

An Introduction to Criminal Law

Prepared For: Legal Education Society of Alberta

Criminal Law for Legal Support Staff

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For Presentation In:

Edmonton – January 17, 2012

Calgary – January 19, 2012

A BASIC INTRODUCTION TO CRIMINAL LAW¹

WHO IS A CRIMINAL LAWYER?

A criminal lawyer is a lawyer who practices (does legal work) in the area of law that involves prosecuting or defending people charged with offences.

A defence lawyer is usually a lawyer in private practice (meaning he or she is self-employed or works for a private law firm), but not always. Some defence lawyers are employed in the public service – for example staff lawyers with the Youth Criminal Defence office. A defence lawyer represents a client – a person who has been charged with an offence. The defence lawyer acts as the voice for the client in court, or in dealings with the prosecutor. It is the defence lawyer's job to act in the best interests of his or her client, and to attempt to obtain the best possible result for the client. This may mean taking a case to trial and trying to obtain an acquittal for a client, or it may mean assisting a client to plead guilty to a charge and helping the client obtain the most favourable sentence outcome available. No matter who is paying the bills (the charged person, a friend or family member, Legal Aid Alberta, or someone else) the client is always the charged person and the lawyer takes his or her instructions from the client (not the person paying the bills). A lawyer has a professional responsibility not to do anything unethical, but subject to that limitation only, the defence lawyer must vigorously act only in his or her client's interests. It is not the job of the defence lawyer to decide if a client is guilty or not guilty. It is not the job of a defence lawyer to make judgments about a client's conduct. It is not the job of the defence lawyer to decide what is best for the community or society's interests. The focus of the defence lawyer is always on protecting his or her client.

A prosecutor (often called Crown counsel in Canada) is a criminal lawyer who prosecutes the offences. A prosecutor is usually a public servant (employed by the provincial or federal government), but not always. Some lawyers who are in private practice are hired by the government on an ad hoc (occasional contract) basis to prosecute offences on behalf of the government. In Alberta (and in many other jurisdictions in Canada) the police usually have complete control over the charging process.² The job of a prosecutor usually begins after a charge has been laid. The prosecutor decides if the available evidence is sufficient to support a prosecution and if the prosecution is in the public interest. The client of a prosecutor is the public at large – the prosecutor acts in the best interests of the community or society generally. A prosecutor is not a lawyer for a victim or a complainant. Private interests (other than that of the charged person) are not normally represented in the criminal

¹ Shelley L. Tkatch, Public Prosecution Service of Canada, Calgary, and Maureen J. McGuire, Alberta Justice, Edmonton. Any opinions expressed in this paper are the opinions of the authors and are not representations by the Public Prosecutions Service or Alberta Justice.

² In some jurisdictions, such as B.C. and the Atlantic provinces, there is a process known as charge approval where the charges are not laid without the consent of the prosecutor. But in other jurisdictions, like Alberta, a prosecutor may advise police at the pre-charge state.

law system. Prosecutors have the same professional responsibility as defence lawyers not to do anything unethical. In addition, prosecutors have an additional responsibility to ensure that prosecutions are fair – this means a prosecutor has an obligation to see that the court receives a complete and not one-sided view of the evidence. A prosecutor’s job is not to attempt to obtain a conviction at all costs – only to present all of the available relevant evidence to the court.

Lay prosecutors are people who are not lawyers, but are hired to prosecute offences. Sometimes the province or municipalities hire lay prosecutors to prosecute provincial offences (contraventions of provincial legislation, such as speeding offences), or municipal bylaw offences (such as parking infractions).

Non-lawyers sometimes act as representatives for defendants charged with offences. Under the Criminal Code, a non-lawyer can represent a person charged with a summary conviction offence if the maximum penalty for that offence is no more than six months’ imprisonment. Non-lawyer defence representatives are sometimes called paralegals, or court agents.

Lay prosecutors and paralegals are not criminal lawyers. This course is oriented towards legal assistants working with criminal lawyers, and therefore we will not be discussing the roles of non-lawyer prosecutors or defence representatives.

WHAT IS A CRIMINAL OFFENCE?

In Canada, criminal offences are violations of certain types of legislation. A criminal offence, strictly speaking, is a law passed by the federal government that prohibits a specific type of conduct (i.e. theft) and specifies a punishment for anyone who violates that law. Most criminal offences are found in the Criminal Code, but there are some criminal offences that can be found in other federal legislation – for example: the *Controlled Drugs and Substances Act*.

Quasi-criminal offences are similar but are violations of provincial or municipal legislation, or violations of federal regulatory legislation. Some examples of quasi-criminal offences are offences under the *Income Tax Act* like evading taxes, or polluting contrary to environmental statutes, or unsafe working conditions at a job site.

