

# 7

## Criminal Code Offences

### What You Should Know

- How are violent crimes dealt with under the *Criminal Code*?
- What criminal acts are considered property crimes?
- What are some recent changes to the *Criminal Code* that reflect society's changing views?
- What drug offences are found in the *Controlled Drugs and Substances Act*?
- What changes in the criminal law have been made to reduce the occurrence of drinking and driving?

### Selected Key Terms

assisted suicide

assault

break and enter

controlled substance

fraud

homicide

manslaughter

murder

robbery

sexual assault

soliciting

street racing

theft

### Chapter at a Glance

7.1 Introduction

7.2 Violent Crimes

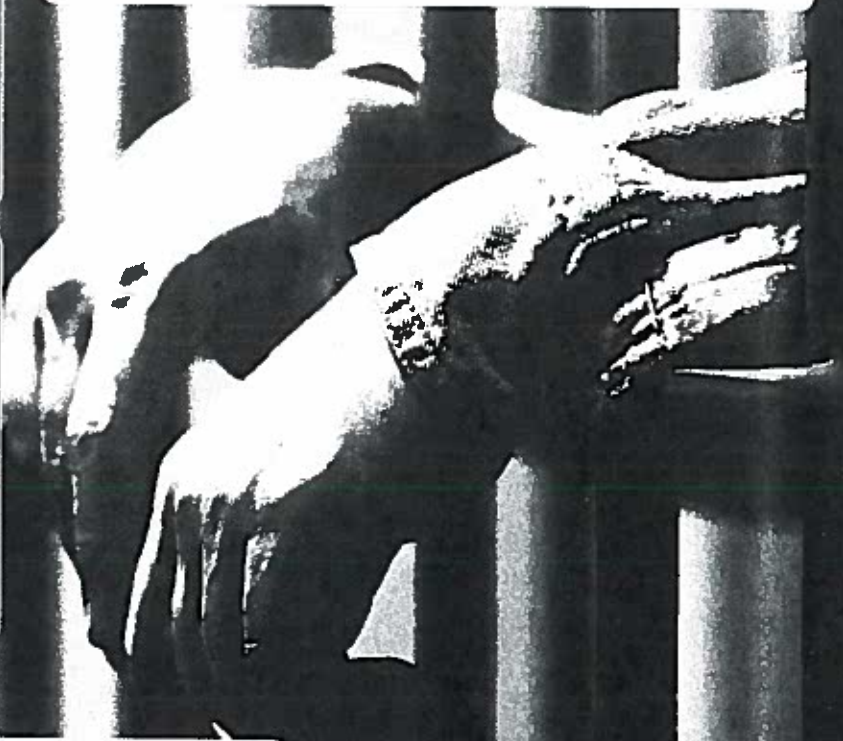
7.3 Property Crimes

7.4 Other Crimes

7.5 The *Controlled Drugs and Substances Act*

7.6 Driving Offences

Some people say that the way to fight crime is to make tougher sentences and send more criminal offenders to jail. Others say it is better to rehabilitate offenders in the community and deal with the root causes of crime instead. Which side do you agree with?



# Introduction

The *Criminal Code* is a federal statute that is meant to reflect the current social values of Canadians. The actual laws found within the *Criminal Code* may not always mirror what Canadians believe in. However, their interpretation by the courts certainly does so. This balance between statute law and judicial precedent is what constitutes criminal law in Canada today.

Under the *Constitution Act, 1982*, criminal law is a federal responsibility. That is why all offences are treated the same across Canada. This is very different from the system that exists in the United States, where criminal laws and punishments vary from state to state. For example, a person convicted of first-degree murder anywhere in Canada would be sentenced to life in prison without eligibility of parole for 25 years. In the United States, the same person would face the death penalty if convicted in Texas and life in prison if convicted in Michigan.

In order to best represent the values of society, the government must continue to examine criminal laws. It must amend, remove, and add new laws when necessary. The *Criminal Code* was first enacted in 1892. Since then, it has undergone many amendments and reforms, and amendments continue to occur regularly. For example, changes in values in our society have led to tougher punishments for impaired driving. Technological advances have resulted in new laws to address computer crimes.

The *Criminal Code* outlines clear and concise definitions of what a criminal offence is. It also establishes a range of punishments the judge can impose when a person is convicted of an offence. However, there is another aspect to criminal law in Canada: the courts must interpret (or apply meaning to) the laws based on the facts of each case. There is an ongoing debate in our society about whether judges should be allowed to apply the law and set punishments as they see fit. On the other side, should there be firm guidelines on what constitutes a crime and what is the appropriate punishment?



## Activity

To learn more about  
Criminal Code offences,

Go to Nelson  
Social Studies



### The Parts of the Criminal Code

Part I: General

Part II: Offences against Public Order

Part III: Firearms and Other Weapons

Part IV: Offences against the  
Administration of Law and Justice

Part V: Sexual Offences, Public Morals,  
and Disorderly Conduct

Part VI: Invasion of Privacy

Part VII: Disorderly Houses, Gaming,  
and Betting

Part VIII: Offences against the  
Person and Reputation

Part IX: Offences against Rights  
of Property

Part X: Fraudulent Transactions  
Relating to Contracts and Trade

Part XI: Willful and Forbidden Acts  
in Respect of Certain Property

Part XII: Offences Relating to  
Currency

The *Criminal Code* is  
subdivided into parts that  
specifically outline criminal  
offences by category.

## Did You Know?

In 2005 and 2006, the crime rate in Canada for most serious violent offences increased. However, in 2007, the overall violent crime rate in Canada declined by 2.5 percent. In particular, the homicide rate dropped by 3 percent. Other decreases included attempted murder (-5.1 percent), robbery (-4.7 percent), and abduction (-8.3 percent).

Although the national crime rate dropped 7 percent in 2007, Saskatchewan reported the highest crime rate among Canadian provinces for the tenth year in a row. This reflects an increase in crime rates in small urban centres. What other provinces and territories have a high crime rate? Do any of these statistics surprise you?

In 2006, police reported a total of 605 homicides. Of these, 78 were spousal homicides. This was four more than in 2005 and the first increase in the past five years. This rise was due to an increase in the number of men killed by their wives, up from 12 in 2005 to 21 in 2006. What are your thoughts on these statistics? What do you think could explain this increase?

## 7.2 Violent Crimes

Violent crimes include offences against the person and reputation. These are found in Part VIII of the *Criminal Code*. These offences include crimes that are violent in nature and cause harm to the human body. Also included are crimes such as willfully promoting hate toward an individual (offence against a person's reputation). We will focus on six key areas of violent offences in this section: homicide, assault, sexual assault, other sexual offences, abduction, and robbery.

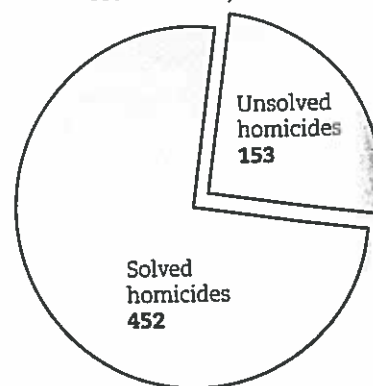
### Canadian Homicide Statistics by Province and Territory, 2006

Province/Territory	Number of Victims	Rate per 100 000 People
<b>Canada Total</b>	<b>605</b>	<b>1.9</b>
Newfoundland and Labrador	7	1.4
Prince Edward Island	1	0.7
Nova Scotia	16	1.7
New Brunswick	7	0.9
Québec	93	1.2
Ontario	196	1.5
Manitoba	39	3.3
Saskatchewan	40	4.1
Alberta	96	2.8
British Columbia	108	2.5
Yukon	0	0
Northwest Territories	0	0
Nunavut	2	6.5

### Homicides by Accused-Victim Relationship

Victim Killed by	Number of Victims
Current spouse (includes common law)	62
Ex-spouse (includes separated and divorced)	16
Parent	31
Child	15
Other family	41
Boyfriend/girlfriend (current or former)	15
Close friend or neighbour	42
Casual acquaintance	91
Business relationship	7
Criminal relationship	54
Stranger	75
Unknown	3

### Solved and Unsolved Homicides, 2006



Approximately 75 percent of all homicides in Canada in 2006 were solved (452 out of 605).

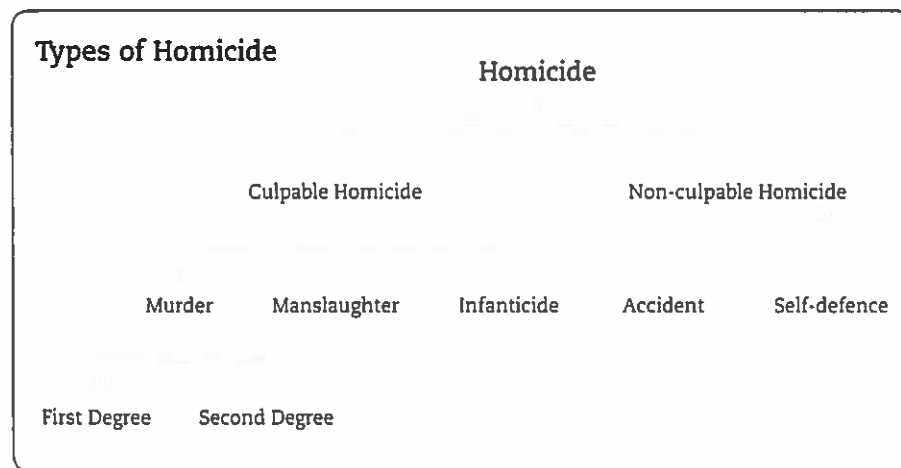
## Homicide

Killing another human being, directly or indirectly, is defined as **homicide** in the *Criminal Code*. Homicide can either be culpable or non-culpable. A **culpable homicide** happens when a person causes the death of someone else, on purpose or because of recklessness. So, that person is to blame. A **non-culpable homicide** is not an offence. The death was the result of a complete accident, and, therefore, it lacks intent or blame.

**homicide** the killing of another person, directly or indirectly

**culpable homicide** blamable or criminal homicide

**non-culpable homicide** homicide for which a person will not be held criminally responsible



What do you already know about these types of homicide?

## Murder

**Murder** is usually defined as the deliberate killing of another person. It is generally understood that there is clear intention to kill. However, it can also occur when there is no intent. For example, a person may set a house on fire. That person is guilty of murder if there was someone in the house and he or she died, and if the person who set the fire knew that someone was in the house. Direct intent is not necessary for murder to exist.

In Canada, murder is divided into two subcategories: **first-degree murder** and **second-degree murder**. First-degree murder occurs if any one of the following situations exists:

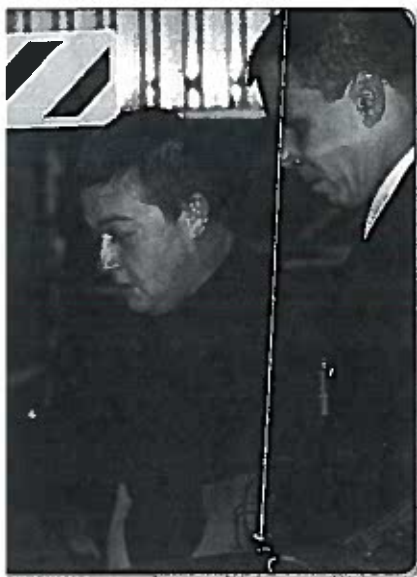
- The murder is planned and deliberate (for example, murder for hire). “Planned” and “deliberate” are not the same thing. Planned refers to a scheme that has been thought out carefully. In addition, the person must have carefully weighed and considered the consequences of his or her actions. Deliberate means the act is not impulsive.
- The victim is a law enforcement agent, such as a police officer or a prison official.
- The death occurs while another crime is being committed. For example, a bank robber may kill a guard even if he or she did not mean to. These crimes include hijacking an aircraft, various sexual assaults, threats or causing bodily harm to a third party, kidnapping and forcible confinement, and hostage taking.

**murder** intentional homicide

**first-degree murder** the most serious form of homicide, as defined in the *Criminal Code*

**second-degree murder** murder that does not meet the conditions of first-degree murder





In October 2007, Emrah Bulatci (left) was arrested and charged with first-degree murder after he shot and killed RCMP constable Christopher Worden. Any time a person murders a police officer, the charge is automatically first-degree murder. His case went to trial in 2008.

