimous.

Each province passes its own legislation to establish the qualification of potential jurors. Usually, to be eligible for jury duty the individuals must be a Canadian citizen.18 years of age or older and a resident of the province for at least one year. In most cases, publicly elected politicians and people working in the justice system, such as lawyers, prisons guards, police officers, and probation officers, cannot serve as jurors. Anyone wishing to be executed from jury duty may apply to the sheriff.

Jury selection. Potential jurors are selected randomly from electoral polling lists; these lists represent a wide cross-section of citizens in the community. A group of potential jurors is called a jury panel. The accused is brought in front of the judge and jury panel for arrangement to enter a plea of guilty or not guilty. If the plea is not guilty, the Crown and defense attorneys will select jurors from the jury panel under the judge's supervision. The selection process includes the six steps:

1. The names of the people on the jury panel are written on cards that are put into a box and selected at random. Selected names are read aloud to the court.
2. The person whose name has been chosen goes to the front of the court and faces the accused.
3. Both the Crown and the defense may object to a potential juror by challenging this individual.
4. Either counsel may make a challenge for cause if they believe that the prospective juror:
   a) has already formed in opinion on this case;
   b) is physically unable to perform the duties of a juror;
   c) has been convicted of a serious offence.
   Each side is allowed to make an unlimited number of challenges for cause.
5. After a potential juror is accepted as suitable and impartial, the Crown and Defense still have the chance to reject this person through the use of peremptory challenges. A **peremptory challenge** is one that required no reason for eliminating a potential juror from jury duty. A criminal trial is an adversarial process, which the accused on one side and the state or government on the other. Clearly, the state is more powerful party. Peremptory challenges were developed as a way of granting the accused some control over the adversarial process and against the power of the state. In effect a peremptory challenge allows the accused to say: "I don't want this person deciding my case." In serious cases, such as first degree murder or treason, each side may use 20 of these challenges. In less serious cases in which the accused may be sentenced to more then five years in prison, 12 peremptory challenges are permitted; where the sentence is less then five years, 4 such challenges allowed.
6. When the selection process is completed, the 12 jurors take the juror's oath:
   "I swear to well and truly try and true Deliverance make between our sovereign lady the Queen and the accused at the bar, whom I have in charge, and a true verdict give, according to the evidence, so help me God."

The Criminal Trial Process

A criminal trial is an adversarial process that pits the Crown against the accused. The trial begins with the judge explaining the jury's role as the trier of facts. Then the judge asks the 12 jurors to select a foreperson who will represent them and communicate with the judge. The foreperson will also lead the other jurors through their deliberations and, at the trial's conclusion, will inform the court of their verdict.

The Crown's Opening Statement

The Crown presents its case before the defense because it has the burden of proof, so the trial always begins with an opening statement by the Crown. This statement identifies the offence committed, summarizes the evidence against the accused, and outlines the way the Crown will present its case. The jury is not meant to consider the opening statement as evidence; the Crown will introduce evidence only after its opening statement is complete. Most of the evidence in a criminal trial is presented through witnesses.

Examination of Witnesses

The first examination of a witness is called **a direct examination**, or an examination-in-chief. The Crown will ask direct examination, defense counsel may cross-examine the witness. The purpose of a cross-examination is to test the accuracy of the evidence or to convince the jury that there are contradictions in the witness's testimony that weaken the Crown's case.

The Defence Responds

When the Crown has finished calling its witnesses, the defence may bring **a motion for dismissal** if counsel believes that the Crown has failed to prove guilt beyond a reasonable doubt. As trier of the law, the judge may agree with the defence and will withdraw the case from the jury to enter a **directed verdict** of not guilty.

If the judge does not dismiss the charges, and the accused pleads not guilty, the trial must continue. The defence begins by summarizing its case in an opening statement. The defence may choose to call witnesses to refute testimony provided by the Crown's witnesses or to show reasonable doubt. The procedure of direct examination (this time by the defense) and cross-examination (this time by the Crown) is repeated. The defendant may choose to testify on his or her own behalf but, according to s. 119C) of the Chapter of Right and Freedom, "cannot be compelled to be a witness."

After the defence has presented all its evidence, the Crown has the opportunity to rebut, or contradict, any new evidence the defense has introduced. Defence counsel can then present further evidence for a surrebuttal, a contradiction of the Crown's rebuttal.

(In a court proceeding, a **surrebuttal** is a response to the opposing party's rebuttal)

The Rules of Evidence

During the trial, either the Crown or the defence may object to questions asked by the opposing attorney or to answers provided by witnesses. When an objection is made, the judge rules on whether the evidence in question is "admissible" that is, whether it may be

accepted by the court. Following are some of the most common grounds for objection in a criminal trial.

Leading Questions

A leading question suggests to the witness a particular answer. During direct examination, it is generally not permitted to ask a witness a leading question unless it involves a fairly unobjectionable matter, such as establishing the age of a witness. But concerning the more contentious issues of a direct examination, Crown or defence counsel would not be allowed to ask a question such as "Wasn't it Bob you saw holding the knife and stabbing Bill?" The question would have to be reworded; for instance, "What did you see Bob to do Bill?" The question does not suggest an answer but asks for an explanation of that occurred.

In cross-examination, counsel would be allowed to ask a leading question as long it pertained to previous testimony: "You want this court to believe you say Bob stabbing Bill?" This question refers to a fact – the witness saw Bob stabbing Bill – a fact that was already established in the direct examination.

Hearsay Statements

An attorney may ask witness only about what the witness saw or experienced first-hand, not about something he or she heard from a third party. Hearsay evidence is evidence given by a witness based on information received from someone else rather personal knowledge and it would not be admissible in court.

Opinion Statement

Defence counsel or the Crown cannot ask a witness to give an opinion about a matter that goes beyond common knowledge unless the witness is recognized expert in the field. For example, aye witness can give an opinion about the car at the crime of the scene. But only a car mechanic who was allowed to examine the car – could give the opinion about the condition of the car's brakes.

Immaterial or Irrelevant Questions

An immaterial or irrelevant question has no connection with the matter at hand; as a result, it is considered inadmissible.

Non-Responsive Answers

Sometimes the Crown or defence counsel will question a witness and receive a reply that does not really answer the question. This is called a non-responsive answer. When this happens, counsel may ask the judge to direct the witness to answer the question properly.

Types of Evidence

As noted previously, evidence is the information that will prove or disprove disputed facts presented in a court of law. All evidence must be "material" – it must be important and relevant to the case in question. Evidence is considered relevant if it has probative value, that is, if it tends to make more or less probable a certain fact pertaining to the quilt or innocence of the accused.

Direct Evidence

Direct evidence is the testimony given by a witness to prove an alleged fact. The most common type is an eyewitness account of a crime. For example, in a robbery case, Bob's testimony that she saw Sam assault Dan and steal her purse would constitute direct evidence. But even direct evidence can be challenged. Sam's lawyer might rebut the

evidence by proving that Bob has poor vision and left her glasses home on the day in question.

Circumstances Evidence

If there is no one to provide eyewitness testimony, the offense may by proven by circumstantial evidence – indirect evidence that leads to a reasonable inference on the defendant's quilt. Suppose no one saw Sam assault Jill and take her purse, but the investigating officer found the purse in a nearby trash can and it was covered with Sam fingerprints. Also, a witness testifies that he saw Sam in the area at the approximate time the crime took place. This testimony might allow the judge or jury to infer, or conclude from the evidence, that Sam robed Jill.

Circumstances evidence is generally admissible in court unless the connection between the evidence and the inference is too week to help decide the case. In determining the admissibility of a piece of evidence, the judge must be convinced that the defendant's guilt is one of the conclusions that could be drawn from the evidence.

Character Evidence

Character Evidence used to establish the likelihood that the defendant is the type of person who either would or would not commit a certain offence. Generally, the Crown is not allowed to attack the defendant's character. This rule guards against the jury's tendency to infer that because the defendant has a "bad character," he or she must be guilty. Defense counsel, on the other hand, is permitted to introduce evidence of the defendant's good character to convince the jury that he or she is not the type of person who would have committed the offence. Once defense counsel introduced this type of evidence, however, the Crown is allowed to rebut it by presenting contradictionary evidence.

The Crown is allowed to introduce evidence of the defendant's past convictions. Such evidence is not to be used or the sake of attacking the defendant's character but only for testing the defendant's credibility, that is the likelihood of whether he or she is telling the truth.

Electronic Surveillance

Electronic Surveillance is the use of any electronic device to overhead or record communication between two or more people. Wiretapping and bugging are two of three most common methods of electronic surveillance.

Wiretapping is the interception of telephone communications, generally at the point some distance away from the target premises. Bugging is the recording of speaker's communication by means of an electronic device that overheads, broadcasts, or records that communication. Generally, any evidence obtained by wiretapping or bugging is admissible in court only if the interception is authorized beforehand by a judge. Exceptions occur in cases where a police officer believes he situation is an emergency or where the interception is necessary to prevent a violent act.

