

CRIMINAL LAW FUNDAMENTALS

CHAPTER LISTING

Chapter 1: Introduction

Chapter 2: Judicial Interim Release, Powers of Arrest and Release, Early Case Resolution,
Plea Discussions, and Mentally Disordered Offenders

Chapter 3: Classification of Offences and Elections

Chapter 4: The Preliminary Inquiry

Chapter 5: Indictments and Informations

Chapter 6: Preparing for Trial and Examination of Witnesses

Chapter 7: Adult Sentencing

Chapter 8: The *Youth Criminal Justice Act*

Chapter 9: Appeals, Reviews, and Extraordinary Remedies

CHAPTER 1

INTRODUCTION

1	Rules relating to practice by students-at-law.....	1-2
2	Initial contact/interviews.....	1-5
3	Adjournments.....	1-6
4	Preliminary inquiry.....	1-7
5	Factors in deciding when to take a case.....	1-7
6	Retainers.....	1-9
	6.1 Money laundering.....	1-10
7	Legal Aid.....	1-13
	7.1 Certificate program.....	1-13
	7.2 Duty counsel.....	1-13
	7.3 Youth Criminal Defence Office.....	1-14
	7.4 Family Law Office.....	1-14
	7.5 Siksika Nation.....	1-14
8	Appendix list.....	1-14

CHAPTER 2

JUDICIAL INTERIM RELEASE, POWERS OF ARREST AND RELEASE, EARLY CASE RESOLUTION,
PLEA DISCUSSIONS, AND MENTALLY DISORDERED OFFENDERS

1	Introduction to judicial interim release	2-2
2	Arrest without warrant and release	2-2
3	Arrest with warrant and release.....	2-5
4	Bail hearings	2-6
4.1	Duty counsel.....	2-6
4.2	Court jurisdiction	2-6
4.3	Standard of proof.....	2-7
4.4	Onus of proof.....	2-7
4.5	Section 515 criteria	2-8
4.6	Bail conditions.....	2-9
4.7	Evidence at a bail hearing.....	2-10
4.8	Practical tips for defence counsel.....	2-11
5	Court of Queen’s Bench reviews.....	2-12
6	The paper trail.....	2-13
7	Miscellaneous provisions	2-14
8	Release pending appeal.....	2-14
9	The early case resolution program	2-15
10	Plea discussions	2-16
11	Mentally disordered offenders.....	2-17
11.1	Assessment orders	2-17
11.2	Assessment orders and bail	2-18
11.3	Assessment reports	2-18

CHAPTER 3

CLASSIFICATION OF OFFENCES AND ELECTIONS

1	Introduction.....	3-2
	1.1 Flowchart	3-2
2	Summary conviction offences.....	3-2
3	Indictable offences	3-4
	3.1 Absolute jurisdiction of the Provincial Court judge	3-4
	3.2 Offences in the exclusive jurisdiction of the superior court (Queen’s Bench)	3-4
	3.3 Accused’s election	3-5
	3.4 Deemed elections	3-6
	3.5 Re-election.....	3-6
	3.6 Sentence.....	3-8
	3.7 Appeals	3-8
4	Dual procedure/hybrid offences.....	3-8
5	Making the proper election	3-9
6	Appendix list.....	3-10

CHAPTER 4

THE PRELIMINARY INQUIRY

1	Introduction.....	4-2
1.1	Availability and purpose of preliminary inquiry	4-2
1.2	Advantages for the defence	4-2
1.3	Advantages for the Crown	4-3
1.4	Use of the preliminary inquiry	4-4
2	Full answer and defence	4-4
3	Order restricting publication	4-5
4	General procedure.....	4-5
4.1	Regulation of proceedings.....	4-6
4.2	Presence of the accused	4-7
4.3	Transcript.....	4-7
4.4	Witnesses	4-7
4.5	Accused's statement	4-7
5	Order to stand trial or discharge.....	4-7
6	Section 715 - Preservation of evidence.....	4-9

CHAPTER 5

INDICTMENTS AND INFORMATIONS

1	Introduction.....	5-2
2	Form.....	5-2
3	Sufficient wording/defective charges.....	5-3
4	Duplicitous charges.....	5-3
5	Dealing with defective charges.....	5-3
6	Severance.....	5-4
	6.1 Severing counts.....	5-4
	6.2 Severing trials of co-accused.....	5-5
7	Extraordinary remedies – judicial review.....	5-5
	7.1 Limitations on extraordinary remedies.....	5-7
8	Judicial remedies.....	5-7

CHAPTER 6

PREPARING FOR TRIAL AND EXAMINATION OF WITNESSES

1	Pre-trial procedures	6-2
1.1	Opening the file, client interviews, and authority documents.....	6-2
1.2	Charges.....	6-4
1.3	Disclosure.....	6-6
1.4	Consultation with opposing counsel	6-9
1.5	Notice requirements	6-9
1.6	Subpoenas.....	6-10
2	Conduct of a trial	6-11
2.1	Introductions and identification	6-11
2.2	Motions	6-11
2.3	Direct examination.....	6-12
2.4	Cross-examination	6-12
2.5	Re-direct examination.....	6-15
2.6	Objections.....	6-16
2.7	Argument/closing submissions.....	6-16
2.8	Judgment/charge to the jury	6-17
3	<i>Charter</i> applications	6-17
3.1	Substantive provisions of the <i>Charter</i>	6-17
3.2	Notice to the Crown and to the court.....	6-18
3.3	Onus/burden of proof	6-20
3.4	Standard of proof.....	6-21