All other types of murder are classified as second-degree murder. The minimum sentence for both first- and second-degree murder is life imprisonment. The difference between the two has to do with the possibility of parole. Someone convicted of first-degree murder is eligible for parole only after 25 years, and for second-degree murder, after a minimum of 10 years.

In legal terms, the cause of death is known as causation. It is usually an issue in a homicide trial. For the Crown to show causation, it must prove that the accused did in fact cause the death of the victim. The common method of proving this is to use the “but-for” test. But for the accused’s act, would the harm have occurred? For example, person X shoots and kills person Y. Applying the but-for test, we ask “But for X’s act, would Y have died?” If the answer is no, we must conclude that X caused the death of Y. The legal issue of causation is addressed in the case of *R. v. Nette*, 2001, below.



## Case

### *R. v. Nette*, 2001 SCC 78 (CanLII)

For more information, [Go to Nelson Social Studies](#)

On August 21, 1995, Clara Loski, a 95-year-old widow who lived alone in her house in Kelowna, British Columbia, was found dead in her bedroom. Her hands and feet were bound with electrical wire, and a garment was around her head and neck. Also, her home had been robbed.

The RCMP investigation led to the arrest of Daniel Nette. He had made statements to police officers about his involvement in the robbery and the death of Loski. Under section 231(5) of the *Criminal Code*, Nette was charged with first-degree murder. The charge was based on the fact that he had caused her death while committing the offence of unlawful confinement. At the trial, the Crown medical expert testified that Loski died of asphyxiation. He stated, however, that a number of other factors contributed to her death: her age and corresponding lack of muscle tone, her heart problems, and asthma. Nette was found guilty of the lesser charge of second-degree murder. The British Columbia Court of Appeal and the Supreme Court of Canada both dismissed the appeal and upheld the original trial verdict.

The Supreme Court held that the actions of the accused are the test for causation for second-degree

murder. How the accused acted must be found to have been a “significant cause of death.” In the case of first-degree murder causation, the actions of the accused must be regarded as having been “a substantial and integral cause” of the death. Similarly, for manslaughter, the actions of the accused must be “a contributing cause of death.”

### For Discussion

1. What was the original charge against Daniel Nette? Why was it appropriate, given the facts of the case?
2. Why was the charge changed based on the definition of “causation”? How was it applied in this case?
3. Madame Justice Louise Arbour of the Supreme Court commented that no reasonable jury could have had any doubt about whether the accused’s actions constituted a significant cause of the victim’s death. What did she base these comments on?
4. Do you agree with the outcome of this case? Explain.

## Manslaughter

Manslaughter is causing the death of a person, directly or indirectly, by means of an unlawful act. Manslaughter is not murder and requires only general intent. For example, if Marina loses control of her car while speeding and kills a pedestrian, she could be charged with manslaughter, not murder. The *mens rea* for manslaughter is that a reasonable person would recognize that the unlawful act—speeding—could physically harm or kill the victim. If Marina had intentionally sped up to hit a specific pedestrian, she would be charged with murder. That is because her actions were based on specific rather than general intent.

Sometimes people charged with murder are convicted of manslaughter. This can happen if the accused successfully uses one of two defences: provocation or intoxication. For a provocation defence, it must be shown that the accused caused another's death "in the heat of passion caused by sudden provocation." Furthermore, the provocation must be a wrongful act or insult and must be something that would cause an ordinary person to lose self-control (excepting drugs or alcohol). Finally, the killing must take place during the loss of self-control. If, after being provoked, the accused has time to plan the killing of the other person, the charge would be murder, not manslaughter. If a person sees a loved one being seriously harmed and kills the aggressor to protect the loved one, this is an example of provocation.

The issue of intoxication is often significant in murder cases. That is because being drunk or high on drugs can affect a person's ability to predict the consequences of his or her actions. The Crown must prove both the killing and the specific intent if the accused uses the intoxication defence. If there is doubt as to whether the accused specifically intended to kill the victim because the accused was drunk or high, the accused must be found guilty of manslaughter, not murder.



Do you think this cartoon depicts manslaughter? Why or why not?

**manslaughter** culpable homicide that is not murder or infanticide

### Review Your Understanding

1. What constitutes a violent crime?
2. What is the difference between culpable and non-culpable homicide?
3. Distinguish between first- and second-degree murder, and describe the penalties for each.
4. Under what circumstances could a charge of murder be reduced to manslaughter?
5. Define causation as it relates to a homicide trial.

### Did You Know?

In October 2006, the government of Alberta passed the *Criminal Notoriety Act*. Its purpose is to prevent people who have been convicted of serious crimes from profiting by retelling the crime (for example, by selling their story to a book publisher). Nova Scotia, Ontario, and Manitoba have similar laws in place.

## Assisted Suicide

**assisted suicide** the act of counselling, aiding, or abetting someone to commit suicide

**euthanasia** mercy killing, usually to relieve suffering

It is against the law to counsel anyone to commit suicide or to help them accomplish it. Until 1972, it was an offence even to attempt suicide, and those who tried to take their own lives were often prosecuted. Assisted suicide continues to remain a controversial issue in Canada. Some chronically ill Canadians have argued that they have the right to assistance when they wish to commit suicide. On the other hand, disability rights groups often oppose legalizing assisted suicide. They believe that people who have disabilities may be pressured to end their lives. So, while suicide and attempted suicide were decriminalized, assisted suicide remains prohibited under section 241 of the *Criminal Code*. The constitutionality of section 241(b) was challenged unsuccessfully by Sue Rodriguez in 1992.



Sue Rodriguez had a terminal disease. She hoped that, when she was no longer able to enjoy life, someone would be able to help her end her own life. However, the *Criminal Code* prohibits giving assistance to commit suicide. Rodriguez challenged this as a violation of her Charter rights. However, both the Supreme Court of British Columbia and the Supreme Court of Canada decided against her. On February 12, 1994, Rodriguez committed suicide with the help of an anonymous doctor.

## Euthanasia

A related issue to suicide is **euthanasia**, sometimes called mercy killing. This means that one person acts to end another person's life, but usually for compassionate reasons such as ending suffering. There are different levels of consent to euthanasia. For example, Judith, a patient with terminal cancer, has expressed a wish to die by choosing not to undergo aggressive chemotherapy. Under these circumstances, ending her life would be called voluntary/passive euthanasia. On the other hand, Dieter, another patient with terminal cancer, has not expressed a wish to die. Perhaps he cannot express such a wish (for example, because he is in a coma), or perhaps he does not wish to die. Ending his life under these circumstances would be called involuntary/active euthanasia. The main difference is that under voluntary euthanasia, consent is given by the person wishing to die. Under involuntary euthanasia, someone (such as a spouse) gives consent on behalf of the person who cannot speak for himself or herself.

It is often difficult to tell the difference between assisted suicide and euthanasia. A simple way to look at it is as follows. Assisted suicide occurs when a person intentionally kills himself or herself with the assistance of another person. Usually, the person wishing to die is suffering from an incurable or terminal illness. Therefore, he or she is unable to carry out the deed alone. An example of this made headlines in the United States. Dr. Jack Kevorkian, a retired Michigan pathologist, invented the "suicide machine." His machine allowed a person to push a switch to administer a fatal injection through an intravenous needle that Dr. Kevorkian had inserted. He was jailed for second-degree murder after televising an act of assisted suicide. The 79-year-old doctor was released in June 2007 after having served eight years in prison. He claimed that he had participated in at least 130 assisted suicides during his life.





## Case

### R. v. Latimer, 2001 SCC 1 (CanLII)

For more information, Go to Nelson Social Studies

On October 24, 1993, Robert Latimer killed his 12-year-old daughter, Tracy. He placed her in the cab of his pickup truck, ran a hose from the exhaust to the cab, and killed her by carbon monoxide poisoning. Tracy was a 40-pound quadriplegic who functioned at the level of a three-month-old. Latimer never denied what he did and explained his actions as a form of “compassionate homicide.” In November 1994, a jury convicted him of second-



Robert Latimer and his wife leave court in 1997 after he was convicted of second-degree murder.

degree murder. He successfully appealed to the Supreme Court of Canada. The court ordered a new trial based on its conclusion that the RCMP had interfered with the jury.

In November 1997, a second jury found Latimer guilty of second-degree murder. The trial judge sentenced him to two years of imprisonment. However, the Saskatchewan Court of Appeal overturned the sentence. It set the minimum sentence for a second-degree murder conviction. This included life imprisonment, with eligibility of parole in 10 years. On January 18, 2001, the Supreme Court of Canada unanimously upheld the decision. Latimer began serving his sentence, and on February 27, 2008, Latimer received early parole. He had served seven years in jail.

### For Discussion

1. Why was Latimer charged with second-degree murder in this case?
2. How does the issue of euthanasia relate to the Latimer case?
3. What is your opinion of the Latimer case and the legal issue of euthanasia as it presently exists in Canada today? Explain.
4. Research the parole board's decision to release Latimer, and examine what they considered before making their decision.

## Assault

In Canada, there are three levels of assault, based on the level of severity and corresponding penalties:

Level One: assault

Level Two: assault causing bodily harm

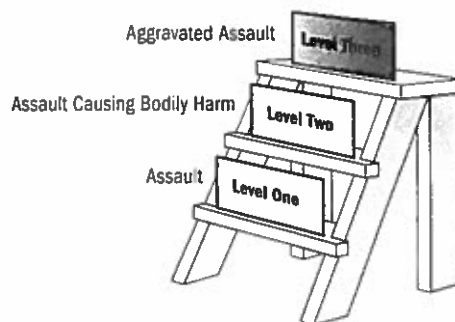
Level Three: aggravated assault

These levels are identified in section 265 of the *Criminal Code*.

All assaults have two common elements:

1. The accused must have intent to carry out the attack and cause harm.
2. There must be no consent by the victim (for example, as in a boxing match).

### Levels of Assault



The three levels of assault





## You Be the Judge

**Canadian Foundation for Children, Youth, and the Law v. Canada (Attorney General), 2004 SCC 4 (CanLII)**

For more information, [Go to Nelson Social Studies](#)

In February 2004, in a 6–3 decision, the Supreme Court upheld section 43 of the *Criminal Code*. Section 43 is commonly called the “spanking” law. It allows parents, teachers, and caregivers (babysitters and foster parents) to use corporal punishment as “reasonable force” to discipline children. This

section of the Code was enacted in 1892, and it has changed little since then. (See also Chapter 13, pages 465–466.)

- Should a parent be charged with assault if he or she spansks a child? Why or why not? Explain your opinion.

### Level One Assault

The first level of assault consists of one of any of the following actions:

- applying intentional force to another person without that person’s consent (for example, punching or grabbing someone)
- attempting or threatening, by an act or a gesture, to apply force against someone (for example, waving a fist at someone you intend to hit)
- approaching or blocking the way of another person (for example, aggressive panhandling in major cities like Toronto)

**assault** the application or threat of force without the other person’s consent



Harmful words are not assault. The words must be accompanied by gestures. For example, if Rodney tells Adnan, “I am going to belt you,” it is not an assault unless Rodney also waves a fist. It is important to note that consent is not necessarily given just because the victim participates in an activity that poses some risk. For example, in Olympic boxing, both fighters consent to being struck with gloved fists. However, they do not consent to being bitten, kicked, or struck below the belt. Assault carries with it a maximum penalty of five years in prison.

Grabbing or punching someone without that person’s consent is an example of Level One Assault.

## Level Two Assault

The second level of assault is **assault causing bodily harm**. It generally involves a physical attack with a weapon, such as a knife or baseball bat. This attack usually causes bodily harm (injury) to the victim, which requires medical attention. Bodily harm is anything that interferes with the victim's health or comfort in more than a fleeting, trifling way. In *R. v. Bertuzzi*, 2004, Todd Bertuzzi of the Vancouver Canucks was charged with assault causing bodily harm. During a hockey game, he punched and severely injured Colorado Avalanche player Steve Moore. (For more on this case, see the Issue feature in Chapter 11 on pages 384–385.) Assault causing bodily harm carries a maximum penalty of 10 years of imprisonment.