Polygraph Tests

A polygraph or "lie detector" is a machine that allows a skilled examiner to detect physical signs that indicate on the part of the person being tested. The machine changes in pulse, respiration, and blood pressure. The examiner begins the test by asking the person control questions that have been designed to elicit answers that the examiner knows are untrue. The examiner carefully observes the person's physical reaction when

making these untruthful responses and then observes whether the same reactions take place when this person is asked about the criminal charges in question.
The main weakness of a polygraph test is that its accuracy depends on the competence of the examiner. Over time, even a highly skilled examiner will have an accuracy rate of less then 100percent. For this reason, the results of a polygraph test are not admissible evidence for determining whether a defendant is lying or telling the truth a particular crime. However, the Crown may introduce as evidence anything the defendant says during the course of the exam.

Voir Dire

A voir dire is a mini-trial that takes place during the trial. The jurors are escorted from the courtroom and asked to wait in the jury room. Then the judge, from the Crown, and the defense discuss the issue that is keeping the trial from moving forward, such as whether a particular piece of evidence is admissible. One of the most common reasons for a voir dire is to determine whether a defendant's confession was given voluntary. In this situation, the defendant or other witnesses may be called to testify. After hearing arguments from both sides, the judge will decide whether the evidence is admissible in whole, in part, or not at all. Then the jurors are summoned back into the courtroom, and the trial resumes.

Summary of the Case

After all the testimony has been given, each counsel presents a summary of the case in the form of closing arguments. If the defense called witnesses during the trial, then defense counsel closes first. If not, the Crown closes first. The Crown will attempt to show that the defendant's guilt has been proven beyond a reasonable doubt. The defence will try to show that the Crown has ailed to established **mens rea** or **actus reus,** thereby demonstrating that a reasonable doubt does exist. The closing arguments are not to be considered as evidence, but are intended to help the jurors better understand the issues involved in the case.

Charging to the Jury

After the summaries by opposing counsel, the judge gives a charge to the jury – an explanation of the law and instructions on how the law applies to the case before them. The judge will also advise the jurors on how to consider the evidence and how to makes a verdict in accordance with the law. The judge must be very careful in making the charge to the jury. If the charge is very deficient in any way, it may form the basis for an appeal of the verdict. In fact, a deficient charge is most common basis for a successful appeal. After the charge has been given, the sheriff escorts the jurors to the jury room. There the jury members will deliberate on their verdict.
As explained earlier, it is the judge's role to decide on matters of law and the jury's task to decide on matters of fact. While he judge rules on what evidence is admissible, the jury decides on what evidence is believable. If the jurors believe the accused, or they do not know whom to believe, they must acquit. If they do not believe the accused but are left with a reasonable doubt regarding the defendant's quilt, the jury is obliged by law to return a verdict of not guilty.

The Verdict

Once the verdict has been reached, it is read in open court. Both the Crown and the defense have the right to ask that the jury be polled – each jury member must stand and

confirm his or her agreement with the verdict. A jury's verdict must be unanimous. A jury that can not reach a unanimous decision is called a hung jury. In this situation, the jury is discharged, and a new jury is selected to try the case again.

Appeals

No legal system is free from error. For this reason, the right o appeal is an important safeguard in Canada's adversarial system. Usually, a notice of appeal must be filed within a short period of time, in most cases within 30 days. The appeal is then heard in an appeal court, which has the authority to review the decision and may one of the following rulings a) to affiliate the lower court's decision; b) to reverse the lower court decision; c) to order a new trial.

Investigation and Arrest

Once the police have collected physical evidence, they usually begin to question the suspects. Depending on the amount of evidence collected, the police may make an arrest either before or after questioning. Procedures for dealing with suspects have been codified in the *Criminal code*, developed through case law, and enshrined in the *Chapter of Rights and Freedoms*. If the Police do not conduct their investigation according to established procedures, they run the risk of watching the case fall apart later in the court because evidence obtained improperly may be considered inadmissible.

Questioning the Accused. Police Officers are required to ask suspects questions as they investigate a crime. They cannot, ***however, force*** a suspect to answer their question. Section 7 of this Chapter has been interpreted to grant a detained or arrested person the right to remain silence. The police must give the suspect a chance to make a free and meaningful choice about whether to speak or remain silent. They are required by law to promptly inform arrested persons of the reason for their arrest and their right to counsel. The procedure is standard; the arresting officer must say the following:

You have the right to retain and instruct legal counsel without delay. You have the right to free legal advice from a legal aid lawyer. If you are charged with an offence, you can contact the Legal Aid Plan for legal assistance. Do you understand?

Do you wish to telephone a lawyer now?

Once an arrested person has been informed of his or her rights, anything he or she says to the police or put in writing can be used against that person in court. Young people are given special rights and protection under ***Youth Criminal Justice Act***.

Interrogation Techniques

When police officers interview a suspect their primary goal is to obtain the truth. The best way to accomplish this goal is to develop a trusting relationship with suspect.

Most of the time the police use a four-stage approach in the interrogation process: they ask the suspect to describe:
1) the entire incident
2) the period before the offence took place
3) the details of the actual offence
4) the period following the offence.

Arrest and Detention procedures
A criminal case usually begins when the police formally charge a person with committing offence. The police may either arrest or detain the suspect. A person placed under arrest is deprived of his or her liberty by legal authority. In order for an arrest to be lawful, the arresting offices must follow this four steps:
1) identify himself or herself as a police officer
2) advise the accused that he or she is under arrest
3) inform the accused that promptly of the charge and show the arrest warrant if one has been obtained
4) touch the accused to indicate that he or she is in legal custody.

Once the accused is in custody, the police must inform the person of the right to counsel. In certain circumstances, instead of arresting the suspect, the police will "detain" the person. **Detention** involves stopping someone and asking the individual to answer a few questions. When the police place someone under detention, they are depriving that person of liberty with or without physical restrain. People detained by police must be promptly informed of the reasons for the detention and of their right to retain counsel. The police cannot arrest just anyone they suspect of committing a criminal offence. They must have some proof that an offence has been committed, and they must have reasonable grounds for suspecting that the person they wish to arrest was the offender. **Reasonable grounds** means that based on information available, a reasonable person would conclude that he suspect had committed a criminal offence. Responsible citizens usually co-operate with the police when stopped or questioned. If the questioning persists beyond an appropriate point, the individual may demand to speak to a lawyer and be given the officer's name and badge number. If someone is detained or arrested in an arbitrary or improper manner, that person may sue the police for unlawful arrest *Appearance Notice*. The police have three methods of apprehending an offender. They can issue an appearance notice; arrest the suspect with a warrant. For most summary conviction offences and for those indictable offences that are less serious, the police will not arrest the accused person but will issue an appearance notice, a legal document compelling the accused to appear court on a certain date at a specific time. The accused must sign the appearance notice and be given a copy. If the accused fails to attend court on the date shown, the police may ask a judge to issue a bench warrant. Than the accused will be arrested for the original affiance and charged with another offence called “failure to appear". In this case the accused may find it more difficult to be released from custody before the court date.
In the Criminal Code was amended such that subsection 495(2) placed considerable restrain on police powers of arrest without a warrant. They could not arrest without a

warrant for indictable offences including theft or possession of stolen goods under one thousand dollars. They also could not arrest without a warrant for an offences that could be tried either by indictment or summarily, or for an offence punishable on summary conviction.

Searches

Because the law seeks to balance the individual's right to privacy with the state's need to conduct a thorough investigation, both statue and common law carefully explain at that point the police may conduct searches during criminal investigation and what kind of evidence they may collect. Generally, the police have to obtain a warrant before conduction a search but as the following section show, there are important exceptions to the rule.

Searching a Person

The Police do not have to obtain a warrant to search a person they have just arrested. According to the Supreme Court Decision the Police have to satisfy three conditions for this exception to be legal:

- the arrest must be lawful
- the search must be connected to the lawful arrest
- the manner in witch the search is carried out must be reasonable

Except in the case of someone suspected of impaired driving, an arrested person does not have to supply the police with a breath, blood, or urine simple, unless compelled to do so by a warrant. Even with a warrant, the arrested person usually allowed to confer with a lawyer before providing the sample. For certain "designated offences," such as murder or aggravated sexual assault, the police may obtain a warrant that forces a person to provide a sample for DNA proofing.

Searching a Place

In most cases, the police must obtain a warrant before searching places such as a residence, an office, or a storage area. A search warrant is a court document that gives police the right to search a specific location. When preparing a search warrant, the police must ensure that the warrant is correctly obtained and properly filled out. Any irregularities may result in the court throwing out evidence obtained through the warrant.

To obtain a search warrant, a police officer must deliver sworn information to a judge or justice of peace. The information will specify the crime, the items the police are looking for, and the reasonable grounds they have for believing that those items will be found in a specific location. If the court grants the warrant, this document will list all these details as well as the date and time the police are allowed to conduct their search. For arching a residence, the warrant usually specifies one day during which the search may be carried out. Unless otherwise noted, the search must take place during daylights hours that is between 6.00 a.m. and 9.00 p.m.

