CRIMINAL OFFENCES
Chapter 9
Levels of Offences

In the Canadian legal system we have three levels of criminal offences.

- Summary Conviction Offences
- Indictable Offences
- Hybrid Offences
LEVELS OF OFFENCES: SUMMARY CONVICTION

- A **summary conviction** offence is a minor offence that carries a relatively light penalty.
- The penalty for **summary conviction** can vary from a maximum $2,000 fine and/or up to six months in jail.
- These offences are dealt with quickly as the defendant appears before a judge (without a jury) in a Provincial Court.
**Levels of Offences: Indictable Offences**

- An **indictable offence** is a serious crime and carries heavy penalties.
- Penalties for indictable offences can range from 2 years to a maximum of life imprisonment (25 years).
- The [Criminal Code of Canada](https://canada.legislation.gov.ca) sets out minimum and maximum penalties for indictable offences.
- Depending on the indictable offence the case can be heard in a [Provincial Court](https://canada.legislation.gov.ca) or the [Superior Court](https://canada.legislation.gov.ca) of the Province.
**** Levels of Offences: Hybrid Offences

- A hybrid or dual procedure offence is one that the Crown Prosecution can decide to try either as a summary conviction offence or an indictable offence.

- Hybrid offences are always treated as indictable offences until charges are laid in court. At that time the Crown must decide how to proceed.

- Whether the offence is treated as a summary conviction or an indictable offence depends a lot on the circumstances surrounding the offence (see page 223 in text).
Offences Against The Person

- All crimes in the [Criminal Code of Canada](https://canlii.org/en/ca/rsc/1985-c-46) are organized into different categories.
- Part VIII of the Criminal Code deals with [Offences Against the Person and Reputation](https://canlii.org/en/ca/rsc/1985-c-46) and includes violent crimes in which the person is threatened, injured, or killed.
HOMICIDE

- The **Criminal Code** defines **homicide** as any person who directly or indirectly causes the death of a human being.
- There are two types of homicide:
  - **Culpable Homicide** - The killing of a person in which someone can be legally responsible
  - **Non-Culpable Homicide** - The killing of a person in which a person cannot be held legally responsible.
**Murder**

- **Murder** is the intentional killing of another human being and is considered **culpable homicide**.
- There are two classifications of murder: **First Degree** and **Second Degree**.
- A killing is classified as being in the **First Degree** in the following situations:
  - It is planned or deliberate
  - One person hires another to commit murder
  - The victim is a police officer, prison employee, or other peace officer.
  - The murder is caused while committing or attempting to commit another serious offence.
- The mandatory minimum sentence for First and Second Degree Murder is **Life Imprisonment**. A person who is convicted of Second Degree Murder can apply for parole after **10 years**. A person convicted of First Degree Murder can only apply for parole after **25 years**.
Infanticide

- **Infanticide** is the killing of a newborn child by its mother.
- In order for someone to be charged with infanticide all three of the following conditions must apply.
  - The accused must be the natural mother of the victim.
  - The victim must be less than 12 months old.
  - At the time of the offence the accused must have been suffering from a mental disturbance caused by not being able to recover from the birth of the child (post partum)
Manslaughter

- Manslaughter is any homicide that is not murder or infanticide.
- The **actus reus** of manslaughter is the killing of someone through a wrongful act, even if the killing was not intentional.
- The **mens rea** of manslaughter is that any reasonable person could have foreseen that the wrongful act could cause bodily harm.
- Murder charges can be reduced to manslaughter if the accused can prove **provocation**.
ASSAULT

The most common violent offence in Canada is assault. The Criminal Code classifies three levels of assault.

- **Level 1**: Hybrid Offence and carries a maximum penalty of 5 years in prison. Pushing and threatening someone with violence.
- **Level 2**: A Hybrid Offence and carries a maximum penalty of 10 years in prison. This level of assault deals with the implied use or use of a weapon.
- **Level 3**: The most violent level of assault known as aggravated assault deals with the maiming, disfiguring, or endangering the life of the victim.
SEXUAL ASSAULT

There are three levels to sexual assault, similar to those of regular assault.

- **Level 1:** The lowest level where the victim suffers the least physical injury. This assault is typically one that violates the sexual integrity of the victim, such as touching of a sexual nature that is not consensual. This level of sexual assault is a hybrid offence, the maximum penalty if tried as indictable is 10 years in prison.

- **Level 2:** The second level deals with sexual assault with a weapon, threats to a third party, or causing bodily harm. The maximum penalty is 14 years in prison.