CHAPTER 7
ADULT SENTENCING

1	Introduction.....	7-3
2	Alternative measures (adult).....	7-3
3	Extrajudicial measures (youth)	7-5
4	Statutory purposes and principles of sentencing.....	7-5
5	Additional factors to be considered in sentencing.....	7-7
	5.1 Guilty plea.....	7-11
6	Factors that are not normally considered	7-11
7	Sentencing hearings.....	7-12
	7.1 Submission on facts	7-12
	7.2 Pre-sentence report	7-14
	7.3 Previous convictions and notice of greater punishment.....	7-15
8	Sentences available	7-15
	8.1 Discharge.....	7-15
	8.2 Probation	7-16
	8.3 Fines	7-19
	8.4 Victim surcharge	7-19
	8.5 Restitution	7-20
	8.6 Ancillary orders.....	7-21
	8.7 Aboriginal offenders.....	7-21
	8.8 Conditional sentence	7-22
	8.9 Imprisonment in a provincial correctional centre (provincial time)	7-25
	8.10 Imprisonment in a federal penitentiary (federal time).....	7-25
	8.11 Concurrent, consecutive, and global sentences of imprisonment	7-25
	8.12 Mandatory, minimum, and life sentences.....	7-26
	8.13 Effect of sentence on immigration.....	7-26
9	Discretion in sentencing.....	7-27
10	Guilty plea process	7-29
	10.1 Multiple counts on an information.....	7-29
	10.2 Plea entered by counsel	7-29
	10.3 Unequivocal plea.....	7-29
	10.4 Lesser and included offences	7-30

CRIMINAL LAW FUNDAMENTALS

10.5 Outstanding or pending charges..... 7-32

11 Application to withdraw a guilty plea 7-32

11.1 Co-accused’s acquittal..... 7-33

12 Record suspensions (formerly known as pardons) 7-33

13 Plea and sentence bargaining 7-34

14 Appendix list..... 7-36

CHAPTER 8

THE YOUTH CRIMINAL JUSTICE ACT

1	Introduction.....	8-3
2	Scope and structure of the <i>Youth Criminal Justice Act</i>	8-3
3	Extrajudicial measures.....	8-5
4	Organization of the youth criminal justice system.....	8-5
5	Judicial measures.....	8-6
	5.1 Pre-trial detention and judicial interim release.....	8-6
	5.2 Appearance.....	8-11
	5.3 Reports.....	8-12
	5.4 Adjudication.....	8-12
6	Sentencing.....	8-12
	6.1 Youth sentences.....	8-12
	6.2 Adult sentences.....	8-18
7	Custody and supervision.....	8-24
	7.1 Reviews under ss 103 and 109.....	8-24
8	Records under the <i>Youth Criminal Justice Act</i>	8-25
	8.1 Name and records.....	8-25
	8.2 Fingerprints.....	8-26
	8.3 Access to records.....	8-26
	8.4 Record of adult sentence.....	8-28
	8.5 Prohibition orders.....	8-28
	8.6 Subsequent adult offences.....	8-28
	8.7 Disclosure of information in a record.....	8-29
	8.8 Destruction of records and prohibition on use and disclosure.....	8-30
	8.9 Young person's access to records.....	8-30
	8.10 Offences.....	8-30
	8.11 Termination of a youth sentence.....	8-31
9	General provisions and evidence.....	8-31
	9.1 Offence.....	8-31
	9.2 Evidence.....	8-32
10	Appeals.....	8-33
	10.1 Sentence appeals.....	8-34

11 Issues specific to young persons.....8-35

CHAPTER 9

APPEALS, REVIEWS, AND EXTRAORDINARY REMEDIES

1	Introduction.....	9-2
2	Basic procedures.....	9-2
	2.1 File an originating document.....	9-3
	2.2 Serve the originating document.....	9-3
	2.3 Prepare the appeal record.....	9-3
	2.4 Prepare a factum.....	9-4
	2.5 File and serve the respondent's memorandum or factum.....	9-4
	2.6 Hearing.....	9-4
3	Basic appeal and review jurisdiction.....	9-5
4	Basics of extraordinary remedies jurisdiction.....	9-6
5	Appeals by accused in relation to indictable offences.....	9-7
6	General rights of appeal by an accused.....	9-7
	6.1 Leave to appeal requirements.....	9-8
	6.2 Sentence appeals.....	9-8
	6.3 Basics of the notice of appeal.....	9-8
	6.4 Grounds of appeal.....	9-8
	6.5 Time limits for filing a notice of appeal.....	9-9
	6.6 Factums and authorities.....	9-9
	6.7 Standards of review.....	9-10
	6.8 Interim applications: court appointed counsel, stays, bail pending appeal.....	9-13
	6.9 Appeal hearings.....	9-13
	6.10 New evidence on appeal.....	9-14
	6.11 Disposition of appeals.....	9-14
7	Summary conviction appeals.....	9-15
	7.1 Introduction.....	9-15
	7.2 Jurisdiction issues.....	9-15
	7.3 Section 813 appeal procedure.....	9-15
	7.4 Sentence appeals.....	9-16
	7.5 Further appeals to the Court of Appeal.....	9-16
8	Supreme Court of Canada.....	9-16