Before conducting their search the police must identify themselves and show the warrant to the person living or working in the place to be searched. During the course of the search, the police may confiscate other items that are not listed in the search warrant, as long as these items are related to the crime and are in plain view. Any object to be used as

evidence in court will be kept in police custody until the trial. Other items must be returned to the owner within three months.
In cases where the police believe they must act quickly to preserve evidence, they may obtain a telewarrant to search the premises. A telewarrant is a search warrant obtained over the phone or by fax. The officer gives the judge or justice of the peace all the required information and files it with the court. The officer then makes a facsimile warrant and shows this warrant at the scene of the search.
A search warrant almost always required if the police wish to search a private home. However, under s. 529(3) of the Criminal Code, two exceptions apply where pressing circumstances make it difficult to obtain a warrant in time. Police must have reasonable grounds to believe that entering the dwelling is necessary to prevent 1) imminent injury or death to any person or 2) the destruction of evidence relating to an indictable offence.
The Controlled Drugs and Substances Act gives the police the authority to search any premises except a person's residence for illegal drugs without first obtaining a warrant. Anyone found within the premises can also be searched if the police have reason to believe they are carrying illegal drugs. Also, provincial liquor law give police the right to search automobiles for illegal alcohol without first obtaining a warrant. A warrant is still necessary, however, to search a residence for illegal alcohol.

Citizen Arrest
Citizen's arrest originated in Medieval England when there was no police force and it was everyone's duty to assist in chasing criminals. These powers are now set out in the Criminal Code. The notion of `citizen's arrest' is most relevant to people employed in a quasi-constabulary role, such as security guards. In general, private security personnel don't have any greater powers of arrest than any other private citizen. Anyone who owns or lawfully possesses property may arrest someone found committing a crime on or in relation to that property, eg, a farmer may arrest someone stealing his tractor. Secondly, anyone may arrest a person found in the act of committing a serious (indictable) offence or escaping from the police after committing a crime. In all cases, the arrested person must be delivered immediately to a police officer.
A person making a citizen's arrest has no right to search you. Store detectives are allowed to arrest you on the mere suspicion that you have stolen something. They do not need to search you and have no authority to do so. Young people should remember that they, like adults, have the right to remain silent. They do not have to answer any questions that are asked by the store personnel.
Saying `you're under arrest' does not, in itself, constitute an arrest. If the person so `arrested' runs away he has not, in law, been arrested at all. To arrest someone requires force or, at least, compulsion.
Your right to make a citizen's arrest is not as important as your need to stay safe. If you think that collaring a criminal is going to put you in any kind of danger, back off and call the cops instead. Should you choose to make a citizen's arrest, be aware that you are only allowed to use reasonable force to do so, which could be determined in a court of law. Put simply, it means you can't steam in with your fists if the offender offers no resistance, and nor should you overdo it when apprehending someone for a trivial offence. If you do, you could lay yourself open to a charge of assault.

Unreasonable Search and Seizure
Section 8 the Canadian Chapter of Right and Freedom guarantees that people will not be subject to unreasonable search and seizure. That means that the police must have a good reason for searching the person, home o belongings of an accused. The search must also be conducted fairly. For instance, police can search the place where a person is arrested in order to find a weapon or articles relating to the offence, but they cannot use their searches as "fishing expeditions" to see if something else turns up that could be used against suspect in court. Some Laws outside the Criminal Code gives the police specific search powers. For example, the Controlled Drugs and Substances Act grant the police the power to search any place (except a residence) where thy suspect drugs are concealed without obtaining a warrant beforehand.

Procedure after Arrest
Once a person has been arrested, a number of procedures may follow, such as taking photographs and fingerprinting or placing the person in a line-up. The only suspect the police have the right to photograph and fingerprint is someone who has been arrested for an indictable offence. If the police do not charge the person, or if the person is charged but acquitted in court, the police will usually retain the arrest record (including the fingerprints and photographs) for 10 years before destroying them.
The police do not have the right to force an arrested person to participate in a line-up. A line-up is a grouping of suspects shown to a victim or witness for the purpose of identifying the perpetrator. Usually the people in a line-up are all of the same gender and share the same general characteristics of age, height, and build. Depending on the lawyer's advice and the circumstances of the case, the defendant may either participate in the line-up or refuse to do so.

Arbitrary Detention or Imprisonment
Section 9 the Canadian Chapter of Right and Freedom guarantees that "everyone has the right not to be arbitrarily detained or imprisoned." It means that people can not be held for questioning, arrested, or kept in jail by the police without good reason.

Criminal Offences Level of Offences Types of Offences

Canada's justice system handles various criminal offences differently depending on the seriousness of the crime. The type of offence has a bearing on custody issues, bail requirements, trial procedures, and sentencing. The three level of crimes including summary conviction offences, indictable offences, and hybrid offences.
Summary Conviction Offences
A summary conviction offence is a minor offence that carries a relatively light penalty. Generally speaking, a person convicted of such a crime will be fined up to $2000 and/or imprisoned for up to six months. Treating a matter in a "summary fashion" means dealing with it quickly and simply, so as the term implies, there cases usually proceed through the court system fairly rapidly. Summary conviction offences are tried in Provincial court without a jury. With the permission of the judge, the accused does not have to appear in court but can be represented by lawyer. The Criminal Code states whether a crime is

classified as a summary conviction offence. Examples: public nudity, cruelty to animals, trespassing at night.

Indictable offences

An indictable offence is a serious crime and carries a heavier penalty than a summary conviction offence. The Criminal Code established maximum penalties for indictable offences, ranging anywhere from two years imprisonment for committing a common nuisance up to life imprisonment for aggravated sexual assault. The method for trying an indictable offence differs according to the severity of the sentence that the offence carries. For an offence with a maximum penalty of less then five years imprisonment, the trial will be head in Provincial Court or Superior Court of the province before a judge without a jury. If the maximum penalty is more than five years, the accused can opt for trial in Supreme Court, either with a judge along or with a judge and jury. The most serious indictable offences, such as murder and treason (listed in s. 469 of the Criminal Code), must be tried in Superior Court. Examples: perjury, arson, murder.

Hybrid Offences

A hybrid or dual procedure offence is one that the Crown can decide to try either as summary conviction or indictable offence. The Criminal Code always makes it clear when an offence is hybrid by starting explicitly that it can be treated either on a summary or indictable basis. Hybrid offences are always treated as indictable until charges are laid in court. At that point, the Crown must decide how to treat the offence. The Crown's decision often depends on the circumstances of the particular case.

Offence against the person

Crimes in the criminal Code are classified under different categories according to the type of offence. For example, all gambling offences are found in Part VII, Disorderly Houses, Gaming, and Betting:

Part II	Offences Against Public Order
Part III	Firearms and Other Weapon
Part IV	Offences Against the Administration of Law and Justice
Part V	Sexual Offences, Public Morals, and Disorderly Contact
Part VI	Invasion of Privacy
Part VII	Disorderly Houses, Gaming, and Betting
Part VIII	Offences against the Person and Reputation
Part IX	Offences against Rights of Property
Part X	Fraudulent Transactions Relating to Contracts and Trade
Part XI	Willful and Forbidden Acts in Respect of Certain Property
Part XII	Offences Relating to Currency

Homicide

The Criminal Code 222(1): A person commits homicide when directly or indirectly, by any means, he caused the death of a human being. Technically speaking, an execution is a form of homicide; so is a planned murder or an unplanned killing resulting from a jealous rage.

There are two main types of homicide: culpable and non-culpable (the word culpable means “blameable’). A culpable homicide is a killing or which the accused can be held legally responsible. That is, someone intentionally caused the death of another person or shows such recklessness that these actions are likely to cause death. A non-culpable homicide is a killing for which the accused cannot be held legally responsible, such as a death caused by an unforeseeable accident.

Murder

Murder is intentional killing of another human being, is a form of culpable homicide. Section 231(1) of the Criminal Code classifies murder into two categories: first degree and second degree. A killing qualifies as first degree murder in any one of following situations:

1. It is planned and deliberate.
2. One person hires another to commit murder.
3. The victim is a police officer, prison employee, or other person employed for the preservation and maintenance of the public peace.
4. The murder is caused while committing or attempting to commit another serious offence, such as hijacking, sexual assault with a weapon or causing bodily harm, aggravated sexual assault, kidnapping and forcible confinement, and hostage taking. I this situation, murder do not have to be planned and deliberate to qualify as first degree.

Section 231(7) of the Criminal Code defines second-degree murder as any murder that does not fit into one of the four situation listed in the category of first-degree murder.

The mandatory minimum sentence for both first- and second-degree murder is life imprisonment. The only difference is the date at which the offender can apply for parole. Generally, anyone convicted of first-degree murder has to serve 25 years in prison before qualifying for parole. An offender convicted of second-degree murder can usually apply for parole after serving 10 years.

Infanticide

Infanticide occurs when a mother kills her newborn child. All three of the following circumstances must be present for the crime to be considered infanticide:

1. The accused must be the natural mother of the victim;
2. The victim must be less then 12 months old; and
3. At the time of the killing the accused must have been suffering from a mental disturbance caused by not being able to recover from giving birth to the victim.

The maximum punishment for infanticide is five years’ imprisonment.

Manslaughter

Section 234 of the Criminal Code defines manslaughter as any culpable homicide that is not murder or infanticide. The actus reus of manslaughter consist of killing someone through a wrongful act, even if the killing was not intentional. The classic example of manslaughter is a killing that happens during a barroom brawl.

