



# The Criminal Justice System

Some behaviours are considered so wrong or harmful that laws must be passed to make such conduct criminal. Murder, robbery, assault, theft, and forgery are just a few examples of crimes. These acts are prohibited by criminal law.

The responsibility for defining crimes belongs to the federal government. This makes criminal law the same across the country. Most criminal offences are found in the *Criminal Code*. However, criminal offences may be found in other federal laws, such as the *Controlled Drugs and Substances Act*.

Provincial governments may also create laws that prohibit certain acts. For example, it is against the law to exceed the posted speed limit on highways. However, provincial offences are not criminal offences. Only the federal government can create a criminal offence.

When a crime is believed to be committed, the police investigate. The police will collect evidence in the hopes of determining if a crime took place and finding a suspect. If it appears that a suspect has committed a crime, charges will be laid. The lawyer for the state, or Crown prosecutor, will put the evidence before the court so that the truth about the crime may be established. This is usually in the form of a trial.

Once all the evidence has been heard in a trial, a decision is made on whether or not the accused is guilty of the offence. Trials can be heard by a judge, or heard by a judge and jury.

## ***TRIAL BY JUDGE AND JURY***

When a trial is heard by a judge and jury, the judge will instruct the jurors about the applicable law. The jury will examine the facts of the case. If the jury is convinced that the accused committed the crime and that the accused intended to commit the crime, they will be found guilty. The judge will then determine the punishment for the crime, within the parameters of the law.

## ***TRIAL BY JUDGE***

If a trial is heard by a judge alone, the judge has two tasks. First, the judge determines what law applies to the crime. Second, the judge decides whether the facts prove the guilt of the accused. Just like a trial by jury, to find a person guilty the judge must be convinced that the accused committed the crime, and be convinced that the accused intended to commit the crime. If the person is found guilty, the judge will also determine the punishment for the crime within the parameters of the law.

## **Trial Rules and Procedures**

While it is important that people who break the law are brought to justice, our society considers it even more important that an innocent person is not wrongfully convicted and punished.

Because of this, several basic principles of our justice system help prevent this type of mistake.

These principles include:

- the accused has a right to a fair hearing by a court; and
- the accused is presumed innocent until proven guilty.

These principles form the basis of many of the rules that protect the rights of the accused and

# The Criminal Justice System ...continued



that ensure justice is served. Some of these rules are outlined below:

**RULE 1.** The judge and members of the jury must remain impartial. The jurors must not make up their minds about the guilt or innocence of the accused until all the evidence has been heard and the law has been explained to them by a judge. The decision must be based on the evidence before them.

**RULE 2.** The Crown has the burden of proof. This means that the Crown is responsible for proving the guilt of the accused. The accused does not have to prove anything, and, in fact, does not even have to say anything.

**RULE 3.** The Crown must prove all the elements of the crime beyond a reasonable doubt. This means that the evidence and that the facts establish the guilt of the accused and do not show any other sensible explanation of the events.

**RULE 4.** The accused has the right to be represented by a lawyer. The defence lawyer will see that the accused's rights and interests are protected.

**RULE 5.** Rules cover the types of questions which lawyers may ask witnesses and the kinds of answers that witnesses may give:

- *Leading Questions* - A leading question is a question that tells the witness how to answer or puts words in the witness's mouth. For example, "Was it then that you saw the accused run from the building with the television?" is an improper question. Instead, it is best to let the witness tell their own story by asking general questions such as "What happened next?"

Although a lawyer cannot ask their own witnesses leading questions, leading questions are acceptable when witnesses are being cross-examined by the opposing side's lawyer.

- *Opinions* - Usually, witnesses cannot give their opinions. Instead, they are only asked to tell what they saw. For example:

*"He's bonkers!" is an opinion.*

*"He was wearing a dog costume and barking at the neighbours!" is a fact.*

There are two exceptions to this rule. The first exception is if a question is being asked about a general area of knowledge. In this case, witnesses are allowed to give opinions. For example, a witness could be asked to give an opinion about the weather because it is something that almost everyone will have some general knowledge about.

The second exception is if a witness is an expert in their field. As long as the opinions relate to their field of expertise, the witness is allowed to give opinions. For example, a medical expert could give an opinion about the extent of a person's injuries. However, a medical expert could not give opinions about the rules of accounting.

- *Irrelevant and/or Prejudicial* - Generally, only questions that are relevant to the case may be asked. This is especially true if the question could create prejudice against a witness. For example, asking a witness about an ancestor who was a



## The Criminal Justice System ...continued

horse thief would be of no relevance to charges of vandalism.

- *Hearsay* - Witnesses can only testify about things that they have direct knowledge of. This means their testimony must be about things that happened to them or things that they saw happen. Witnesses are not allowed to repeat what they heard from somebody else. That is called hearsay evidence. The courts do not accept this kind of evidence because it might be unreliable.

If the lawyer believes that one of these rules about questioning has been broken during a trial, they can object to the judge and give a reason for the objection. The judge will then decide whether to disallow the question, or ask that the question be rephrased.

### Purpose and Principles of Sentencing

If an accused is found guilty, there are several factors that will contribute to their sentence.

The *Criminal Code* sets out the purpose and principles of sentencing. The central purpose of a criminal sentence is to build respect for the law and maintain a just, peaceful and safe society. This purpose is to be satisfied by imposing fair and just sanctions. Under the *Criminal Code* sentences should:

- denounce the criminal conduct
- deter the offender and others
- separate offenders from society when necessary
- assist in rehabilitating the offender
- provide reparation to the victim and the community
- give a sense of responsibility to the offender

The sentence should be proportionate to the degree of responsibility and involvement of the offender. It should also be based on sentences for similar crimes and circumstances from across the country.

Courts will also consider the kind of offence and its seriousness. The *Criminal Code* usually provides a maximum sentence for each offence. For some offences, such as drinking and driving, there are also minimum penalties.

Additionally, courts will consider factors specific to the crime and the offender. For example, the courts will consider the circumstances surrounding the offence, how the crime was carried out, the amount of planning or deliberation involved, whether force, threats or weapons were used, the offender's previous criminal record, if any, their age, family history, substance abuse problems, addiction issues, education and employment history, and the offender's attitude regarding the offence and proceedings.

The *Criminal Code* also specifies aggravating factors a judge should consider in sentencing. If the offender abused a position of trust or authority in committing the offence, the sentence will be harsher. If the crime was motivated by bias, prejudice or hatred against certain identifiable groups in society, as, for example, in racial crimes, the offender would receive a higher penalty.