## Level Three Assault

The third and most severe level of assault is **aggravated assault**. This is an attack so severe that the physical injuries may threaten the life of the victim. It is committed if a person wounds, maims, disfigures, or endangers the life of the victim. However, the *mens rea* required is only to commit bodily harm. Aggravated assault carries a maximum penalty of 14 years in prison.

## Sexual Assault

**Sexual assault** is a specific form of assault that involves any form of unwanted sexual activity. A sexual assault occurs when consent is not given. In 1983, Canada passed Bill C-127. It made changes to the laws of rape, which was the old term used to describe “sexual assault” in the *Criminal Code*. The new legislation grouped sexual assault into three levels. These include acts ranging from unwanted sexual touching to violent physical attacks. The levels of sexual assault parallel the three levels of assault described on pages 223–225.

### Level One Sexual Assault

The first level of sexual assault is defined in section 271(1) of the *Criminal Code* as almost the same as criminal assault. The only difference is that it occurs in relation to sexual conduct or when the victim's sexual integrity is violated. It could involve minor physical injury to the victim or no injuries at all. It carries a maximum imprisonment of 10 years. An example is a molestation offence, which is a non-consensual, forced physical sexual behaviour.

### Level Two Sexual Assault

The second level of sexual assault is defined in section 272(1) of the *Criminal Code*. It involves sexual assault with a weapon or an imitation of a weapon, threats, or causing bodily harm to the victim. It carries a maximum imprisonment of 14 years.

### Level Three Sexual Assault

The third level of sexual assault, the most severe form, is aggravated sexual assault. It is defined in section 273 of the *Criminal Code* as a sexual attack so serious that the victim's physical injuries may even be life threatening. It carries a maximum penalty of life in prison.



An attack with a weapon, such as a knife, is considered Level Two or Level Three Assault, depending on the severity of the injury to the victim.

**assault causing bodily harm** the second of three levels of assault in criminal law

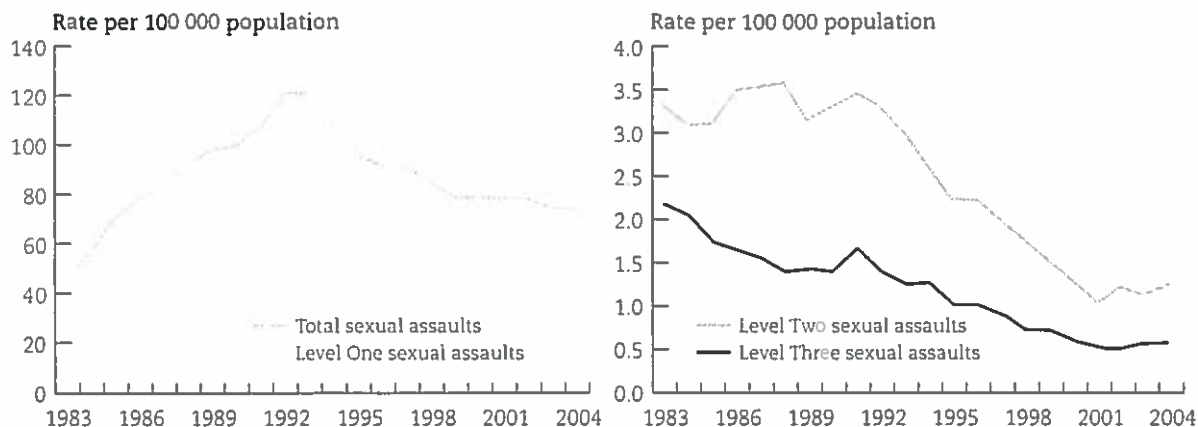
**aggravated assault** the most serious of three levels of assault in Canadian law

**sexual assault** the broad term for the three levels of sexual assault

“Abuse of Authority” from  
All About Law DVD



## Sexual Assaults in Canada, 1983–2004



These graphs show the number of sexual assaults reported to the police.

**consent** agreement given freely and voluntarily



### Did You Know?

In December 2004, Parliament passed the *Sex Offender Information Registration Act (SOIRA)*. This led to the creation of the National Sex Offender Registry. The backbone of the registry is a national sex offender database. It is maintained by the RCMP and is available to police across the country. As of July 2007, the National Sex Offender Registry contained the names of about 16 000 sex offenders.

## Consent

Consent is a central aspect in any sexual assault. It is defined in section 273.1(2) of the *Criminal Code*. Consent is the voluntary agreement of the accuser to engage in the sexual activity in question. The *actus reus* (act) of sexual assault is the sexual touching to which the victim does not consent. The *mens rea* (intent) of sexual assault can rest on knowledge that the victim gave no consent, recklessness, or willful blindness (the perpetrator avoids asking the victim for consent). Consent is frequently an issue in sexual assault trials, especially since there are usually few witnesses to such assaults.

In *R. v. Ewanchuk*, 1999, the Supreme Court did not allow the defence of “implied consent” to be introduced into Canadian law. Implied consent means that if a victim was being overly flirtatious, for example, it may “imply” that he or she consented to sexual activity. When it comes to consent and sexual activity, the court reaffirmed that “no means no” and only “yes means yes.”

Intoxication is also not a defence if the accused “departed markedly from the standard of reasonable care.” In other words, if the accused drank so much that loss of self-control was bound to occur, intoxication cannot be used as a defence to sexual assault. The law was clarified following the sensational case of *R. v. Daviault*, 1994 (see the case in Chapter 8, page 271). In this case, the court held that drunkenness can be a defence in a sexual assault case if there is reasonable doubt that the accused could make a clear decision to act with intent. The accused had been drunk during an attack on a 65-year-old partially paralyzed woman. Many Canadians were outraged by this judgment. The *Criminal Code* was later amended with the passage of Bill C-72. This bill clarified the issue of criminal fault by reason of intoxication.

## Rape Shield

The rape shield law limits a defendant’s ability to cross-examine sexual assault complainants about their past sexual behaviour and sexual history. In *R. v. Seaboyer and Gayme*, 1991, the Supreme Court struck down the



rape shield law. The court argued that it violated the rights of the accused. Following this decision, Bill C-49, a new rape shield law, was introduced in 1992. As a result, the *Criminal Code* now prohibits evidence of sexual reputation from being raised in court to challenge the credibility of the complainant. However, the judge can permit this evidence if it will add value to the fairness of the trial. Section 276 of the Code outlines what the judge must consider in determining whether to admit the evidence and in what situations the information should be made public. In the case of *R. v. Darrach*, 2000, in a unanimous 9-0 decision, the Supreme Court confirmed that present rape shield legislation is constitutional.

## Age of Consent

Age of consent is the legal age that a person can consent to sexual activity. In the past, the age of consent was 12, which was changed to 14 in 1892. It took nearly a century before Canada raised the age to 16, in February 2008. Where there is a relationship of trust, authority, or dependency (such as a teacher, coach, or doctor), the age of consent in Canada is 18 years. The *Criminal Code* provides what is often referred to as a “close in age” or “peer group” exception. For example, a 14- or 15-year-old can consent to engage in sexual activity with another person who is less than two years older.

In July 2005, Parliament passed a law that increased protection against exploitative sexual activity such as child pornography and prostitution. Included in the law was the creation of a new *Criminal Code* offence of sexual exploitation. This law attempts to better protect young persons between 14 and 18 years of age against predators. Under the new law, it will be up to the courts to decide if a relationship is exploitative of a young person. It recognizes that the age of a person can indicate vulnerability. Other factors, such as the following, are also used to determine if a young person is being exploited sexually:

- Age difference—Is the other person much older than the young person?
- Evolution of the relationship—How did the relationship develop? For example, did it develop quickly and secretly over the Internet?
- Control or influence over the young person—What degree of control or influence did the other person have over the young person? For example, was there an employer/employee or student/teacher relationship?

## Abduction

In general terms, abduction involves capturing and carrying off a person by force, against his or her will. It is similar to kidnapping. However, in legal terms, it has a different and more precise meaning. Section 282 of the *Criminal Code* defines abduction as “the forcible removal of an unmarried person under the age of 16 from the care of a parent, guardian, or any other person who has lawful care of the child.” Foster parents and child welfare agencies are considered guardians. Because the number of separated and divorced families in Canada is rising, so is the number of abductions. In January 1983, abduction by a parent was added to the *Criminal Code* and became a criminal offence. Anyone found guilty of child abduction can be imprisoned for a term up to 10 years.

### e Activity

To learn more about rape shield provisions,

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Social Studies



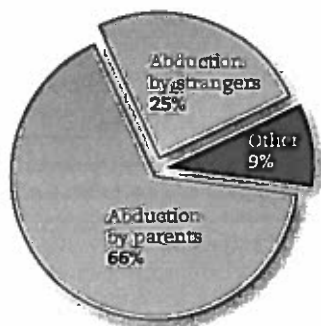
### ? Did You Know?

Surveys show that less than 10 percent of women who are sexually assaulted report the assault to the police. In 2005, 6 out of 10 victims who reported being sexually assaulted were under the age of 17.

**age of consent** the age at which a young person can legally consent to sexual activity

**abduction** the illegal, forced removal of a child from the custodial parent

### Child Abduction in Canada, 2006



Abduction by parents is rising steadily.



## You Be the Judge

### R. v. Dyck, 2008 ONCA 309 (CanLII)

For more information, [Go to Nelson Social Studies](#)

In 1988, 11-year-old Christopher Stephenson was grabbed at a Brampton, Ontario, shopping mall. He was sexually assaulted and killed by Joseph Fredericks, a convicted child sex offender. Fredericks had been released and was still on parole. However, he was able to serve the remaining part of his sentence in the community. In 1993, the coroner's inquest into Stephenson's death recommended creating a national registry for convicted sex offenders. This registry would require them to register with local police when they move into a community. A province-wide registry took effect in Ontario on April 23, 2001, the first of its kind in Canada. It was called "Christopher's Law," named after Christopher Stephenson.

On April 25, 2008, the Ontario Court of Appeal dismissed Abram Dyck's challenge of the constitutionality of the sex offender registry. The court ruled that the public's right to safety outweighs the offender's freedoms.

- Should all provinces pass such a law? Why or why not?



Christopher Stephenson was murdered by Joseph Fredericks, shown here (centre) struggling with police after a hearing in 1988.



### Did You Know?

A rapid response during an investigation of a child abduction is critical. According to the government of Ontario, of those victims who were murdered, 44 percent were dead within 1 hour after the abduction, 74 percent within 3 hours, and 91 percent within 24 hours.

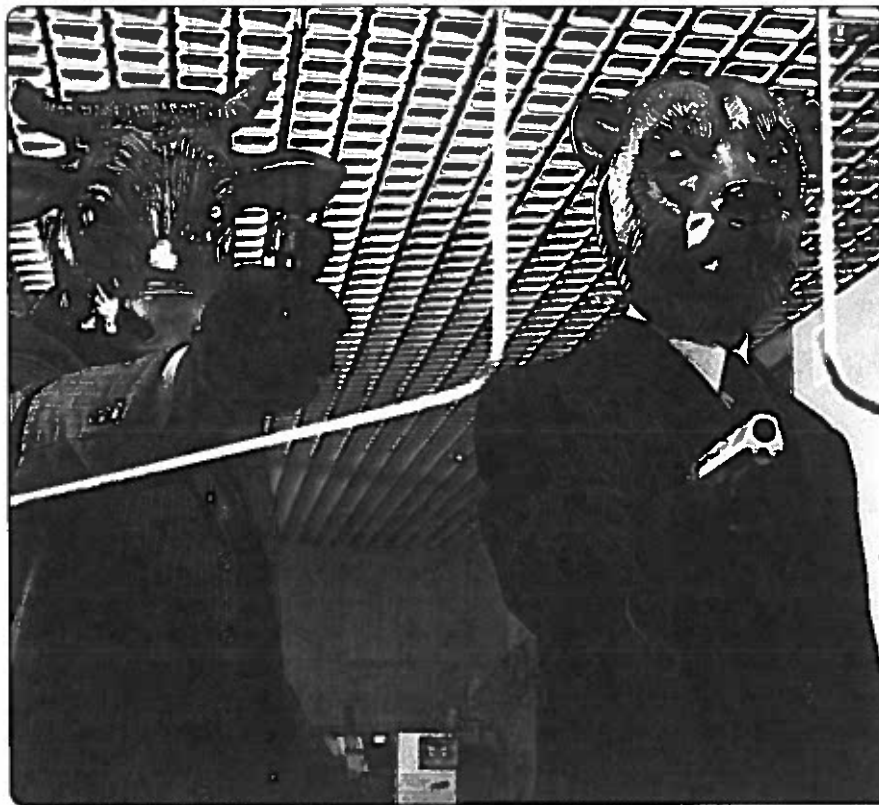


Canadian 1994 biathlon Olympic gold medalist Myriam Bédard was arrested for abducting her 12-year-old daughter. Bédard had breached a custody order and took her daughter to the United States. On September 20, 2007, Bédard was found guilty and received a conditional sentence with no jail time.