The mens rea for this offence is that any reasonable person could have foreseen that the wrongful act would pose a risk of bodily harm that was “neither trivial not transitory’ (neither insignificant not temporary). To be found guilty of manslaughter, the offender did not have to foresee that the wrong act could result in death. Note, too, that a charge of manslaughter can be brought in the event of criminal negligence that results in death. The

accused can be charged with either manslaughter or criminal negligence causing death, but cannot be charged with both for the same offence.
A charge of murder can be reduced to manslaughter if the accused can show provocation on the part of the victim.

Assault

In Canada, the most common form of violent crime is assault. The Criminal Code classifies assault according to three levels of severity:

1. The first level of assault is hybrid offence and carries a maximum penalty of five years' imprisonment. Examples include pushing someone or threatening a person with violence. Words y themselves, however, cannot be considered an assault; they must be accompanied by an act or gesture.

Assault comprises any one of the following actions;

- intentionally applying force to another person, either directly or indirectly, e\without that person's consent;
- attempting or threatening, by an act or gesture, to apply force;
- accosting or impeding another person, or begging, while openly wearing or carrying a weapon or an imitation of a weapon.

2. The second level of assault is assault with weapon or causing bodily harm. This type of assault is defined as injuring a person in a way that has serious consequences for the victim's heals or comfort. It may also involve carrying, using, or threatening to use a weapon. This is hybrid offence and carries a maximum penalty of 10 years' imprisonment.
3. Level 3. The most violent level of assault is aggravated assault, which is defined as wounding, maiming, disfiguring, or endangering the life of the victim. His is indictable offence and carries a maximum sentence of 14 years in prison.

Sexual Assault

The Justice Department wished to emphasize that "sexual assault involves physical violence against another person". It also anted to recognize hat spouses can be charged with sexual assault and that victims can be either male or female. There three level of sexual assault resemble those of regular assault.
The first level is sexual assault – the most common offence and the one where the victim suffers the least physical injury. Sexual assault is not defined in s. 271(1) of the Criminal Code. Generally speaking, it may be defined under s. 265(1) as an assault that violates the victim's sexual integrity. It usually involves touching of a sexual nature that is not invited or consensual. Since Level 1 sexual assault is a hybrid offence, the Crown can proceed by way of indictment or summary conviction. The maximum penalty for the first level of sexual assault is 10 years in prison.
The second level is sexual assault with a weapon, threads to a third party, or causing bodily harm and involves sexual assault in combination with threats or the use of weapons, or that results in bodily harm. This carries a maximum sentence of 14 years' imprisonment.
The third level of sexual assault is aggravated sexual assault, which is defined as wounding, maiming, disfiguring, or endangering the life of the victim of a sexual assault. Because this is the most violent level of sexual assault, an offender can receive a maximum sentence of life imprisonment.

Consent is a valid defence to a charge of sexual assault if the accused person had an honest and reasonable, even if mistaken belief that the victim was consenting to sexual contact. However, consent cannot be used as a defence in three instances: 1) when a victim says no, either by words or conduct, such as directly repulsing physical advances or struggling to escape an embrace; 2) when the accused is intoxicated and not able to determine if consent has been given; or 3) when the accused person was reckless or deliberately blind to the victim's responses, or failed to take reasonable steps to find out if the victim was consenting.

Suicide

Anyone who counsels a person to commit suicide or aids or abets a person to commit suicide is guilty an indictable offence according to s. 241 of the Criminal Code.

Motor Vehicle Offences

Most motor vehicle offences, such as speeding or failing to stop at a red light are under provincial jurisdiction. As a result, they are not addressed in the Criminal Code. However, because of their seriousness, the following offences are contained in the Code.

Dangerous Operation of a Motor Vehicle

A "motor vehicle" is defined in s. 2 of the Criminal Code as a vehicle that is drawn, propelled, or driven by any means other than muscular power. To convict an accused of dangerous operation of motor vehicle, the Crown must prove that the safety or lives of others were endangered because the driver failed to exercise the same care a prudent driver would have exercised under same conditions. This offence can be committed in a number of ways, depending on the manner and circumstances in which the vehicle is operated. For example, Bob drives over the peed limit and passes another motorist on a double line, forcing an on-coming car off the road. Dangerous operation of motor vehicle is a hybrid offence punishable for a term of up to 5 years. Dangerous operation causing bodily harm is an indictable offence with a maximum punishment of 10 years. If someone driving in a dangerous fashion causes a death, the maximum penalty is 14 years in prison.

Failure to Stop at the Scene of an Accident

According to s. 252(2) of the Criminal Code, anyone who involved in a motor vehicle accident and does not stop, offer assistance, and give or her name and address is presumed to show intent to escape civil or criminal liability. This person may be charged with failure to stop at the scene of an accident. Commonly known as "hit and run" this is a hybrid offence punishable by a term of up to 5 years. The maximum punishment for a hit-and-run accident causing bodily injury is 10 years. If the accident causes a death, the offender can be sentenced to a maximum of life in prison.

Impaired Driving

The proof that a driver is impaired, either by drugs or alcohol, can come from a number of sources. A person's erratic driving, slurred speech, or inability to walk a strait line, or the smell of alcohol on his or her breath can serve as proof of the driver's impairment. Another source of proof is a breath or blood test, both of which measure the amount of alcohol in the person's bloodstream. Section 235(b) of the Criminal Code makes it an offence to drive or to have "care or control" of motor vehicle while the amount of alcohol in the bloodstream exceed 80 milligrams in 100 milliliters of blood.

Under s. 254, if the police have reasonable and probable grounds to believe that an impaired person is or has been operating a motor vehicle within the last three hours, they may demand that this person take a Breathalyzer test. Any individuals who cannot take the test because of an existing medical problem may be asked to give a blood sample instead. The blood sample may only be taken by a qualified medical practitioner who is satisfied that doing so will not endanger the subject's death.
Operating a motor vehicle while impaired and refusing to provide a breath or blood sample are both hybrid offences under s. 255(1) of the Criminal Code. The severity of he punishment increases for subsequent offences. Impaired driving causing bodily harm is an indictable offence with a maximum penalty of 10 years in prison. If an impaired driver kills someone, the maximum penalty is life in prison.

Offences against property
The protection of private property is an important function of the Criminal Code. There are many different kinds of offences against property, but the most common are theft, robbery, and breaking and entering.
Auto theft in Canada costs the Canadian insurance industry over $600 million each year. When the additional costs to the medical, law enforcement, and judicial systems are factored in, auto theft costs the Canadian economy over $1 billion annually.

Theft
Theft, the taken of property, permanently or temporary, without the owner's permission, is the most commonly reported criminal offence in Canada. The criminal Code defines theft in an elaborate but precise fashion:
322.(1) Every one commits theft who fraudulently and without colour of rights takes, or fraudulently and without colour of rights converts to his use or to the use of another person, anything, whether animate or inanimate, with intent:
a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;
(b) to pledge it or deposit it as security;
(c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or
(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.
Note the use of the term "colour of right" in the Criminal Code definition of theft. Colour of right is the honest belief that a person owns or has permission to use the article in question.
Sentences for theft depend on the value of the goods stolen. Theft of goods worth over $5000, commonly known as theft over, is an indictable offence with a maximum punishment of 10 years in prison. Theft of goods worth under $5000, commonly known as theft under, is a hybrid offence with a maximum punishment of 2 years in prison.
Robbery
Robbery may be defined as theft involving violence or the thread of violence. The seriousness of the offence is reflected in its maximum sentence – life imprisonment.
Breaking and Entering

Committing the crime of breaking and entering involves not only breaking into a place but also having the intent to commit an indictable offence once inside. The place is usually a dwelling house (home), a commercial building, or some other structure; the intention is usually to commit robbery. Just breaking in without the intent t commit an indictable offence is not considering breaking and entering. This offence is punishable by a maximum sentence of 10 years in prison if the place broken is a commercial building. If it is a dwelling house, the maximum penalty increases to life in prison.

Other Criminal Code Offences

Mischief, fraud, prostitution, and gambling are some of the more common Criminal Code offences.

Mischief

Mischief is listed under Part XI of the Criminal Code, Wilful and Forbidden Acts. According to s. 430, mischief may be committed in various ways, but mainly in relation to property and data. Data being defined in the Code as any information prepared in a suitable form to use in a computer system. One common form of mischief is vandalism, which involves destroying or defacing property. According the Criminal Code, mischief is committed by wilfully destroying property or data, rendering property or data useless, interfering with the any person in the lawful use of property or data. Both types of mischief (property and data) are hybrid offences.

According to s. 430(2), anyone found guilty of mischief that endangers another person's life can be sentenced to life in prison. It is not necessary for the actual harm to materialize as long as the act has been committed.

Public mischief is a completely different crime, listed under Part IV of the Criminal Code. Classified as a hybrid offence, public mischief occurs when someone provides false information that either misleads the police in their investigation or trick them into thinking that a crime has been committed when actually no crime has taken place. One of the most common examples of public mischief is falsely reporting a stolen car.