Criminal offences are legal actions commenced by the government against a person accused of violating the offence provision of the legislation. Once they are commenced (when charges are laid), criminal offences have to be dealt with by the courts. Criminal offences are never “settled out of court”. Charges can be withdrawn or stayed (dropped), they can end with a guilty plea or they can go to trial and end with a guilty or not-guilty verdict.

Disclosure Checklist

Prepared For: Legal Education Society of Alberta
Criminal Law for Legal Support Staff

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For Presentation In:
Edmonton – January 17, 2012
Calgary – January 19, 2012

LESA "Criminal Law for Legal Support Staff", January 2012

DISCLOSURE CHECKLIST¹ : LOWER COMPLEXITY MATTERS²

ITEM	REQUESTED	PROVIDED	FOLLOW UP	COMMENTS
Copy of Information/Indictment				
Copy of the accused's criminal record, if any				
Report to Crown Counsel (RTCC)				
Synopsis				
Witness List				
List of Seizures				
Exhibit List				
Police or Other Investigatory Agency Witnesses				
Will-say Statements				
Notes				
Investigative Reports				
<i>McNeil</i> disclosure				
Civilian Witnesses				
Will-say statements				
Written Statements				
Recorded Statements				
Criminal Records				
Expert Witnesses				
Name				
Description of area of expertise				
Qualifications				
Notes				
Summary of opinion				
Report(s)				
Evidence				
Identification evidence, including photo or physical lineups				
Photographs				
Diagrams				
Maps				
Charts				
Evidence (cont'd)				
Affidavits				
Video Recordings				
Electronic Evidence				
Certificates				
Notices of Intention				

¹ Prepared January, 2012.

² Higher complexity matters like murder, conspiracy, organized crime, wiretap cases, and complex frauds may require disclosure requests outside the scope of this checklist. Such disclosure requests will require the input of an experienced defence counsel.

Pre-Trial Scenarios

Prepared For: Legal Education Society of Alberta

Criminal Law for Legal Support Staff

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For Presentation In:

Edmonton – January 17, 2012

Calgary – January 19, 2012

THE PRE-TRIAL SCENARIOS

VOCABULARY

There are two different scenarios that will be reviewed in this paper. To assist you with following the discussion, I will provide definitions for the terms that are specialized to criminal law, and are central to understanding this review.

- Information:** although the more common meaning is also intended here, an Information is the document on which the formal charges are set out.
- Release Documents:** **Promise to Appear, Summons, Undertakings, Appearance Notice** and **Form 32 Recognizance** are the forms of release from custody after arrest. The Accused may be released by the Officer in Charge, a Justice of the Peace, a Provincial Court Judge. In Murder and other section 469 of the *Criminal Code* category cases, the bail hearing has to occur before a Justice in the Court of Queen's Bench.
- Crown:** could be either the Provincial Crown Prosecutors' Office, or the Department of Public Prosecutions (Federal Prosecutors) and their agents.
- Reverse Onus:** is a bail concept which means that the *Criminal Code* has placed the burden of proof on the accused to show why he/she should be released.
- Disclosure:** is the material that the police have provided the Crown documenting the investigation, and includes officer notes and witness statements. When the Crown requests further material, or a follow up on the original investigation, the documents (including notes and emails) also become part of the disclosure.
- Information to Obtain:** is a *Criminal Code* affidavit sworn by the police to provide the basis for an application to get a warrant (search, wire tap, etc.).
- Show Cause:** is the *Criminal Code* term referring to a bail hearing before a

Provincial Court Judge or Justice of the Peace.

- Summary Offence:** (properly called Summary Conviction Procedure) is a criminal offence that is usually less serious, and has a maximum sentence of 6 months or a fine not greater than \$2,000 for non-violent offences, and 18 months for violent offences. A lawyer can appear in court on behalf of the client in the absence of the client.
- Indictable Offence:** more serious offences, which are basically not limited by the Summary Conviction sentence maximums. Without a designation of counsel the client must be present for all court appearances unless excused by the judge.
- Hybrid Offences:** are offences where the Crown can choose to proceed by either Summary Conviction or Indictable procedure.
- Designation of Counsel:** a form that is signed by the client (accused) and the lawyer which acknowledges the retainer, and permits counsel to appear in court in the absence of the client to take steps in proceedings prior to the preliminary inquiry and/or trial.
- Crown Election:** the decision on a Hybrid Offence.
- Defence Election:** trial in provincial court, in the Court of Queen's Bench without or with a jury.
- Preliminary Inquiry:** a hearing before a Queen's Bench trial, where the Crown calls evidence to either show the judge there is evidence for trial, or call evidence at the request of the Defence.
- Charter Notice:** a notice provided to the Crown (and the Court) to alert the Crown of the intention to allege a breach of a right under the *Canadian Charter of Rights and Freedoms*, and the nature of the breach.
- Notice of Constitutional Question:** is notice provided to the Crown (and the Court) of the intention to challenge the constitutional validity of a provision of legislation (e.g. argument that a section in the *Criminal Code* should be