## Robbery

In general terms, robbery is illegally taking someone's property without permission. For example, if Bobby takes your cellphone without asking, you could call that theft or robbery. In legal terms, robbery has a more specific meaning. It is theft involving violence or the threat of violence using a weapon such as a gun, a knife, or even a stick. When the Crown is basing its case on the threat of violence, it must prove that the victim felt threatened and that there were reasonable and probable grounds for the fear. For example, phrases such as "Empty your till!" or "This is a holdup!" are accepted threats of implied violence.

Similarly, using a finger or fist as a weapon has been accepted in court as a threat of violence. Also, holding an imitation weapon such as a toy gun is classified as using an offensive weapon. The severe punishment for robbery is life imprisonment. This reflects society's revulsion for criminals who steal using violence.



Using a weapon such as a gun or knife is theft involving the threat of violence, and in which the victim feels threatened.

### Robberies in Canada, 2006

Country/Province/Territory	Number of Robberies	Rate per 100 000 People
<b>Canada Total</b>	<b>30 707</b>	<b>94</b>
Newfoundland and Labrador	119	23
Prince Edward Island	24	17
Nova Scotia	790	85
New Brunswick	221	29
Québec	6 989	91
Ontario	10 987	87
Manitoba	2 148	182
Saskatchewan	1 474	150
Alberta	3 154	93
British Columbia	4 756	110
Yukon	18	58
Northwest Territories	15	36
Nunavut	12	39

**robbery** theft involving violence or threats of violence

The number of robberies in Canada in 2006 increased by 6 percent from the 2005 rate. Robberies were up in most provinces. The most notable increase (18 percent) was in Saskatchewan, second only to Manitoba. Also, about one in every eight robberies in 2006 involved a firearm. Why do you think the robbery rates across Canada rose? What strategies can a local police force use to help protect its citizens?





### Tackling Violent Crime Act

In February 2008, Parliament passed a new law, the *Tackling Violent Crime Act*. Its aim was to protect Canadians from criminals who commit serious violent crimes. The idea behind the act was to prevent dangerous, high-risk offenders from offending again. It took effect on May 1, 2008. Some of the main points of this act are as follows:

- severe, mandatory jail time for serious gun crimes
- reverse-onus bail provisions for accused in serious gun crimes; offenders must show why they should not be kept in jail while awaiting trial
- three-strikes law aimed at dangerous and high-risk offenders, creating a presumption of dangerousness
- higher penalties for drug-and-alcohol-impaired drivers, including new ways to detect drug-impaired driving
- raise of the age of sexual consent from 14 to 16 years to protect youth from adult sexual predators

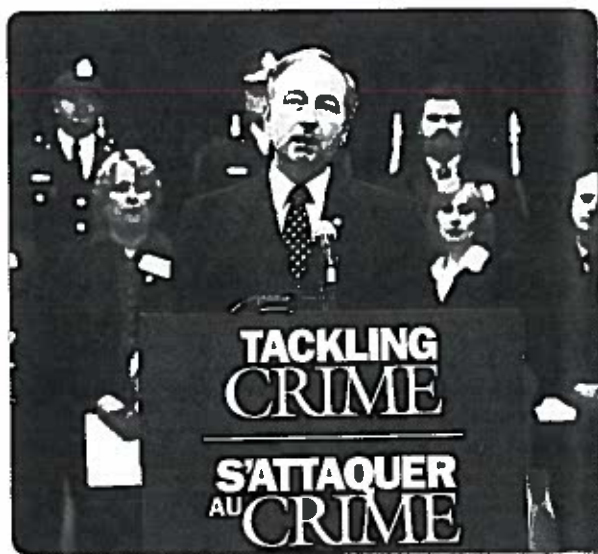
To fight impaired driving, the act allows police officers to conduct roadside sobriety exams to test for drugs as well as alcohol. Refusing a test for alcohol or drugs results in a minimum fine of \$1000. A maximum sentence for refusing drug and alcohol tests could be as high as five years of imprisonment. Penalties for impaired driving were increased. For a first offence, fines were increased from \$600 to \$1000. For a second offence, the sentence was increased from 14 to 30 days in jail. A third offence nets 120 days in jail, up from the previous 90 days.

Sexual and violent criminals receive more severe sentences. An offender convicted three or more times of specific violent or sexual crimes must convince the court why he or she should not be declared a dangerous offender. This is known as reverse onus. Peace bonds will be extended and more conditions imposed on those released from jail.

Firearm crimes receive higher mandatory prison sentences. A first offence results in a five-year sentence. A second firearm offence receives a seven-year term in prison. These sentences are for eight specific weapons-related offences. Other serious firearm-related offences such as trafficking or smuggling result in a three-year sentence for a first offence. A second offence nets a five-year sentence.

The *Tackling Violent Crime Act* created two new offences. Breaking and entering to steal a firearm became an indictable offence. So did robbery to steal a firearm. To keep violent criminals off the streets, the act included a reverse onus. Offenders had to show why they should not be held in jail awaiting trial.

To protect youth from sexual predators, the act raised the age of consent from 14 to 16. It included a close-in-age exception. By that, 14- and 15-year-olds were able to engage in sexual activity with partners who were less than five years older.



Justice Minister Rob Nicholson introduced the new legislation as part of his *Tackling Violent Crime Act*. It aims at making sure dangerous offenders do not offend again.

#### For Discussion

1. What does the act propose to fight impaired driving?
2. How did the act deal with dangerous offenders?
3. What changes in the law deal with weapons charges?
4. How did the act change bail provisions?

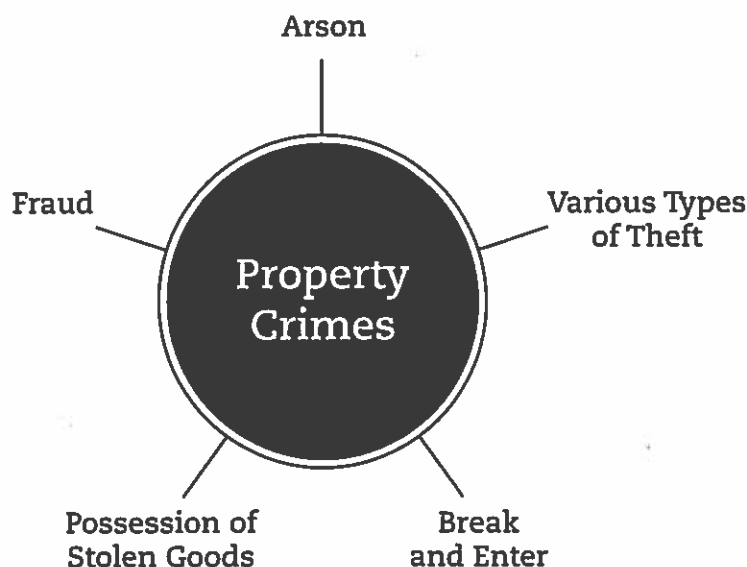
## Review Your Understanding

1. Explain the difference between assisted suicide and euthanasia.
2. What is the difference among the three levels of assault?
3. What is the difference among the three levels of sexual assault?
4. In what situations is consent not a defence to sexual assault?
5. Describe the elements of robbery.

## 7.3 Property Crimes

At one time, protection of property was one of the most important functions of criminal law. That is why death was a common penalty for theft until just a couple of hundred years ago. Property such as livestock (cattle and horses) was so important to owners that society demanded this extreme punishment. Today, the *Criminal Code* still has major penalties for offences against property. These types of offences make up about two-thirds of all offences listed in the *Criminal Code*. There are five major property crimes (see the diagram below).

### Types of Property Crimes



This diagram shows the five main types of property crime. Each of these is reviewed on the following pages.

### ? Did You Know?

Property that is lost continues to be the property of the owner. So, the old phrase "possession is nine tenths of the law" is not true.

### ? Did You Know?

In 2007, Abbotsford, British Columbia reported 5869 property crimes per 100 000 people. This was the highest rate in Canada.

### ? Did You Know?

The fictional portrayal of crime on television and film, together with media coverage of real crime, has propelled criminal law into the public spotlight. However, one must remember that there is real law and TV law. Often, the fictionalized version tends to distort and sensationalize real law. Journalists further contribute to this hype as they give extensive coverage to crime in newspapers, on the radio, and on television. Therefore, Canadians often think that the crime rate is higher than it really is. Actually, the crime rate in Canada is going down. So, overall, Canadians are very safe.



### Did You Know?

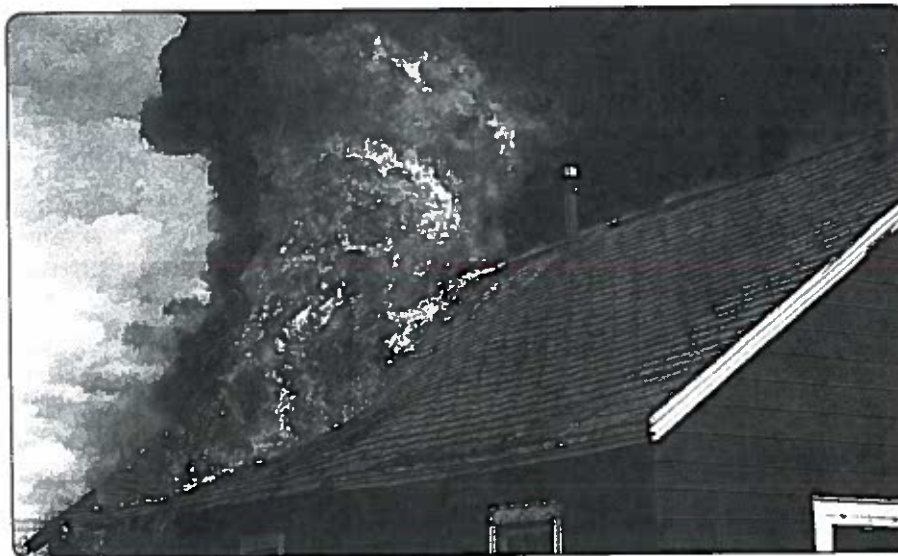
Arson is the cause of more than 12 percent of all fires in Canada. Most arson offenders are between the ages of 12 and 17. Each year, fires started by arson kill more than 50 and injure over 500 people. Property damage exceeds \$150 million.

**arson** intentionally causing damage to property by fire

In 2006, there were 13 504 incidents of arson reported to police in Canada.

## Arson

Section 433 of the *Criminal Code* defines arson as the act of intentionally causing damage to property by fire or explosion. For example, if a group of teenagers starts a fire that gets out of hand and spreads to nearby buildings, they could be charged with arson. They should have been able to foresee (anticipate) the possible consequences of setting the fire in the first place. Where there is no danger to life, the maximum penalty for arson is 14 years in prison. However, if the arsonist recklessly causes bodily harm to another person, the maximum penalty is life imprisonment.



## Theft

**theft** taking someone's property without her or his consent

**colour of right** the legal right to a property

Theft is one of the most common property offences in Canada. In 2006, it accounted for over half of all property crimes. Theft is defined simply as taking someone's property without their consent or damaging it so severely that it is unusable.

Theft has a number of elements. Each of these must be proven for a successful conviction:

- The act must be fraudulent. This means that the person who is stealing must have intended to do something wrong. In other words, you cannot "accidentally" steal something. The person knows that the property she or he is stealing does not belong to her or him.
- The person taking the item must not have any legal right to it. Having a legal right to an item is known, in legal terms, as colour of right. The legal owner needs to be established and whether consent has been given by the owner to someone else.
- The accused must have intent to deprive the owner of the item or convert it to his or her own use. For example, stealing someone's bike and stripping it of parts for one's own use would be considered theft.