Fraud

Listed in the Criminal Code under Part X, Fraudulent Transactions, fraud is defined as intentionally deceiving someone in order to cause a loss of property, money, or service. To convict a person of fraud, The Crown must prove that the accused purposely intended to deceive. There are many types of fraud, including falsifying employment records, filing to collect fares, manipulating of the stock market, forging trademarks, and adding precious minerals to a mine to increase its value.

As with theft, the penalties for the fraud are determined by the value of the fraudulent transaction. When the fraud is value at less than $5000, the Crown can charge the accused with either a summary offence punishable by a fine or an indictable offence with a maximum punishment of two years in prison. When the fraud is valued at more than $5000, it is an indictable offence with a maximum punishment of ten years in prison.

Prostitution

In Canada, the act of prostitution itself is not a crime offence; what is criminal is the act of soliciting (communication for the purpose of prostitution). Although not defined in the Criminal Code, prostitution (either male or female) usually refers to the act of engaging in sexual services for money. Section 231(1) makes it clear that either the prostitute or the client can be charged with soliciting if, in a place open to public view, he or she:

(a) stop or attempt to stop any motor vehicle,
(b) impedes the free flow or pedestrian or vehicular traffic or ingress (entry) to or egress (exit) from premises adjacent to that place, or
(c) stop or attempt to stop any person, or in any manner communicates or attempts to communicate with any person, for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute.

Keeping a common bawdy house s.210 is also a summary offence. A common bawdy house is a place kept, occupied, or used by a person for the purpose of prostitution or the practice of indecent acts. Procuring and living off the avails of prostitution (income from prostitution) are indictable offences with a maximum penalty of 10 years in prison, 14 years if the prostitute is under 18. Currently, this law is most commonly enforced against procures living off the income of street prostitutes.

Gambling

As with prostitution, in Canada gambling itself is not a crime offence, but offences can be committed in relation to gambling. These offences are primary divided into those involving "disorderly houses" and those involving illegal forms of betting. The Criminal Code contains a general definition of a disorderly house as a common bawdy house, common betting house, or common gaming house. A common betting house is a place where people bet among themselves (e.g. on a horse race or a football game) and where the keeper of the house receives a portion of the winning bet. A common gaming house is a place kept for the gain or profit where people play
games, such as poker, and where the keeper of the house keeps a portion of the winnings from the game. It is a criminal offence to keep a disorderly house, to be found in a disorderly house, or to permit a place to be used as a disorderly house. Anyone who keeps a common betting or gaming house is guilty of an indictable offence and can be sentenced to a prison term of up to two years.

Drug Offences

The Controlled Drugs and Substances Act is the federal statute that deals with narcotics and other controlled drugs such as heroin, cocaine, and marijuana. This Act passed on May 14, 1994, replacing the Narcotic Control Act and those parts of the Food and Drugs Act that dealt with controlled and restricted drugs. The Controlled Drugs and Substances Act refer to narcotics and other controlled drugs as "controlled substances" and lists them in a series of schedules. For the purpose of the Act, therefore, a controlled substance is defined as any drugs included in Schedule I, II, III, IV, or V. Some controlled substances are shown in the table.

Schedule	Controlled Substances	Maximum penalty for Possession
Schedule I	Opium and its derivatives, including codeine, morphine, and heroin, cocaine, methadone	Indictable 7 years Summary First offence $1000 and/or 6 months Subsequent offence $2000 and/or 1 year
Schedule II	Cannabis and its derivatives, including cannabis resin	Indictable 5 year Summary

	(hashish) and marijuana	First offence $1000 and/or 6 months Subsequent offence $2000 and/or 1 year
Schedule III	Amphetamines and their derivatives, including methamphetamine (speed) and MDA (ecstasy), LSD, DMT, Psilocybin, Mescaline	Indictable 5 year Summary First offence $1000 and/or 6 months Subsequent offence $2000 and/or 1 year
Schedule IV	Barbiturates, Diazepam (Valium), Anabolic steroids	Not an offence
Schedule V	Phenylpropanolamine, Propylhexedrine, Pyrovalerone	Not an offence

Possession

Under the Controlled Drugs and Substances Act, it is unlawful to be unauthorized possession of any of the drugs listed in Schedules I to III only. Some of these drugs may by prescribed for medical purposes. Possession is the state of having knowledge of and control over something. The term is defined the same way in the Act as it in s. 4(3) of the Criminal Code. Within this more complex definition of possession, there are three important points to remember:

1. The person in possession must know that the item is and have some measure of control over it.
2. A person may be found in possession even if he or she gave the item in question to another person
3. A person can be charged with possession even if the person does not own the controlled substance or have it in his or her possession, as long as the person knows about it and consents to its possession by someone else.

Trafficking

According to the Controlled Drugs and Substances act, trafficking means to sell, give, administer, transport, sent, deliver, or distribute a controlled substances; to sell an authorization for a controlled substances; or to offer to do any of the above. To obtain a conviction for possession for the purpose of trafficking, the Crown must prove beyond a reasonable doubt that the accused possessed the controlled substance with the intention of trafficking.

Money Laundering

Money laundering is the practice of transferring cash or other property to conceal its illegal origin. Money laundering is a hybrid offence.

Defences for the Accused

Provocation and Self-Defences

Defence of provocation in criminal law may only be used in a charge of murder, and if successful then the conviction will be for lesser charge of manslaughter. The main purpose of this defence is to use the criminal law provision for mercy in those cases

where the defendant loses self control when provoked and under the stress. Courts have to allowed or murder convictions to be reduced to manslaughter even if the Crown could show that intent to kill was envisaged. The Criminal Code has et out specific provision for conditions under which this defence may be used. In every case it must be shown that the provocation was of an intensity that a reasonable person would lost the ability to control their action and an behavior. On cases where this defence is successful the key that appears to be haw an ordinary person is supposed to act in the face of such intense provocation. Further the accused cannot use techniques that would incite the victim to a provocative act murder him and then claim provocation as a defence.

The objective test in law does not take into account the background and characteristics of the accused, but only the nature of the provocation. A clear and present danger to life depending on the circumstances of the assault is the objective test. As well, courts are emphasizing the need to consider the background to the provocation. At the present time however, the Criminal Code does not provide for any widening of the defence of provocation other than for murder. Even though the court cannot accept a defence of provocation in non-capital cases, the judge can take this defence into consideration in the sentencing phase.

The Criminal Code allows for use of force for protection of one's person or property. While there are numerous sections of the Criminal Code that discuss circumstances for a **self-defence** argument, Section 34(1) spells out clearly "the right of a private person to use force to defend himself as long as force is not intended to cause death or grievous bodily harm." As in most aspects of our Criminal law, the aim is to arrive at an objective test as to what is sufficient force for self protection. As such good and probable grounds exist to believe that only **deadly force** would preserve life.

Mental Statuses: mental disorder, automatism, and intoxication

1. Mental disorder (formerly called the insanity defence) is defined in the Criminal Code as a "disease of the mind". An accused person who suffered from mental disorder at the time the offence was committed cannot be held criminally responsible because he or she would have been unable to form the **mens rea** of the offence. The defence of mental disorder is found in s. 16 of the Criminal Code.

2. Automatism refers to a condition in which a person acts without being aware of what he or she is doing. Current case law recognized two types of automatism: insane automatism and non-insane automatism. Insane automatism is caused by a mental disorder. A person suffering from insane automatism will be found not criminally responsible due to a mental disorder. The Criminal Code allows for a range of results, including sending the individuals to a psychiatric hospital. Non-insane automation is caused not by a mental disorder, but by an external factor, such as a concussion or medication. If proven, the accused will be acquitted.

3. Intoxication is the condition of being overpowered by alcohol or drugs to the point of losing self-control. Generally, intoxication is not a defence to a crime. A person who gets drunk and commits a criminal offence is still responsible for his or her actions. However, there are exceptions. Firstly, according to case law, intoxication may be a defence to crime of specific intent, but not to those of general intent (a general intent offence occurs when a person commits a wrongful act for its own sake, with no ulterior motive; specific intent offence occurs when a person commits one wrongful act for the sake of accomplished another). If a person lacks the ability to form the specific intent to commit

the offence because of intoxication, then the mental element cannot be proven, and the accused person cannot be found guilty of the specific intent. The second exception to the rule is if a person's intoxication is so extreme that it almost amounts to a mental disorder.

Self-Defence

Self-Defence is set forth in s. 34 of criminal Code. Section 34(1) states that a person may use force to defend against an unprovoked assault where there is no intent to kill or to cause serious bodily harm to the attacker. A person, who is assaulted, without provocation, may only use the amount of force necessary to defend against the attack. This is called reasonable force.

Necessity

The defence of necessity means that the accused had no reasonable alternative to committing an illegal act. The defence of necessity to succeed, all of the following conditions must be met:

1. The accused must show that the act was done to avoid a greater harm.
2. There was no reasonable opportunity for an alternative course of action that did not involve a breach of the law.
3. The harm inflicted must be less then the harm avoided.

Compulsion or Duress

Section 17 of the Criminal Code says that a person will be excused from having committed an offence if the accused did so under compulsion, which means that the person was forced by threats of death or bodily harm. Duress is also used in case law, but it offers a slightly broader defence.