- **Level 3:** Aggravated sexual assault is the maiming, wounding, disfiguring or endangering the life of the victim. The maximum penalty is life imprisonment.
Suicide is not a criminal act in Canada, but anyone who counsels a person, aids, or abets someone in suicide is guilty of a criminal act.
Most motor vehicle offences are under provincial jurisdiction and therefore are not part of the Criminal Code of Canada. However, because of their seriousness, there are several offences contained in the Criminal Code.
**Motor Vehicle Offences**

- **Dangerous Operation of a Motor Vehicle** is the operation of a vehicle in a manner that it endangers the safety or the lives of others. The offence is a hybrid offence which can carry a penalty of up to 5 years in prison.

- **Dangerous Operation of a Motor Vehicle Causing Bodily Harm** is an indictable offence with a maximum punishment of 10 years.

- **Dangerous Operation of a Motor Vehicle Causing Death** carries a penalty of 14 years in prison.
Failure to Stop at the Scene of an Accident is a criminal offence and is describes as anyone who is involved in an accident and fails to stop to offer assistance, and give his or her name. This is a hybrid offence and is punishable by up to 5 years in prison.

- If the accident causes bodily harm the maximum punishment is 10 years.
- If there is a resulting death from the accident the maximum penalty is life in prison.
Motor Vehicle Offences

- **Impaired Driving** and **Refusing to Give a Breath or Blood Sample** are both hybrid offences and the punishment increases with subsequent offences.

- **Impaired Driving Causing Bodily Harm** is an indictment offence with a maximum penalty of 10 years in prison.

- **Impaired Driving Causing Death** is an indictment offence with a maximum penalty of life in prison.
Offences Against Property

- The protection of private property is an important function of the Criminal Code.
- The most common offences against property are theft, robbery and breaking and entering.
**Theft**

- **Theft** is defined as the taking of property, permanently or temporarily, without the owner’s permission.

- In some cases the accused can claim the **Colour of Right**, which means they honestly believed they had the owners permission to use an item.

- Sentencing for theft depends on the value of the goods stolen. **Theft over**, is an **indictable offence** and deals with property that is valued over $5,000. It has a maximum punishment of 10 years in prison.

- **Theft under**, is a **hybrid offence** with a maximum punishment of 2 years in prison.
ROBBERY

- **Robbery** is theft involving violence or the threat of violence.

- It is an indictable offence and the maximum sentence for robbery is life in prison.
BREAKING & ENTERING

- The crime of breaking and entering involves the entering of a place (dwelling or commercial building) with the intent to commit an indictable offence.

- If the offence deals with a commercial building the maximum penalty is 10 years in prison. In the case of the offence involving a home the maximum penalty is life in prison.
OTHER CRIMINAL CODE OFFENCES

- Mischief, fraud, prostitution, and gambling are some of the more common Criminal Code Offences that are not listed under the Crimes Against the Person or Crimes Against Property.
MISCHIEF

- **Mischief** is the willful destruction or damaging of property or data, interfering with the lawful use of property or data, or interfering with any person in the lawful use of property or data.

- If the mischief endangers the life of a person the maximum sentence is life in prison.
PUBLIC MISCHIEF

- **Public Mischief** is a hybrid offence dealing with the giving of false information that either misleads the police in their investigation or tricks them into thinking a crime has been committed when no crime has actually taken place.

- The maximum sentence is five years in prison.

Filling a child’s shoe with a meat-like substance on a beach to lead the police to believe a crime happened is an example of public mischief.
**Fraud**

- **Fraud** is the intentional deceiving of someone in order to cause a loss of property, money or service.
- Fraud includes falsifying employment records, failing to collect fares, manipulating the stock market, forging trademarks, and adding precious minerals to a mine to increase its value.
PROSTITUTION

In Canada, the act of prostitution itself is not a criminal offence; what is criminal is the act of soliciting (communicating for the purpose of prostitution).

According to the Criminal Code either the prostitute or the client can be charged with soliciting if they in a public place:

a) Stops or attempts to stop a motor vehicle
b) Impedes the free flow of pedestrian or vehicular traffic or entry or exit from a place

c) Stops or attempts to stop any person, for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute.
Gambling itself is not a criminal offence but there are offences directly related to gambling.

The main offence related to gambling goes under the term of a disorderly house.

This offence occurs when a person allows, organizes betting, or gambling and keeps a portion of the profit.

Anyone who is found guilty of runs a betting house can be sentenced up to two years in prison.
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.
- Some of the more common drug-related offences are possession, trafficking, and money laundering.
**Possession**

- *Possession* is having knowledge of and control over something. There are three things important factors in dealing with the crime of possession:
  - The person in possession must know what the item is and have some measure of control over it.
  - The person may be found in possession even if he or she gave the item in question to another person.
  - 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

- **Trafficking** is a criminal offence that involves selling, giving, transporting, or distributing a controlled substance.

- **Possession for the Purpose of Trafficking** is a separate charge.
Money Laundering

Money Laundering is the practice of transferring cash or other property to conceal its illegal origin.

This process has been made illegal to try and stop criminals to conceal the source of money they earn from criminal activity.