### Did You Know?

Theft under \$5000 has a maximum penalty of two years, while theft over \$5000 can have a penalty of up to 10 years.





In 2006, there were about 160 000 auto thefts reported to police in Canada. There has generally been a downward trend in the number of auto thefts in Canada since 1996. The number has dropped by about 20 percent over the decade.

### Did You Know?

Since February 1, 2008, British Columbians have to prepay for their gas at pumps. Known as "Grant's Law," it protects gas station workers. This was the result of Grant DePatie being dragged to his death while trying to stop a "gas-and-dash" in 2005. While prepayment is common in many U.S. states, British Columbia was the first Canadian province to pass such a law.



### Case

#### R. v. Foidart, 2005 MBCA 104 (CanLII)

For more information, Go to Nelson Social Studies



Edwin Foidart was hired by a Winnipeg church to repair their existing pipe organ as part of a major restoration project. In order to do this, Foidart located and purchased a used organ for the church. He planned to use the parts to restore the church's pipe organ. The used organ parts were temporarily stored in a garage on Foidart's property. However, difficulties arose, and the church had to cancel the restoration project. As a result, Foidart was asked to return all the organ parts in his possession. Over time, church members discovered that not all the organ parts had been returned. Some of the parts were found in pipe organs belonging to other churches. The accused was eventually charged with theft over \$5000. In his defence, Foidart argued that he had a colour of right to the pieces from the collection. However, he chose not to testify at his trial to this effect.

The trial judge found Foidart guilty of theft. Since the judge had not heard from Foidart as to reasonable belief of colour of right, he could not consider

this defence in his decision. Foidart appealed to the Manitoba Court of Appeal. The issue before the court was whether the lack of evidence from the accused himself as to his belief in the ownership of the organ parts was fatal to his case. In a 3-0 decision, the court agreed with the initial trial judge and dismissed Foidart's appeal.

### For Discussion

1. How does the definition of theft apply to this case?
2. Explain how the definition of colour of right was applied in this case.
3. Why did the courts conclude that it was necessary for persons to take the stand in their own defence when arguing that they have a colour of right?
4. Do you agree with the Manitoba Court of Appeal's decision? Why or why not?

**Identity theft** using someone's personal information without his or her consent to commit a crime

## Identity Theft

**Identity theft** is the act of stealing someone else's identity, usually for criminal purposes. It has been called the crime of the twenty-first century. In 2005, there were 11 231 reported identity theft complaints in Canada. This crime accounted for over \$8.5 million in losses. Identity theft is the fastest-growing form of consumer fraud in North America. Some examples of identity theft include the following:

How can you minimize your risk of identity theft?



- **Mail theft**—Thieves steal the mail of victims to get access to their critical information like credit card numbers. Using those numbers, thieves then extend the victim's credit line, apply for new credit cards, and open fraudulent accounts.
- **Theft from personal spaces**—Thieves target places such as residences, offices, or cars in which the owners have left wallets or purses. Some thieves rely on "dumpster diving." This is the act of rummaging through garbage in dumpsters or trash bins to remove documents containing valuable personal information.
- **Misuse of personal data in business transactions**—Criminals use special small devices known as "skimmers." They can read the data on a credit card's magnetic stripe when someone swipes the card during a purchase. Identity thieves sometimes install skimmers on the outside of legitimate financial institutions' ATM machines.
- **Phishing, spoofing, and pretexting**—Criminals can obtain personal data from people online using a technique known as phishing. In such cases, consumers receive "spoofed" e-mails that appear to come from legitimate businesses, such as banks. These e-mails ask consumers to visit spoofed websites that appear to be from the same businesses. Then, consumers are asked to enter personal information. Consumers also receive "pretext" phone calls from persons pretending to be with legitimate businesses, asking for personal information.

- **Theft from company or government databases**—Identity thieves try to access large databases of personal information. These databases are usually maintained by private companies and government agencies. Criminals steal computer hard drives and hack into databases to obtain this information.



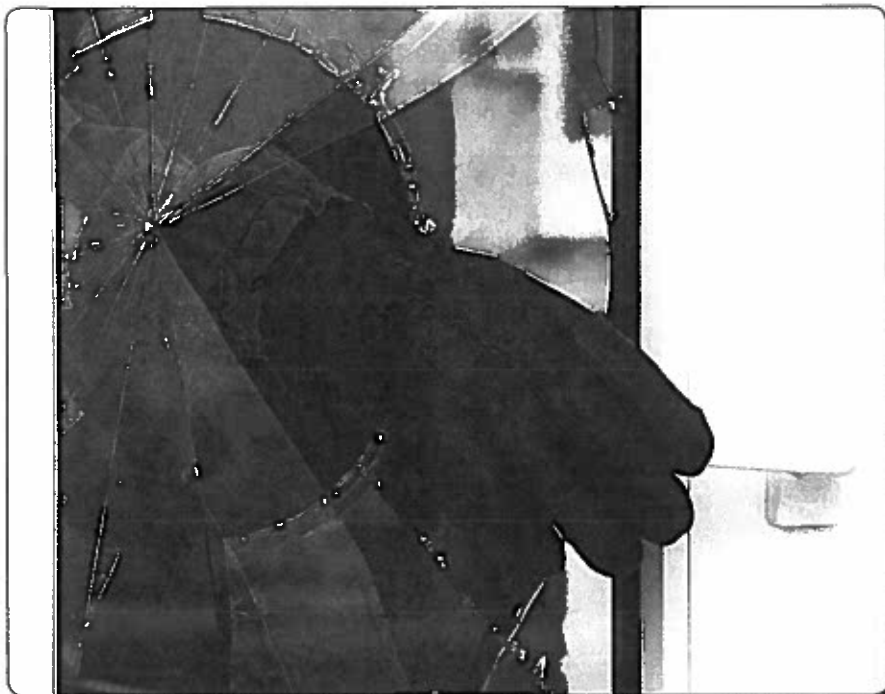
An Edmonton police officer displays a skimmer, a mini video camera used to read PINs at ATMs.

Identity theft is a serious problem for victims. Stolen personal information can be used to open bank accounts or obtain loans or credit cards. It can also be used to gain employment or transfer property from the victim's name. Victims of identity theft may suffer major financial loss as well as damaged reputation or credit ratings. Government and businesses can also be victims of identity theft. If identity theft is used to support terrorist activities, there may be national security implications.

Currently, the *Criminal Code* does not contain a specific identity theft offence. Section 342 contains some new offences dealing with computers and credit/debit cards. However, most of the Code offences relating to property predate the computer and the Internet. In November 2007, Parliament introduced new legislation. If passed, it will create several new *Criminal Code* offences. The new law will make it an offence to obtain, possess, transfer, or sell the identity documents of another person.

## Break and Enter

The law considers **break and enter**, commonly called burglary, a serious offence. The word “break” generally refers to opening something (usually by force), such as a locked door, that was meant to be closed. “Enter” means to go into a place, such as a building, where one has no right to be. In legal terms, they are defined in sections 321 and 350 of the *Criminal Code*. A simple example is someone who enters a home by breaking through a window or glass door.



### Cornered

by Mike Baldwin

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3922



“Do you have another card? This one's been reported stolen.”

Identity theft is the fastest-growing form of consumer fraud in North America.

**break and enter** entering someone's premises without permission with intent to commit an indictable offence

### ? Did You Know?

Since peaking in 1991, the rate of break and enters in 2006 has fallen to the lowest level in 30 years. Innovative police programs are some of the reasons for this decline. These programs include targeting high-risk neighbourhoods, the increase in the use of home security devices, and new locks or security bars in homes.

Break and enter, or burglary, is a serious offence.



**fraud** intentional deceit in order to cause a loss of property

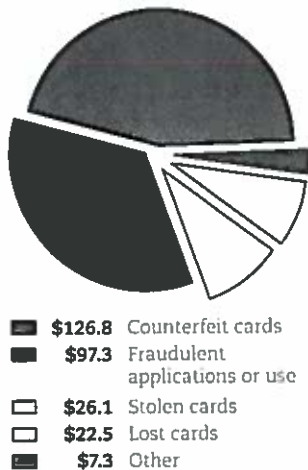
**false pretences** presenting untruths or false information to induce the victim to act upon it

## Possession of Stolen Goods

Section 354 of the *Criminal Code* deals with possession of stolen goods. It is an offence for anyone to possess stolen property and know that it is stolen. For example, if Sonia buys a stolen bicycle from Yolanda, and if Sonia knows that the bicycle is stolen, she is guilty of possessing stolen goods. Anyone found guilty of possessing stolen goods worth \$5000 or more can be sentenced to up to 10 years in prison if the offence is treated as an indictable offence. If the value is less than \$5000, the sentence is a maximum of two years. If the offence is treated as a summary conviction offence, the sentence is up to six months of imprisonment or a fine of \$2000.

## Fraud

**Cost of Credit Card Fraud, 2005 (\$ millions)**



In 2005, the RCMP reported \$280 million in losses due to credit card fraud.

Section 380 of the *Criminal Code* deals with fraud. Fraud is when someone deceives another person on purpose for criminal gain. In order to prove fraud, it must be shown that the accused knew that his or her actions could cause a loss to others. Given the ever-changing complexity of our society, fraud can take many different forms.

Making false statements to obtain credit or a loan is a crime. For example, it is a crime for Connie to apply for a loan and lie about her salary and assets. She could be charged with obtaining credit by false pretences under section 361(1) of the *Criminal Code*. A false pretence implies that someone is making a statement that she or he knows is false and that is intended to defraud, as in the case with Connie.

Credit card fraud can take many forms. Credit is a form of money, and the amount of money that can be spent using stolen credit cards can sometimes exceed the amount that one thief can carry away from a bank. Section 342 of the *Criminal Code* describes the offence of credit card fraud.

The *Criminal Code* also states that it is a crime to write a cheque if there is not enough money in the bank account to cover it. It is a defence if the person can prove that she or he believed there were sufficient funds when the cheque was written.

When the value of the fraud exceeds \$5000, the offence is considered indictable. This offence carries a maximum 14-year prison term. Fraud for less than \$5000 may be either indictable or summary. An indictable offence is punishable with a maximum two-year prison term. The penalty for a summary fraud is a term of up to six months of imprisonment or a fine of up to \$2000.

## Review Your Understanding

1. What elements are necessary to convict someone of theft?
2. What is the legal meaning of the terms "break" and "enter"?
3. Explain the concept of "reverse onus" as it applies to the possession of stolen goods.
4. What are some of the problems caused by identity theft?
5. Discuss three types of fraud.

## 7.4 Other Crimes

This section discusses other *Criminal Code* offences not covered in the previous sections. The six subsections review a variety of crimes ranging from firearms offences to street racing and terrorism. These have nothing in common except that they are all prohibited by the *Criminal Code*. They are grouped together here for convenience only. The following offences are significant because they occur frequently and are of general interest:

- firearms
- obscenity
- street racing
- terrorism
- prostitution
- criminal harassment

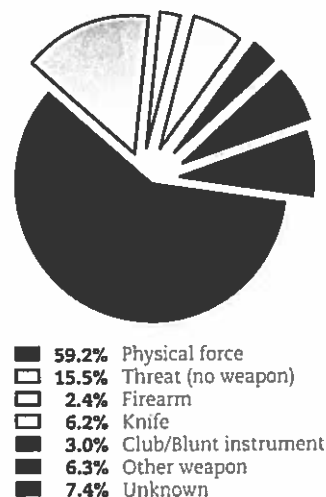
### Firearms

Firearms in Canada are regulated primarily by the *Firearms Act* and by Part III of the *Criminal Code*. The *Firearms Act* sets out the rules for possessing a firearm. The *Criminal Code* identifies the various weapons regulated by the *Firearms Act*. Penalties for illegal possession or misuse of a firearm are included in both the Code and the act. Provinces, territories, and municipalities may have additional laws and regulations that apply. For example, provinces are responsible for regulating hunting, so they may put restrictions on where people can hunt and on the size of firearms that may be used.