Provocation

Provocation is any act or insult that causes a reasonable person to lose self-control. The defence of provocation applies only to the crime of murder. For the defence of provocation to succeed, defence counsel must prove all four elements:

1. A wrongful act or insult occurred.
2. This act or insult was sufficient to deprive an ordinary person of the power of self-control.
3. The person responded suddenly.
4. The person responded before there was time for passion to cool.

Mistakes of Law and Fact

A mistake of Law is simply ignorance of the law. As stated in s. 19 of the Criminal Code, an accused person may not claim his or her own mistake of law as a defence for committing a criminal act.

A person whose behavior would otherwise be criminal may have a defence if he or she made a mistake of fact – an honest mistake that led to the criminal offence. In this case, the accused would not have had the *mens rea* or guilty mind required to commit the offence. An officially induced error refers to a situation in which the accused relied on the erroneous legal advice of an official responsible for enforcing a particular law. This defence can be used against an alleged violation of regulatory law.

Alibi

A defendant who advanced the defence of alibi simply claims that he or she was not present at the time the offence was committed. Evidence by witnesses supporting the defendant's claim strengthens the alibi defence. If the Crown cannot prove that accused was present when the offence was committed, then the accused must be acquitted.

Entrapment
Entrapment is a defence against police conduct that illegally induces the defendant to commit a criminal act.

Criminal Records
For a criminal record to exist you must have been a suspect in a criminal investigation and the police must have at least questioned you. In such a case your name and date of birth will be on file with the police. This type of file is called an incident report, and it will be automatically destroyed after a period of five years, provided that you do not have any more involvement with crime.
If you have ever been fingerprinted in relation to a criminal offence, you have a criminal record, which will appear on police clearance searches. Even f you were not found guilty or if the charges were withdrawn, acquitted, stayed, dismissed, or resulted in a diversion or a peace bond, there is a police record of your arrest, a court record of your trial, and an RCMP record, which includes your photograph and fingerprints.
Once a criminal record exists, it is necessary for you to complete the proper paperwork to have the record destroyed or pardoned. For more information about removimg a criminal record log onto www.pardonscanada.ca.

Prohibited Weapons
The Criminal Code definition of prohibited weapons and firearms includes:

- Automatics firearms
- Sawed-off rifles and shotguns
- Silences
- Large capacity ammunition cartridges
- Knives that open by spring action, gravity and centrifugal force
- Any weapons declared by Order in Council to be prohibited weapon.

Government regulations also list many other devices as “prohibited weapons’ including but not limited to:

- Any firearm capable of discharging a dart or other object with an electrical current, commonly known as Taser public Defenders
- Any firearm designed or of a size to fit in the palm of a hand, commonly known as SSS-1 Stinger
- Any device, liquid, spray, or powder used for the purpose of injuring, immobilizing, or otherwise incapacitating a person such as tear gas or mace
- Any hard non-flexible sticks, clubs, pipes, or rods linked by a lengths of rope, cord, wire or chain, commonly known as Nunchakus
- Any device consisting of a manually triggered telescoping spring loaded steel whip, commonly known as a Kiyoga Baton or Steel Cobra.

By omission, some devices are not considered prohibited weapons, such as batons, truncheons, night-sticks, and billy clubs. Handcuffs and other restrains are also not prohibited or restricted weapons.

Canada Firearms Law

At the federal level, firearms are regulated primarily by the *Firearms Act* and by Part III of the *Criminal Code.* The *Firearms Act* and its supporting regulations set out the rules for possessing a firearm. The *Criminal Code* and its supporting regulations identify the various firearms, weapons and devices regulated by the *Firearms Act.*

Both the *Criminal Code* and the *Firearms Act* contain offences and penalties for illegal possession or misuse of a firearm. For example, a first-time offender who has failed to register a non-restricted rifle or shotgun may be charged under the *Firearms Act* or under the *Criminal Code.* A person who has failed to register a restricted or prohibited firearm or who has used a firearm to commit a crime would be charged under the *Criminal Code.*

Provinces, territories or municipalities may have additional laws and regulations that apply in their jurisdiction. For example, provinces are responsible for regulating hunting. They may put restrictions on where hunting can take place and on the caliber or gauge of firearms that may be used for hunting particular game.

Licensing and registration under the *Firearms Act* can be compared to a driver's licence and the registration of a vehicle. A firearms licence shows that the licence holder has met certain public-safety criteria and is allowed to possess and use firearms. A registration certificate identifies a firearm and links the firearm to its owner to provide a means of tracking the firearm.

There are three classes of firearms: non-restricted, restricted and prohibited.

Non-restricted firearms are ordinary rifles and shotguns, other than those referred to below.

Restricted firearms include:

- handguns that are not prohibited;
- semi-automatic, centre-fire rifles and shotguns with a barrel shorter than 470 mm (about 18.5 inches);
- rifles and shotguns that can be fired when their overall length has been reduced by folding, telescoping or other means to less than 660 mm (about 26 inches); and
- Firearms restricted by *Criminal Code Regulations*.

Prohibited firearms include**:**

- handguns with a barrel length of 105 mm (about 4.14 inches) or less and handguns that discharge .25 or .32 calibers ammunition, except for a few specific ones used in International Shooting Union competitions;
- rifles and shotguns that have been **altered** by sawing or other means so that their barrel length is less than 457 mm (about 18 inches) or their overall length is less than 660 mm (about 26 inches);
- full automatics;
- converted automatics, namely full automatics that have been altered so that they fire only one projectile when the trigger is squeezed; and
- firearms prohibited by *Criminal Code Regulations*.

The main purpose of the *Firearms Act* and its supporting regulations is to keep firearms out of the hands of people who are likely to be a danger to themselves or to others. The *Criminal Code* and its supporting regulations define a firearm for the purposes of the *Firearms Act,* and set out penalties for the illegal possession and misuse of a firearm.

Businesses and individuals need a valid firearms licence to be able to possess (own, borrow or store) a firearm in Canada. They must keep their licence up to date and renew it before the expiry date if they possess firearms. Individuals must be at least 18 years old to get a licence that will allow them to own or to acquire a firearm. Minors aged 12 to 17 can get a minors' licence that will allow them to possess a non-restricted rifle or shotgun, but a licensed adult must be responsible for the firearm. The Possession and Acquisition Licence (PAL) is the only licence now available to new applicants over 18 years old. An existing Possession-Only Licence can be renewed, but new ones are not being issued. Applicants for a PAL or a Minors' Licence must meet specific training requirements in the safe use and handling of a firearm. All licence applicants must pass a public-safety check. A computer link between the Canadian Firearms Information System (CFIS) and the national police database helps to speed up the process and allows for continuous checks of licence holders. As part of the background check, spouses and common-law partners with whom a PAL applicant has lived within the previous two years may be notified of the application to find out if they have any concerns about their own or someone else's safety.

Canada Firearms Centre: www.cfc-cafc.gc.ca. The Canada Firearms Centre (CAFC) was created by an order-in-council in 2003 to oversee the administration of the Firearms Act and the Canadian Firearms Program (CFP). The *Firearms Act* and its related regulations govern the possession, transport, use and storage of firearms in Canada. The objective of the CFP is to help reduce firearms-related death, injury and crime and to promote public safety through universal licensing of firearms owners.

The Firearm Safety Education Service of Ontario (FSESO) is the professional association of instructors in Ontario who are certified by the Chief Firearms Office to teach and / or examine the Canadian Firearm Safety Course (CFSC) and / or the Canadian Restricted Firearms Safety Course (CRFSC): www.fseso.org/ provides quality firearms training to the residents of Ontario at a reasonable cost.

Civil Law and Dispute Resolution

Private law, also known as civil law has a three main branches; tort law, family law and contract law.

Parties involved in Civil Actions.

The citation (or name and location) of a civil case distinguishes it from a criminal case. Citations for civil cases bear the names of the litigants, the parties involved in a civil action. In the case, Milton v. Jones, for example, Milton is suing Jones. If an individual suing a government in a civil action, the citation will name the person or government being sued, such as Robertson v. Ontario (Attorney General).

The party that initiates the legal action is known as the plaintiff, and the litigant against whom the action is taken is known as the defendant.

In a criminal case the state must prove beyond a reasonable doubt that the accused committed the offence. In the civil case, the standard of proof is not as high – the onus is on the plaintiff can prove the case on a balance of probabilities. This means that if the plaintiff can prove that his or her version of the facts is the more likely or the more truthful version, the plaintiff may win.

The main area of civil Law is Tort law.

The primary purpose of the criminal law is to protect and vindicate the interests of the public by punishing or rehabilitating the offender and deterring potential wrongdoers. A tort is a private or civil wrong, as contrasted with a public or criminal wrong. Tort law involves civil proceeding that are initiated and maintained by the injured party. The word "tort' is simply French for "wrong". As used in the legal field it denotes a highly diverse class of legal claims brought by parties (individuals, corporations or government agencies) to vindicate private rights. These rights arise from legally imposed obligations. In most cases, the victim of a wrong is called the "plaintiff" and the wrongdoer is called the "defendant". The plaintiff sues the defendant for monetary compensation which called "damages'. Compensation is available for all injuries to the plaintiff including his person, property reputation, or economic interests. The courts main objective is to place the plaintiff back n the exact same position that he or she was in before the wrong, or tort was committed.

