


# Criminal Law (Legal Systems)

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# Criminal Law Basics

- Federal government has exclusive jurisdiction over the creation of criminal laws
  - Only Parliament can create new criminal offences
- Main federal statutes:
  - *Criminal Code of Canada (CCC)*
  - *Controlled Drugs and Substances Act (CDSA)*
  - *Youth Criminal Justice Act (YCJA)*

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# Criminal Law Basics

- **BUT: Provinces are responsible for most criminal prosecutions and for the court administration at all levels**
- **Also, distinction between true crimes and quasi-criminal/regulatory offences**
  - Provincial governments can create quasi-criminal laws (for instance, traffic offences, health and safety regulations, etc.)
  - Different types of offences: strict liability, absolute liability, etc.



# Criminal Law Basics

- Each province has its own prosecution service
  - Prosecutorial independence is vital
- The Public Prosecution Service of Canada (PPSC) is responsible for (most) drug prosecutions, tax-related prosecutions, etc.

# Criminal Law Basics

- **Prosecution Standard:**
  - Some minor variations from province to province, but two basic prongs to the test:
    - **1) Is there sufficient evidence upon which to base a prosecution?**
    - **2) Is it in the public interest to continue with a prosecution?**

# Prosecution Standard

- **1) Is there sufficient evidence upon which to base a prosecution?**
  - Most onerous version of this test: a Crown attorney may only proceed with a prosecution if a review of the available evidence results in a determination that there is a “substantial likelihood of conviction” (British Columbia Prosecution Service)
  - Others:
    - “reasonable likelihood of conviction” (Alberta)
    - “realistic prospect of conviction” (Nova Scotia)
    - “reasonable prospect of conviction” (Ontario and New Brunswick, though this phrase means different things...)

## Prosecution Standard


- **2) Is it in the public interest to continue with a prosecution?**
  - A case-specific consideration of various factors
  - Basis: Sir Hartley Shawcross's comments
    - "It has never been the rule in this country—I hope it never will be—that suspected criminal offences must automatically be the subject of prosecution. The public interest ... is the dominant consideration." *R v Faber* (1987), 38 CCC (3d) 49 at 61.

# Criminal Law Basics

- **Elements:**

- **Actus Reus:** the criminal act
- **Mens Rea:** the criminal intent
  - Note: intent is different than motive



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# Criminal Law Basics

- Different ways of committing offences:
  - Principal
  - Aider (helping)
  - Abettor (encouraging)
  - Counselling an offence
  - Accessory after the fact

# Criminal Law Basics

- **Some potential defences:**

- Prove it!
- Evidentiary / *Charter* issues
- Third party suspect
- Self defence
- Defence of others
- Defence of property
- Not Criminally Responsible (NCR)
- Automatism
- Duress
- Consent
- Necessity
- Due diligence
- Mistake of fact
- Provocation (partial defence)
- Intoxication (generally only a partial defence...)



# Criminal Law Basics

- Must consider all factors in deciding whether to proceed with a prosecution

# Criminal Law Basics


- **Levels of court:**
  - **Supreme Court of Canada**
    - Federally appointed
    - “Justice”
  - **Court of Appeal (e.g. Manitoba Court of Appeal)**
    - Federally appointed
    - “Justice”
  - **Superior Court (e.g. Manitoba Court of Queen’s Bench)**
    - Court of inherent jurisdiction
    - Federally appointed
    - “Justice”
  - **Provincial Court (e.g. Manitoba Provincial Court)**
    - Provincially appointed
    - “Your Honour” (for Judges)
    - “Your Worship” (for Judicial Justices of the Peace)

# Criminal Law Basics

- Certain offences can only be tried in Superior Court (s 469 of the CCC):
  - Treason
  - Intimidating Parliament or a legislature
  - Inciting mutiny
  - Seditious offences
  - Piracy and piratical acts
  - Murder
  - Accessory after the fact to treason or murder
  - Bribery in relation to a judicial office-holder
  - Crimes against humanity

# Criminal Law Basics

- **Types of criminal offences:**
  - Indictable
  - Summary Conviction
  - Hybrid
    - Crown election: either to proceed by indictment or summarily

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# Criminal Law Basics

- Defence election:
  - After the Crown elects how it is proceeding, proceed to defence election (with regard to court)

# Criminal Law Basics

- **Section 536:**

- If indictable offence with 14 years (or longer) possible maximum sentence, options are:
  - Provincial Court (Judge-Alone Trial)
  - Superior Court (Judge-Alone Trial)
  - Superior Court (Judge and Jury, no Preliminary Inquiry)
  - Superior Court (Judge and Jury, with a Preliminary Inquiry to be held in Provincial Court)




# Criminal Law Basics

- **Section 536:**
  - If indictable offence with under 14 years as the possible maximum sentence, options are:
    - Provincial Court (Judge-Alone Trial)
    - Superior Court (Judge-Alone Trial)
    - Superior Court (Judge and Jury, no Preliminary Inquiry)

# Criminal Law Basics

- **YCJA s 67:**
  - Vital to protect identity of young person (publication bans)
  - If the Crown has given notice of its intent to seek an adult sentence, the young person has an election:
    - Youth (Provincial) Court (Judge-Alone Trial)
    - Superior Court (Judge-Alone Trial)
    - Superior Court (Judge and Jury, no Preliminary Inquiry)
    - Superior Court (Judge and Jury, with a Preliminary Inquiry to be held in Youth (Provincial) Court)



# Criminal Law Basics

- **Therapeutic Courts:**
    - Mental Health Courts / Wellness Courts
    - Drug Treatment Court
    - FASD Court
    - Others
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# Criminal Law Basics

- **Criminal Code Review Board:**

- **Jurisdiction over:**

- **NCR accused (after NCR finding by Court)**

- **Section 16:**

- “No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.”

- **Individuals deemed unfit for trial**

- **Section 2:**

- Unfit “means unable on account of mental disorder to conduct a defence at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so, and, in particular, unable on account of mental disorder to
        - (a) understand the nature or object of the proceedings,
        - (b) understand the possible consequences of the proceedings, or
        - (c) communicate with counsel”

# Criminal Law Basics

- **Criminal Code Review Board:**
  - 672.54: [The Review Board] shall, taking into account the safety of the public, which is the paramount consideration, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is necessary and appropriate in the circumstances:
    - (a) where a verdict of not criminally responsible on account of mental disorder has been rendered in respect of the accused and, in the opinion of the court or Review Board, the accused is not a significant threat to the safety of the public, by order, direct that the accused be discharged absolutely;
    - (b) by order, direct that the accused be discharged subject to such conditions as the court or Review Board considers appropriate; or
    - (c) by order, direct that the accused be detained in custody in a hospital, subject to such conditions as the court or Review Board considers appropriate.

Questions?

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