In 1995, Parliament passed the *Firearms Act*. This act required all gun owners to be licensed and registered. Licensing and registration under the *Firearms Act* can be compared to a driver's licence and the registration of a vehicle. A firearms licence shows that the licence holder has met certain safety criteria. He or she has taken a course such as the Canadian Firearms Safety Course and is allowed to possess and use firearms. A registration certificate identifies a firearm and links it to its owner to provide a means of tracking the firearm.



**Violent Crime by Type of Weapon in Canada, 2006**



In 2006, the vast majority of reported violent crimes did not involve a firearm. A firearm was used against only 2.4 percent of victims. Physical force and threatening behaviour were much more common, accounting for three-quarters of all such assaults.

Hunting with a rifle is legal as long as the owner and user have a licence. Also, the firearm must be registered under the *Firearms Act*.

**non-restricted firearm** any rifle or shotgun that is neither restricted nor prohibited

**restricted firearm** a firearm that needs to be registered

**prohibited firearm** a firearm that a person is not allowed to possess



This sawed-off shotgun would be classified as a prohibited firearm.

#### Firearm Licence Refusal and Revocation, 2008



As of January 2008, a total of 21 676 firearms applications have been refused and licences revoked in Canada. The following are the main reasons for doing so:

- a history of violence
- mental illness
- potential risk to self or others
- unsafe firearm use and storage
- drug offences
- providing false information

## Classes of Firearms

There are three classes of firearms: non-restricted, restricted, and prohibited. Non-restricted firearms are ordinary rifles and shotguns other than those referred to below. As of November 2007, non-restricted firearms no longer need to be registered. The reason for this is that they are rarely used in homicides. Restricted firearms include the following:

- handguns that are not prohibited
- semi-automatic rifles and shotguns with a barrel shorter than 470 mm
- rifles and shotguns with an overall length of less than 660 mm

Prohibited firearms include the following:

- handguns with a barrel length of 105 mm or less and those using .25 or .32 calibre ammunition
- rifles and shotguns that have been shortened so that their barrel length is less than 457 mm or their overall length is less than 660 mm
- semi-automatic firearms converted to fully automatic
- fully automatic firearms, such as machine guns and assault rifles

## Firearm Licences

- To be able to register a firearm, you need a valid firearms licence. This is your authorization to possess and register a firearm and to obtain ammunition. Your licence must be kept current for as long as you possess firearms in Canada. Licence and registration information is contained in the Canadian Firearms Information System. This system is operated by the RCMP and is available to police officers across the country. The types of licences are as follows:

- For Canadian residents 18 and older—The Possession and Acquisition Licence is the only licence currently available to new applicants. It is renewable every five years for a fee of \$60. Applicants must have passed the Canadian Firearms Safety Course (CFSC).
- For individuals aged 12 to 17—A Minor's Possession Licence will allow young people to borrow a non-restricted rifle or shotgun for approved purposes such as hunting or target shooting. Generally, the minimum age is 12 years. However, exceptions can be made for younger people who need to hunt to sustain themselves and their families. Applicants must pass the CFSC. Once you turn 18, you will need to apply for a Possession and Acquisition Licence.

## Street Racing

Street racing refers to illegal auto races that take place on public roads. They range from spontaneous contests between two cars at street corners to well-organized, complex events. A whole subculture has developed around street racing. It has been glamorized in movies such as *The Fast and the Furious* series, as well as in video games such as *Need for Speed* and *Juiced*. Over the years, street racing has led to serious injuries and loss of life among participants, spectators, and sometimes innocent bystanders and police officers. There were an estimated 10 deaths from street racing in Canada in the first half of 2006 alone. In the Toronto region, 35 people have died since 1999 as a result of street racing.

**street racing** the criminal offence of driving a vehicle at high speeds in a reckless and dangerous manner



In December 2006, Parliament passed a law to address street racing. Section 249(4) of the *Criminal Code* defines street racing as operating a motor vehicle in a race with at least one other motor vehicle. The *Criminal Code* does not make street racing itself a crime. However, it does define dangerous or criminally negligent operation of a vehicle. Under the Code, the penalty for street racing offences is harsher than that for dangerous operation of a motor vehicle and criminal negligence. The penalties for street racing offences are as follows:

- dangerous operation or criminal negligence causing bodily harm—14 years (instead of 10)
- dangerous driving causing death—life imprisonment (instead of 14 years)
- mandatory suspension of driving licences

Street racing is a dangerous activity that has led to numerous fatalities and injuries. It was added to the *Criminal Code* in 2006.



**prostitution** sexual activity  
in exchange for money

**soliciting** communicating for  
the purposes of prostitution



Urban centres such as Toronto attract prostitution and related crimes.

## Prostitution

Simply put, prostitution is selling sex for money. It is often described as the world's "oldest profession" because it has existed throughout recorded history. The act of prostitution is legal in Canada. However, some activities related to it are illegal. These include soliciting and keeping a common bawdyhouse (a brothel or place of prostitution). Soliciting is communicating for the purpose of prostitution. According to the Supreme Court of Canada, such communication must be "pressing or persistent" to be an offence. In December 1985, changes to section 213 of the *Criminal Code* were made to deal with this issue. Under this section, it is not permitted to stop a motor vehicle or to communicate with anyone for the purpose of prostitution. The main goal of section 213 is to reduce the visibility of street prostitution.

Procuring (obtaining or getting) is another illegal activity related to prostitution. It involves directing customers to a prostitute. It also involves living off the earnings of a prostitute. The penalty for procuring is much harsher than the penalties for soliciting or keeping a common bawdyhouse. That is because without the procurer (the pimp), prostitution might not happen at all.

Some Canadians feel that soliciting is a "crime without a victim." Others argue that prostitutes are victims of procuring. Nonetheless, some people believe that this is a moral issue (not a legal one). As such, the government should not interfere. However, legislators are concerned about the issues that surround prostitution, such as its frequency in high-crime areas, its connection with the drug trade, the exploitation of prostitutes by pimps, and the impact of prostitution on neighbourhoods.

Some provinces have moved to protect underage prostitutes. Alberta's *Protection of Children Involved in Prostitution Act* (passed in 2000) allows authorities to pick up suspected prostitutes under 18 years of age. They are taken to a safe house and can be held for up to 72 hours without being charged. The safe house provides an opportunity for the youths to be free from their pimps and to receive counselling.

Some provinces have established additional means of controlling prostitution. For example, the highway and traffic acts in several provinces have been amended to allow police to seize, impound, and sell vehicles used in picking up prostitutes on the street. Also, the person's driving licence can be suspended. In 2002, Ontario passed a civil law that goes even further. Civil courts are allowed to freeze and seize any property bought with the proceeds of prostitution without laying criminal charges.

### Review Your Understanding

1. What is the difference between prohibited and restricted firearms?
2. What must a citizen in Canada do to legally possess or use a gun?
3. Summarize some of the newest legislation dealing with firearms.
4. Explain the main aspects of the street racing legislation in the *Criminal Code*.
5. What is the difference between procuring and soliciting in terms of prostitution? What elements must exist for a conviction on soliciting?

## Obscenity

**Obscenity** refers to words, images, or actions that go against moral values. This could range from simple profanity to offensive pictures or videos. The legal definition is described in section 163 of the *Criminal Code*. However, this issue continues to be controversial. The Supreme Court generally follows the “community standards test.” It must determine what the community would tolerate. Sex acts that are “degrading or dehumanizing” are considered obscene. The courts frequently must determine whether something is obscene or a work of art. Under the *Criminal Code*, a publication is considered obscene if it exploits sex or contains material on extreme crime, horror, cruelty, or violence.

A variety of offences relate to obscenity. These include making, printing, circulating, mailing, or distributing obscene material. Police can obtain a warrant to seize any obscene materials and then lay charges. Customs officers also have the right to seize materials that they think are obscene. For example, Vancouver’s Little Sisters Book and Art Emporium imported books that included gay and lesbian erotica. Under section 163(8) of the *Criminal Code*, they were deemed obscene. Therefore, customs officials seized these and did not allow the material to enter Canada. On December 15, 2000, in *Little Sisters Book and Art Emporium v. Canada*, the Supreme Court supported the rights of customs officers to ban the obscene material from entering the country. However, in this specific case, it objected to the arbitrary targeted practices of the customs agents and confirmed that the onus of proving that material is obscene lies with the customs agency.

**obsenity** words, images, or actions that are offensive to public morality

## Child Pornography

Children are vulnerable and need to be protected from harmful criminal activity. This has led to changes in the *Criminal Code*. Anyone who possesses, produces, distributes, or sells child pornography is guilty of an offence. The penalty for possessing such material is 14 days to five years in prison. The maximum prison term for producing or distributing such material is 10 years. These offences are outlined in section 163 of the *Criminal Code*. In June 2002, Parliament passed a law to protect children from being exploited over the Internet. The new law made it illegal for people to access child pornography online. Also, the law made it illegal to communicate with children online for sexual purposes (section 172.1(1)). However, pornography on the Internet is a growing concern since it is difficult to regulate it.



It is important for society to protect children from harmful criminal activity such as child pornography.



## You Be the Judge

### R. v. Smith, 2005 CanLII 23805 (ON C.A.)

For more information [Go to Nelson Social Studies](#)

Donald Smith ran a website that contained material showing “fantasy violence” against women. The site warned that it contained “nudity and fantasy violence.” It included written stories submitted by members and audiovisual material that Smith produced. The audiovisual clips showed topless women with apparent knife and arrow wounds. Actors were used for the clips, and the wounds were created by digital software. There were no explicit acts of sex in the video clips.

Smith was charged under section 163(1) of the *Criminal Code* with making and distributing

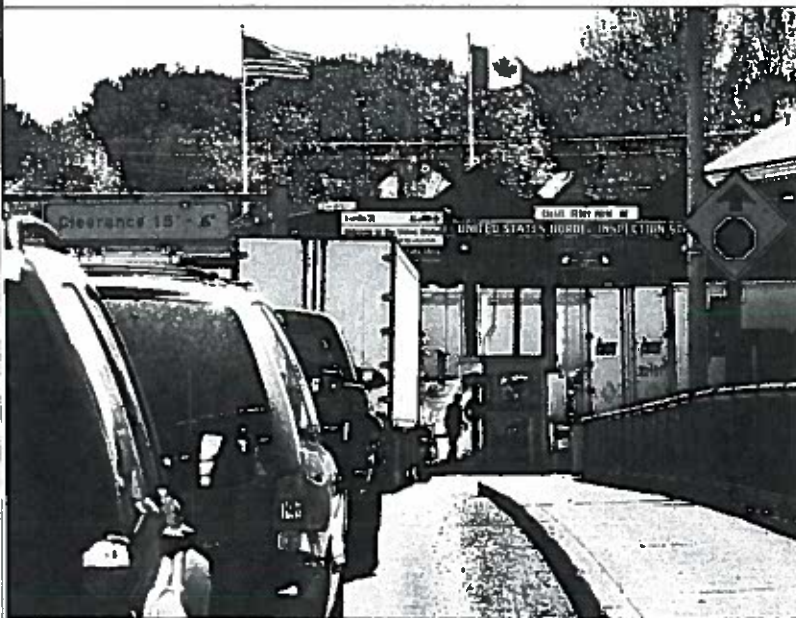
obscene material. In November 2002, Smith was convicted, and the judge imposed a term of probation and a \$100 000 fine. Smith was also prohibited from accessing the Internet. The judge also ordered Smith to turn over his websites to the Crown. Smith appealed this decision on July 7, 2005.

- Do you think Smith’s appeal was upheld or dismissed by the Court of Appeal? What would you have done if you were the judge in this case? Should the *Criminal Code* regulate Internet obscenity?

## Terrorism

**terrorism** the unlawful use of force or violence to further certain political or social objectives

Terrorism is any violent action taken for political, religious, or ideological reasons. This includes killing people or harming property to create fear and further the terrorists’ goals. Terrorism does not have to take place in Canada. It can be against a Canadian citizen or government located outside of the country.



Motorists from New Brunswick wait to go through U.S. Customs. The Canadian and U.S. governments co-operate to ensure that terrorists do not cross our borders.