There are two major subdivisions of torts: torts of intent and torts of negligence. Intentional torts arise from the defendant's subjective intention to interfere with the plaintiff's person or property. Some of the most popular intentional torts are trespass to the person (i.e. assault and battery); trespass to land and trespass to goods. In most cases, the plaintiff must prove actual subjective intent on the part of the defendant. In other words, the conduct must be both voluntary and intentional. Negligence torts are based on the defendant's carelessness or unintentional wrongdoing. Negligence is the failure to take reasonable care to prevent foreseeable harm to others. There is also a third sub category tort called strict liability. In cases of strict liability, the defendant is automatically liable for an injury caused and the issue of negligence need not be raised not proved. In Canada, strict liability is a threshold that is restricted to very specific circumstances such as the doctrine of "vicarious liability" which allows one person to be held responsible with respect to harm that was caused by another. For example, an employer may be held vicariously responsible for torts committed by their employee.

The law of intentional torts is based on the principle that individuals, in the course of their daily lives, should be free from interference or injury from others. The element of

intent is the primordial factor in distinguishing an intentional tort from negligence. Once of the largest categories of intentional tort is known as “intentional interference with the person”. This category encompasses assault, battery, sexual assault, medical battery, false imprisonment, malicious prosecution, nervous shock and the invasion of privacy. The other large category of intentional torts is entitled “intentional interference with property’. These include trespass to land, nuisance, and trespass to chattels. Nuisance is any type of bother that prohibits the right to enjoyment of property. For example, if the next-door neighbor is constantly using her table saw and the noise prevents a person from sitting out in their backyard, this could be a case of nuisance. Trespass to land needs no explanation, however, a trespass to a chattel when an individual intentionally interferes with somebody else’s movable property. Movable property includes a car, a stereo, furniture, or jeweler. To be pursued in court trespassers do not need to have damaged the property.

You can make a consume complaint on Industry Canada web site: www.consumerinformation.ca .

Sentences and the Correction System

Once a person has been found guilty of committing a crime, the judge imposes a sentence, or punishment. Sentencing has many goals: protection of the public, retribution, deterrence, rehabilitation, restitution, and denunciation. The reasons for sentencing have been established over many years by court decisions. These reasons are now summarized in s. 718 of the Criminal Code. All of Part XXIII of the criminal code is devoted to sentencing matters.
Criminals cost money. When they commit crimes, criminals create a social, psychological and financial cost to society. Their victims are left scarred, sometimes for life. Whether it's the woman who got raped or the store owner who got robed, the effects of criminality are both immediate and long-term.
Remand Rates (2004-5), includes persons awaiting trial, who have not been convicted of a crime.

- 36% of all prisoners in provincial jails were there on remand.
- In 2004/2005, approximately 9,600 adults were held in remand awaiting trial or sentence
- The use of remand has increased 83%, from 5,300 to 9,600 adults, over the last decade (since 1995/96).

Once a criminal gets caught though, the cost to society continues to rise. In 2004, according to a Correctional Service of Canada (CSC) report, it cost $110,223 per year to keep a male prisoner in a maximum security facility in Canada, $150,867 for a woman. In New Brunswick's provincial jails, as estimated by the Finance Minister during the last budget exercise, cost per prisoner averages $18,989 for a six month sentence. With a youth offender, the cost totals $43,378 for a six month sentence. In 2004/2005, there were 190 prisons and jails across Canada, of which 76 were under federal jurisdiction and 114 were under provincial/territorial jurisdiction, a number that exceeded the total of colleges

and universities in the country. For many people, their perception of prisons is akin to social clubs where prisoners live a life better then most Canadians. For others the role of prisons should be rehabilitative, with the prisoner on release to the community, being able to perform functions and roles that would allow for integration into the society. Most prisons offer psychiatric services, academic and vocational counseling, substance abuse programs, health care, religious programs and vocational training. Correctional services expenditures totaled $2.8 billion in 2004/2005, up 2% in constant dollars from 2003/2004. Custodial services (prisons) accounted for the largest proportion (71%) of the expenditures, followed by community supervision services (14%), headquarters and central services (14%), and National Parole Board and provincial parole boards (2%). This figure does not include policing or court costs which bring the total expenditures up to more than $10 billion for the year. So criminals don't pay for their crimes, Canadian taxpayers do.

One should note that Canada utilizes a system of security classification which ranks and places inmates in prison ranging from **maximum to minimum security.** In general prisoners are placed in **maximum security** if it is believed that they likely to attempt an escape and pose a thread of committing serious harm in the community. A **medium security** placement means that the prisoner may attempt to escape but does not pose a thread for the community. Those in **minimum security** prisons, pose little thread to escaping or to the community. The prison system in Canada is divided into two pats: federal and provincial. Everyone whose sentence is longer then two year must serve their sentence in a federal penitentiary, and those whose sentences are less than two years serve their sentences in a provincial correction center.

Protection of the Public

In society, the main goal of sentencing is to protect the public. This includes protection of their person, their property, and their individual rights and freedoms. When someone commits an offence, that individual harms not only the victim but everyone in society. People feel threatened until the offender is apprehended and public protection is restored.

Retribution

When one person harms another, society wants that person to “pay” for the offence. Retribution is punishing an offender to avenge a crime or to satisfy the public that the offender has paid for the crime.

Deterrence

Many people believe that punishing offenders sends a message that anyone caught breaking the law will be punished accordingly. They believe that imposing a penalty will deter, or discourage, people from committing crimes. The term specific deterrence refers to punishment as a way of discouraging criminals from re-offending. General deterrence refers to punishment as a way of discouraging other members of society from committing similar crimes.

Rehabilitation

Another important goal of sentencing is to help offender become law-abiding citizens. Rehabilitation involves treating problems that interfere with an offender ability to function in society. Services and programs, such as psychiatric and medical treatment for drug and alcohol dependency, help bring about changes in behavior. Educational programs are also designed to teach offenders skills that will prepare them for reintegration into the community. Recidivism occurs when an offender returns to crime after release from prison. Programs that match the treatment to the offender's

Restitution

Another reason for punishment is restitution, which requires offender to pay society back for the injury, loss, and suffering they caused. Payment for damages is a obvious form of restitution.

Denunciation

Sometimes rehabilitation, deterrence, and protection of the public are not relevant as punishment goal. In such instances, the goal of punishment is demonstration, or condemnation of the offender's action. Denunciation sends a message that the offender's conduct has violated society's basic code of values and that such conduct will be punished.

In passing sentences, a judge may try to achieve more than one goal.

Paroles and Pardons

Parole is the inmate's conditional release into community before the full sentence is served. Except for persons convicted of first-degree murder, prisoners must be reviewed for parole after one-third of the full sentence has been served, or after seven years, whichever is less. This review, however, does not always result in parole. Imamates must meet certain conditions to qualify for parole, providing an incentive for prisoners to demonstrate good behavior while serving heir sentences. Parole also lessens the negative effects of incarceration and gives the parolee the opportunity to return to society with help and supervision.

The National Parole Board (NBP), which has regional offices across the country, decides who can be paroled. The protection of society is the most important factor in any decision to release an offender. The parole board will grant parole only if the member believes that the offender will not pose a risk to society and will return to the community as a law-abiding citizen.

The board member review the following information about the offender to make an assessment of the risk involved in granting parole:

- the offence
- criminal history
- social problems, such as drug use or family violence
- mental status, especially if it affects the likelihood of future crime
- performance on earlier releases, if any
- relationship and employment opportunities
- psychological or psychiatric reports
- opinion from professionals, such as police officer and social workers

- the victim impact statement

Once the risk assessment is completed, the board looks at specific information about the inmate, such as

- behavior while incarcerated
- evidence that behavior has changed
- benefit from correctional programs
- treatment for any disorder diagnosed by a professional

Conditional Release

A conditional release does not shorten the sentence; is simply allows part of the sentence to be served in the community under supervision.

Unescorted temporary absence, a brief release from custody, is granted for personal reasons such as medical or administrative issues, community service, and family contact. An escorted or unescorted **work release** is given to do paid or voluntary work in the community under supervision. Low- risk offenders are eligible for **day parole** after serving one-sixth of the sentence. These inmates are required to return to the institution or a halfway house each night. Most offenders are normally eligible for **full parole** after serving one-third to one-half of their sentence. By law, most offenders are entitled to **stationary releases** after serving two-third of their sentence. This law does not apply to offenders serving life or indeterminate sentences.

Offenders convicted of first-degree murder are eligible for full time parole after serving 25 years of their sentence, but they can apply for early parole after serving 15 years. This is known as the "faint hope" provision because it is so seldom granted. Parole eligibility for those convicted of second degree murder may occur after serving between 10 and 25 years. The period is determined by the trial judge and is specified at sentencing.

Condition for Release

Any offender released on parole or stationary release must agree to all of the following conditions. The offender must:

- travel directly on release to the place of residence indicated on the release certificate, report to a parole supervisor immediately, and continue to report to the parole supervisor as instructed;
- provide the parole supervisor with an address for place of residence and immediately report any changes in address, occupation, educational training, volunteer work, family, domestic or financial situation;
- remain in Canada at all times and within established boundaries;
- obey the law and keep the peace;
- inform the parole supervisor if arrested or questioned by the police;
- always carry the release certificate and identity card provided by the releasing authority and be ready to produce them on request;
- report to the police as instructed by the parole supervisor;
- not own, possess, or have any control over any weapon as defined in the Criminal Code except as allowed by the parole supervisor;
- if on day parole, to return to the penitentiary at the date and time set out on the release certificate.

Pardon

Once a pardon is granted, a person record of conviction is set aside. Any federal agency that record of convictions must keep those records separate. The information may not be

disclosed without permission from the Solicitor General of Canada. A pardon can be very important to people who want the opportunities and privileges that other Canadians enjoy. A pardon does not erase the fact that a person was convicted of an offence.

References
Canadian Prison Law **http://www.canadianprisonlaw.com/**

Legal Services Society BC website http://www.lss.bc.ca/default/Default.asp

PASAN is a community-based network of prisoners, ex-prisoners, organizations, activists and individuals working together to provide advocacy, education, and support to prisoners on HIV/AIDS, HCV and related issues. http://www.pasan.org/

Quakers Fostering Justice (QFJ), in keeping with Friends' testimonies and advices concerning peace, justice and equality http://cfsc.quaker.ca/pages/jails.html

The Prison Outreach Program (POP) delivers HIV/AIDS treatment information, advocacy and support to Federal and Provincial inmates throughout BC. http://www.bcpwa.org/empower_yourself/prison_outreach/

Law Applications

Driving and the Law
Every driver in Canada must have a valid driver's licence to legally operate a motor vehicle on a public road or any other public property. Drivers must carry their licence at all times while driving and must produce it when a police officer asks to se it. It is illegal to drive a motor vehicle that is not insured. The law requires that every motor vehicle be insured with at least third-party liability coverage. If you are stopped by the police, you must show them your insurance card if they ask for it. If you do not have your insurance card with you, as a courtesy act the police will sometimes give you 48 hours to go to police station and show them your card, but they have no legal obligation to do this. The penalty for driving with no insurance in Canada ranges from $2,000 to as much as $25,000 in some provinces. You licence could be suspended for up to one year and your car could be impounded for three to six months.
What happens if I have an accident?
If you are directly or indirectly involved in an accident that causes property damage, bodily injury, or death, you have certain legal obligations. There are also 3 steps you should take care to protect yourself legally:

1. Stay at the scene. It is illegal to leave the scene of the accident, whether you were directly or only indirectly involved in accident. The penalties for failing to remain at the scene including a fine between $200 and $2,000, seven demerit points, up to six months in jail, and suspended licence for up to two years.
2. You must care for the injured person. Call an ambulance if it appears that someone is injured. Do not touch the injured person unless you have

medical training or unless the victim's needs are clear (if a car is burning, you van pull the victim from the car). You should also help prevent further accidents by warning approaching traffic about the accident.

3. You are legally obliged to call the police when someone is injured or there is significant property damage.

You should write down everything about accident, including

1. The licence plate of the other car.
2. Its make, model and year.
3. The other driver's licence number, address, and telephone number.
4. The name of the other driver's insurance company and policy number.
5. The names and phone numbers of witnesses to the accident.

Upon request, you must provide in writing your name, address, phone number, vehicle permit number, and insurance information to all other drivers who were involved in the accident or to police officers or witnesses. Be careful about what you say. Make a record of your medical or mechanical expenses, damaged property, and injures. Be careful of recommendation from tow track drivers, medical personal, paralegals or others (including the police officers) who you do not know. In some cases these people receives commissions for referring accident victims.

If the police lay a charge following the accident, it will likely be for careless driving, dangerous driving, or criminal negligence.

Careless driving

The offence of careless driving is committed when a driver drives without reasonable care or attention to other drivers. If you have been charged with careless driving, you will be convicted if facts suggest you were driving without proper care or attention. The penalty for careless driving in most jurisdiction is fine, a possible six-month jail term, up to two year's licence suspension, and usually licence demerit points. If you charged with careless driving, the prosecutor will often be willing to plea bargain. A plea bargain is where you make a deal with the prosecutor to reduce charge against you; in exchange you agree to plead guilty. For example, the prosecutor might reduce a charge of careless driving to following too closely, unsafe lane change, or failing to yield. Careless driving is an offence under the provincial Highway Traffic Act and is not criminal.

Dangerous driving

Dangerous driving means driving in a way that endangers other people. It is a serious offence under the Canadian Criminal Code.

There do not have to be other people around for a driver to be charged with dangerous driving. The only requirement is that someone drives with reckless disregard for public safety, so that there is a danger to the public who are either present or who might be expected to be present. The police will consider the circumstances; include the nature and condition of the place where the offence took place and the traffic in the area, when they determine whether someone should be charged with dangerous driving. Dangerous driving is a criminal offence and punishable by a maximum jail term of five years. If you are found guilty of dangerous driving that causes death, the penalty is a maximum jail term of 14 years.

Tax: Tax Audits and Investigation

Under the law, you are required to file your tax return and pay all taxes owing by April 30th of the following year. If you do not file a return and are required to pay taxes, you will be assessed a penalty of 5 percent of the amount owing plus 1 percent for each month is past to due, up to 12 months. You will be also charged compound daily interest on any outstanding tax. If you can not afford to pay the entire amount you owe at once, you may be able to arrange a payment plan with Canada Revenue Agency (CRA).

CRA may choose to audit an individuals or business even if there is no apparent reason to do so. Generally, Canada Revenue Agency can only audit someone up to three years after tax return has been filed, unless there is misrepresentation or fraud involved.

There are for main reasons for audit or investigating a taxpayer

- If there is an inconsistency in the reporting, such as not including income that an employer has reported
- CRA may target a group of businesses or individuals to audit as a part an initiative to raise levels of compliance within the group
- CRA may be informed of non-compliance by an outside source or from another government investigation, and may choose to audit based on this lead
- CRA may also audit someone who is financially linked to someone who is already being audited, such as a business partner.

You can disagree with an assessment or reassessment of you tax return by CRA you have to find the way to object a decision: go to www.ccra-adrc.gc.ca and find the form for auditing your taxes return as soon as possible. It is not a rocket science to fill out the tax returns, but sometimes CRA officers makes rude mistakes.

If CRA is going to audit you or your business, you will usually receive a written notice. Then an auditor may contract you to set a date to start the audit. The auditor will review your income tax return, and will usually want to see bank account statements, original receipts, your books or records, and financial statements from your business. The auditor has the legal authority to inspect any documents that related the tax return under review. The auditor also has the authority to enter a business premises without a warrant and require the owner or manager to provide reasonable assistance. An auditor does not, however, have the authority to enter you home unless you agree to it or the auditor gets a warrant from judge. If the auditor finds that your tax return was incorrect, you will usually receive a Notice of Assessment or Reassessment, which correct the tax returns and show if you awe any tax money.

Generally, my recommendation that you keep records for at least three years: the tax authorities can review and reassess your income tax returns for the previous three years and in some unlucky for you cases, even father back.

If you are suspected of fraud or tax evasion, you may be prosecuted for a criminal offence. If you found guilty, the penalties can include a fine of between 100 to 200 percent of amount of tax evaded, or up to 5 years in prison.

Computer, Internet and Crime

Shopping over the Internet has become a more common activity for many consumers. Although it can be a fast, easy and convenient way to make a purchase it is also becoming easier for fraud artists to take your money. Auction rip-offs, purchase scams, SPAM (unsolicited emails) and fishing are all popular methods used by scam artists.

Check out this Canadian Consume Handbook to learn more about how to safely shop online: http://consumer.ic.gc.ca/epic/site/oca-bc.nsf/en/ca01989e.html.
One persistent type of fraud involved the "Nigerian letter scam." It starts with a letter, fax or e-mail that requests help in getting millions of dollars out of the African country. In return, the person is supposed to receive a percentage of the total. As victims are hooked in, they are asked to pay increasingly larger amounts of money for administrative and insurance fees before being eligible to receive their percentage.
A number of cross-border international telemarketing frauds have been using more complex and sophisticated methods: fraudulent prize and lottery schemes; fraudulent loan offers; and fraudulent offers of low-interest credit cards or credit-card protection.
People in Canada can now report fraud from their own home, rather than at police stations. Launched in October, 2003 a program called Reporting Economic Crime On-Line (RECOL) allows Canadians to make fraud complaints from the "comforts of (their) own home," and have them forwarded to the appropriate authorities; http://www.recol.ca/
RECOL can't fight fraud alone. The RCMP operates a national call centre called Phone Busters with the Ontario Provincial Police: http://www.phonebusters.com/ and RCMP has additional web info on fraud and scams: http://www.rcmp.ca/scams/index_e.htm .

Benefits, Benefits and Benefits.
Disability Benefits under the Canada Pension Plan (CPP)

References

Canadian Internet Law Resource Page:
http://www.canadalegal.com/gosite.asp?s=351

Michael Geist. In the Public Interest: The future of Canadian Copyright Law. Ottawa. 600 p. www.irvinlaw.com/books.aspx?bookid=120