The terrorist attacks of September 11, 2001, resulted in several changes to the Canadian *Criminal Code*. The Code now allows the government to publish the names of terrorist groups. Canada has taken action to cut off funds to terrorists. It is now an offence to collect or provide funds for terrorist activities. The government also has the right to freeze any property that is being used in any way to assist a terrorist group. Also, financial institutions must report to the government any assets they have that belong to an identified terrorist group. These changes seriously violate the legal rights of suspects and accused persons. They also raise the issue of freedoms versus security and trying to strike a proper balance between the two. To fight terrorism, Canada passed several new laws. The *Anti-Terrorism Act* became law in 2001. The *Public Safety Act*, passed in 2004, made changes to numerous federal statutes. See the chart on the next page for the highlights of these two laws.



## Highlights of the Anti-Terrorism Act and the Public Safety Act

Anti-Terrorism Act	Public Safety Act
<ul style="list-style-type: none"> <li>• a legal definition of terrorism</li> <li>• terrorist offences defined</li> <li>• new investigative tools for law enforcement agencies, including more power to use electronic surveillance</li> <li>• new powers for police to arrest suspected terrorists without charge</li> <li>• those with information about terrorist activities must appear before a judge to provide that information</li> <li>• protected classified information in courtroom proceedings</li> </ul>	<ul style="list-style-type: none"> <li>• "interim orders" to deal with immediate threats and emergencies</li> <li>• tighter security over threats to aviation, pipelines, and transmission lines</li> <li>• controls over the export technologies sensitive to national security</li> <li>• prevention of money laundering and the spreading of biological and other weapons by terrorists</li> <li>• powers to arrest and detain within Canada foreign nationals without proper identification</li> <li>• declaring bomb threats and other hoaxes to be criminal offences</li> </ul>

This chart outlines the highlights of the Anti-Terrorism Act and the Public Safety Act. The purpose of these two laws is to identify, prosecute, and convict terrorists operating in Canada.



### You Be the Judge

## Canada (Attorney General) v. Khawaja (F.C.), 2007 FC 490 (CanLII)

For more information, [Go to Nelson Social Studies](#)

In 2004, the RCMP raided Momin Khawaja's workplace and home in the Ottawa area. The raid was part of a Canada-Britain investigation. In total, nine men of Pakistani heritage were arrested. On March 29, 2004, Khawaja was the only person arrested in Canada. He was officially charged with several terrorist-related offences. Khawaja was the first man charged under the federal *Anti-Terrorism Act*.

On October 24, 2006, the judge who presided over the case struck down the "motive clause" of the *Anti-Terrorism Act*. This clause defines a terrorist act as one committed for political, religious, or ideological purposes. The judge stated that this clause violated the *Charter of Rights and Freedoms*. The judge wrote that this definition infringed on fundamental freedoms, including those of religion, thought, belief, opinion, expression, and association. However, the judge allowed the trial to go on. Khawaja appealed to the Supreme Court, asking that the charges against him be dropped. His appeal was dismissed in April 2008.

On October 29, 2008, the Ontario Superior Court found Momin Khawaja guilty of five terrorism-related charges. The 29-day trial was considered the first major test of Canada's *Anti-Terrorism Act*, passed in the aftermath of the September 11, 2001, attacks in the United States.

- Do you agree with the court's decision? Why or why not?



This is a courtroom sketch of Momin Khawaja. In 2004, Khawaja became the first person charged under Canada's new *Anti-Terrorism Act* (2001).



**criminal harassment** the pursuit or repeated communication with an unwilling victim



In May 2008, Jack Jordan was convicted of stalking actress Uma Thurman (pictured here) for more than two years. During that time, he would show up on her doorstep or at her movie sets. He also sent the actress a series of creepy love letters.

## Criminal Harassment

**Criminal harassment** (stalking) is pursuing or communicating with an unwilling victim and with his or her friends and family. Such harassment can range from spying on the individual's home or workplace to actual threats. This offence was added to the *Criminal Code* (section 264) in 1993. It prohibits anyone from repeatedly communicating with or following another person against her or his wishes. The activity causes the person to reasonably fear for his or her safety. It is an indictable offence and is punishable with a prison sentence of up to 10 years.

### Criminal Harassment in Canada

- About 88 percent of victims of criminal harassment are harassed by someone they know (ex-partners, spouses, acquaintances, co-workers, or close friends).
- About 12 percent of victims of criminal harassment are harassed by a stranger.
- Although anyone can be a victim of criminal harassment, about 8 out of 10 victims are women, and 9 out of 10 stalkers are men.

Criminal harassment is an indictable offence.

### Review Your Understanding

1. How does the *Criminal Code* define obscenity?
2. What is the purpose of the National Sex Offender Registry?
3. What were some of the changes made to the *Criminal Code* as a result of the September 11, 2001, attacks?
4. Summarize some of the main changes to Canada's terrorism laws as a result of the *Public Safety Act*, 2004.
5. How does the *Criminal Code* define criminal harassment?

## The Controlled Drugs and Substances Act

**drug** a chemical substance that alters the structure or function of a living organism

A **drug** is defined as "any substance that by its chemical nature alters structure or function in a living organism." This definition is so broad that it includes everything from Tylenol to crack. Of course, not all chemicals with these effects are classified as illegal drugs. Otherwise, tea, beer, cola, and Aspirin would be classed with heroin and cocaine. Certain drugs have been classified as criminal and are restricted by law. Thus, courts have declared that marijuana is not an irrelevant narcotic. It is still on the list of substances defined by Parliament as a controlled drug. The relevant statute that relates to the use of drugs is called the *Controlled Drugs and Substances Act*. It was passed in 1997 and is a combination of the old *Narcotic Control Act* and sections of the *Food and Drugs Act*.

The *Controlled Drugs and Substances Act* makes the possession and selling of a variety of drugs a criminal act. Controlled substances are itemized on four basic lists, known as schedules:

- Schedule I—the most dangerous drugs, including narcotics such as heroin and cocaine
- Schedule II—cannabis (marijuana) and its derivatives
- Schedule III—many of the more dangerous drugs previously found in the *Food and Drugs Act*, such as lysergic acid diethylamide (LSD) and Ecstasy
- Schedule IV—drugs that must be controlled but that have therapeutic use, such as barbiturates

There are other schedules in the *Controlled Drugs and Substances Act* besides just these four. Schedules V and VI deal with other medicinal drugs. Schedules VII and VIII deal with cannabis resin (such as hashish) depending on the amount. The act defines a controlled substance as being any substance included in Schedules I to IV.

## Possession

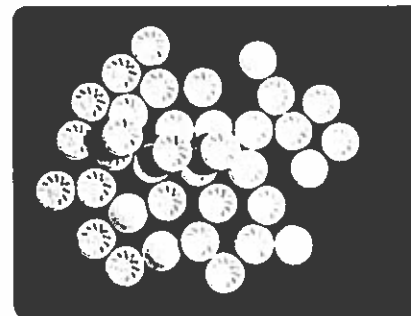
It is an offence to possess any drug listed in Schedules I to III of the act. However, Canadians are allowed to possess drugs found in Schedule IV for therapeutic use. The chart below summarizes the penalties for possessing drugs found in Schedules I, II, III, and VIII.

### Penalties for Possession

Schedule and Substance	Offence	Penalty (maximums)
Schedule I Dangerous drugs	<ul style="list-style-type: none"> <li>• if a first offence and tried summarily</li> <li>• if a subsequent offence and tried summarily</li> <li>• if tried as an indictable offence</li> </ul>	<ul style="list-style-type: none"> <li>• \$1000 fine and/or 6 months</li> <li>• \$2000 fine and/or 1 year</li> <li>• 7 years</li> </ul>
Schedule II Cannabis (marijuana) and its derivatives	<ul style="list-style-type: none"> <li>• if a first offence and tried summarily</li> <li>• if a subsequent offence and tried summarily</li> <li>• if tried as an indictable offence</li> </ul>	<ul style="list-style-type: none"> <li>• \$1000 and/or 6 months</li> <li>• \$2000 and/or 1 year</li> <li>• 5 years less a day</li> </ul>
Schedule III Dangerous drugs formerly listed in the <i>Food and Drugs Act</i>	<ul style="list-style-type: none"> <li>• if a first offence and tried summarily</li> <li>• if a subsequent offence and tried summarily</li> <li>• if tried as an indictable offence</li> </ul>	<ul style="list-style-type: none"> <li>• \$1000 and/or 6 months</li> <li>• \$2000 and/or 1 year</li> <li>• 3 years</li> </ul>
Schedule VIII Cannabis resin up to 1 g and cannabis up to 30 g	<ul style="list-style-type: none"> <li>• if charged under Schedule VIII, always tried summarily</li> </ul>	<ul style="list-style-type: none"> <li>• \$1000 and/or 6 months</li> </ul>

A person found with one marijuana cigarette is treated less harshly than someone who has a large amount of cannabis. Also, first-time offenders are not treated as severely as those with numerous possession convictions.

controlled substance any material listed in the *Controlled Drugs and Substances Act*



Illegal drugs such as Ecstasy (shown here) are listed on Schedule III of the *Controlled Drugs and Substances Act*.



### Did You Know?

Total drug crimes increased by 2 percent in 2006 over the previous year. Cannabis offences were down 4 percent, while cocaine offences were up 13 percent. Cocaine offences have increased by 67 percent since 2002.

**Authorization to Possess (ATP)**  
legal authority to possess and produce marijuana for medical purposes

Even a small quantity of a drug can get you charged with possession. As long as the drug can be identified, a charge can be laid. In addition, the *Controlled Drugs and Substances Act* adopts the definition of possession given in section 4(3) of the *Criminal Code*. A person is defined as “having possession” even when he or she does not technically own the drug. Having control over a drug can therefore lead to a charge. For example, if five people are sharing a marijuana joint, they could all be convicted of possession. The owner of the house in which the five are smoking the drug is particularly vulnerable, even if he or she does not use the marijuana, because allowing its use in his or her home implies consent.

In prosecuting a drug case, the Crown must first prove possession of a controlled substance. In addition, the Crown must show that there was intent to possess. That is, the accused must know that the substance is a drug. The Supreme Court ruled in *R. v. Beaver*, 1957, that *mens rea* is a necessary element of the offence. Louis Beaver had a package of white powder that he thought was milk sugar in his possession. In fact, it contained a narcotic. The court agreed that Beaver did not know the substance was a narcotic. He was acquitted of possession.

In 2001, the *Controlled Drugs and Substances Act* was changed to allow certain patients to grow or buy their own marijuana. The Marijuana Medical Access Regulations (MMAR) came into effect on July 30, 2001. Canada became the first country in the world to adopt a system regulating the medicinal use of marijuana. This change was a result of the ruling in the *R. v. Parker* case discussed below. Legal users of marijuana must carry an **Authorization to Possess (ATP)** card. This allows them to have marijuana for medical purposes. As of December 2007, 2329 Canadians held ATPs.



### Case

#### **R. v. Parker**, 2000 CanLII 5762 (ON C.A.)

For more information, Go to Nelson Social Studies

Terrance Parker had suffered from epileptic seizures for almost 40 years. Surgery failed to control them. Conventional medicine was only moderately successful. Smoking marijuana, however, reduced the number of seizures substantially. He had no legal source of marijuana, so he grew his own. Police raided and searched his home twice in 1996 and 1997. He was charged with cultivating and possessing marijuana. His defence was that the legislation infringed on his guaranteed Charter rights. Section 7 of the *Charter of Rights and Freedoms* guarantees life, liberty, and security. The trial judge wanted to protect Parker and others like him who need medical marijuana. The judge suggested an exemption for persons possessing or cultivating marijuana for their “personal medically

approved use.” The Crown appealed the decision.

The Ontario Court of Appeal agreed with the trial judge. Parker should have the right to grow marijuana for medicinal use. However, the appeal court objected to the trial judge’s attempt to amend the law himself. That would change the meaning of the law. On July 31, 2000, the Ontario Court of Appeal unanimously (3–0) declared Canada’s marijuana laws unconstitutional. This was because it did not allow for the medical use of marijuana. The judges gave the federal government one year to change the law. After that, marijuana possession laws would be removed from the *Criminal Code* entirely. In July 2001, the law was changed to allow access to marijuana for medical purposes.

*continues...*



## Case (continued)

### R. v. Parker, 2000 CanLII 5762 (ON C.A.)



Medical marijuana users Terrance Parker (right) and Mary-Lynne Chamney smoke marijuana. They both suffer from epilepsy. On September 19, 2002, a group of seriously ill people crowded the Ontario courthouse in Toronto. They were there to fight for the right to use medical marijuana. In their opinion, failure to do so violated their Charter rights. Do you agree? Explain.

#### For Discussion

1. What does section 7 of the Charter guarantee?
2. The court declared the prohibition on the possession of marijuana for medical purposes to be "unconstitutional." What does that mean?
3. The Ontario Court of Appeal ruled that Parker needed marijuana to control his epilepsy. Forcing him "to choose between his health and imprisonment violates his right to liberty and security of the person." Do you agree? Explain.
4. Should marijuana continue to be criminalized? Do you think it should be decriminalized or even legalized? Discuss.

#### Review Your Understanding

1. What is the name of the statute relating to the use of drugs in Canada?
2. What is the definition of a drug? What is the criminal classification of drugs based on?
3. Describe two situations in which someone may be charged with possession while not physically possessing the drug.
4. Is intent necessary for possession? Explain.
5. What changes were made to the *Controlled Drugs and Substances Act* in 2001 in response to the ruling in *R. v. Parker*?

## Drug Trafficking

According to the *Controlled Drugs and Substances Act*, to traffic is to "sell, administer, give, transfer, transport, send, or deliver the substance." Section 5 of the act states that no person shall traffic in, or possess for the purpose of trafficking, any substance included in Schedules I, II, III, or IV, or any substance believed to be that substance. The various penalties for trafficking are listed in the chart on the next page.

**traffic** to sell, administer, give, transfer, transport, send, or deliver a controlled substance



## Penalties for Trafficking

Schedule and Substance	Offence	Penalty (maximums)
Schedule I Dangerous drugs	<ul style="list-style-type: none"> <li>if tried as an indictable offence</li> </ul>	<ul style="list-style-type: none"> <li>life</li> </ul>
Schedule II Cannabis (marijuana) and its derivatives	<ul style="list-style-type: none"> <li>if tried as an indictable offence</li> <li>if amount trafficked not more than amount specified in Schedule VII (3 kg)</li> </ul>	<ul style="list-style-type: none"> <li>life</li> <li>5 years less a day</li> </ul>
Schedule III Dangerous drugs formerly listed in the Food and Drugs Act	<ul style="list-style-type: none"> <li>if tried as a summary conviction offence</li> <li>if tried as an indictable offence</li> </ul>	<ul style="list-style-type: none"> <li>18 months</li> <li>10 years</li> </ul>
Schedule VIII Controlled drugs with therapeutic use	<ul style="list-style-type: none"> <li>if tried as a summary conviction offence</li> <li>if tried as an indictable offence</li> </ul>	<ul style="list-style-type: none"> <li>1 year</li> <li>3 years</li> </ul>

The maximum penalties for trafficking vary with the type of controlled substance.

Trafficking has a very broad definition. As a result, prosecutors are free to charge individuals with trafficking even when a simple possession charge might be more appropriate. How much assistance must someone give a drug buyer before the law views it as trafficking? The issue is addressed in the *R. v. Greyeyes* case below.



## Case

### *R. v. Greyeyes*, 1997 CanLII 313 (S.C.C.)

For more information, Go to Nelson Social Studies

In August 1994, Ernest Greyeyes sold five joints of marijuana to an undercover RCMP officer, Constable Morgan. The next day, Morgan asked Greyeyes if he knew where he could get some cocaine. Greyeyes took Morgan to an apartment building. Greyeyes talked to the occupants through the closed door and negotiated a deal. The purchase price was \$40 for the cocaine, and the items were exchanged under the door. Morgan drove Greyeyes home and gave him \$10 for helping to obtain the cocaine. Shortly after this incident, Greyeyes was charged with trafficking.

At trial, Greyeyes was acquitted. However, the Saskatchewan Court of Appeal overturned the acquittal. Greyeyes appealed to the Supreme Court of Canada. The issue was whether someone can be found guilty of trafficking by aiding or abetting in the sale of narcotics. The Supreme Court dismissed Greyeyes's appeal. It stated that anyone who acts on behalf of a purchaser of narcotics should be treated as a purchaser and not as a trafficker. But, in this

case, Greyeyes did far more than act as a purchaser. He clearly aided the traffic of narcotics.

## For Discussion

1. Examine the wording of what constitutes the offence of trafficking. Is possession an included element of the offence?
2. What are the elements that are necessary in order to be found guilty of aiding and abetting an offence (see also Chapter 4)?
3. In your opinion, should Greyeyes have been found guilty of possession, possession for the purpose of trafficking, aiding or abetting for the purpose of possession, trafficking, or aiding or abetting in trafficking? Support your opinion.
4. Having police officers pose as drug dealers to catch drug users has been criticized as being unethical. Do you agree or disagree? Why?

Whether someone will be charged with trafficking depends on how much controlled drug is seized. Before 1986, the onus was on the accused to prove his or her innocence. The accused had to prove that he or she did *not* have the controlled drug for the purpose of trafficking. In *R. v. Oakes*, 1986 (see Chapter 2, page 39), the Supreme Court of Canada ruled that this “reverse onus” violated the presumption of innocence contained in section 11(d) of the *Charter of Rights and Freedoms*. Since then, the onus has been on the Crown to prove that the person possessed the controlled drug for the purpose of trafficking. Drug paraphernalia (equipment such as scales or pipes) or large amounts of cash may be used by the Crown as evidence of trafficking.

Police often act as undercover agents in stopping the drug trade. The procedures they use to obtain evidence may open the door to an offender’s appeal. Police officers posing as drug dealers in order to entrap drug offenders is an example. These practices seem to undermine the integrity of the justice system by giving the police too many powers. Several court rulings have sent a message to police that they may not entrap people. Nor may they use physical violence to obtain evidence. Police also may not undertake “random virtue testing.” This is when a police officer encourages someone to commit an offence, even if there is no reasonable suspicion that the person is already engaged in the particular criminal activity. For example, asking someone to traffic drugs when they have never engaged in such an act could be considered random virtue testing.

## Police Rights of Search and Seizure under the Act

The *Controlled Drugs and Substances Act* grants police the right to search for controlled substances and drugs. Other rights that are incidental to the search, such as arrest, are granted by the *Criminal Code*. Search and arrest are discussed in more detail in Chapter 5.

Section 11 of the *Controlled Drugs and Substances Act* states that a search warrant can be issued by a justice if police believe that evidence of a drug offence can be located. An officer may act without a warrant if the situation is urgent and it is impractical to obtain one. For example, an officer would be compelled to force a search if the suspect is obviously flushing evidence down the toilet. The act provides that the officer can use as much force as is necessary in these circumstances to enter the premises.



In 2004, York Region Police seized hundreds of bags of Ecstasy powder, estimated to be worth at least \$100 million.



Police officers used a drug search warrant to seize these marijuana plants in Peterborough, Ontario.

## ? Did You Know?

As of July 1, 2008, police officers in Canada are able to demand roadside testing for drivers suspected of being under the influence of drugs. The tests will look for impairment by illicit, over-the-counter, or prescription drugs. If police officers conclude that a driver has failed a roadside test, they can have the driver go to a police station. A Drug Recognition Expert (DRE) will make an evaluation based on interviews and observation. The DRE may also demand urine, blood, or saliva samples in order to confirm the impairment.

Upon entry, the officer can search anyone if there are reasonable grounds to believe that the person possesses a controlled substance. For example, the smell of marijuana smoke or a tip that drugs are being concealed are reasonable grounds for the search. The officer may seize any controlled substances and any items believed to contain them. Objects that may have been used in committing the offence may also be seized. These may include equipment used in the manufacturing of drugs, such as scales.

The *Controlled Drugs and Substances Act* does not give police the power to stop and search a person for drugs in a public place. The *Criminal Code* does authorize this type of search, but there must be reasonable grounds for believing that the person is in possession of a drug. The police are required to establish reasonable grounds before they proceed with the search. Reasonable grounds can include police surveillance, visual or physical signs of drug consumption, or a reliable informant.

## Review Your Understanding

1. How does the *Controlled Drugs and Substances Act* define trafficking?
2. What two points must the Crown prove to obtain a conviction for trafficking?
3. Who can be charged with the offence of importing and exporting narcotics?
4. Who has the onus in a trial to prove that an accused person possessed a controlled drug for the purpose of trafficking? What evidence can prove this?
5. Describe a situation in which a warrantless search for drugs would be legal. Explain why.

## Impaired Driving Charges, 2002–2006

Year	Number of Charges	Rate per 100 000 People
2002	80 045	255
2003	77 645	245
2004	80 339	251
2005	78 370	243
2006	74 331	228

The impaired driving rate has been dropping since 2004. Can you think of reasons why this might be the case?

## 7.6 Driving Offences

Motor vehicle accidents are far too common in Canada. Many can be prevented. To try and make the roads safer, the *Criminal Code* deals with a number of offences related to driving. Impaired driving is a concern for most Canadians. Those who drink and drive are penalized by law and criticized by society. The federal government has increased *Criminal Code* penalties for impaired driving. Despite the increase, 74 331 impaired driving charges were laid in 2006 in Canada. That was down 6 percent from 2005 and down 30 percent from 1996. The provinces and territories regulate highways, the licensing of drivers, and alcohol sales. They have introduced measures to deter impaired driving. These include keeping offenders away from motor vehicles by suspending licences and other restrictions.

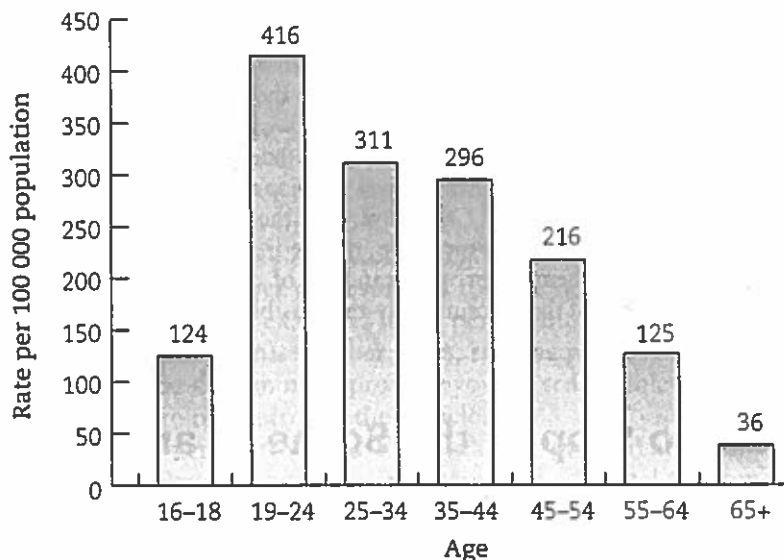


In February 2008, new legislation was passed called the *Tackling Violent Crime Act*. It took effect and became law on May 1, 2008. The act provides the police with better tools to detect and investigate impaired driving in the following ways:

- It authorizes police officers to conduct roadside sobriety tests to see whether a person is impaired by alcohol, drugs, or a combination of both. They may do this by taking samples of bodily fluids to confirm the presence of the impairing substances.
- It makes it an offence to refuse to co-operate with police demands for physical sobriety tests or bodily fluid samples.
- It allows only scientifically valid defences against impaired driving. This reduces the number of individuals who can avoid conviction on technicalities.

The act also increases the penalties for impaired driving. For example, a minimum sentence of 120 days in jail is now in place for a third impaired driving offence.

**Impaired Driving by Age**



### You and the Law

In November 2008, Ontario introduced new controversial legislation to crack down on dangerous driving among young drivers. The new law included a ban on more than one teenage passenger in a vehicle driven by a young person. Over 150 000 teens organized themselves through Facebook to cause the government to back down. As a result, the government revoked this part of the new law. Do you believe that the criticism had merit? What other laws affecting young people would you consider protesting through a Facebook website?

Impaired driving rates are highest among young drivers.

## Definition of a Motor Vehicle

The *Criminal Code* defines a motor vehicle as any vehicle that is moved “by any means other than by muscular power.” In other words, bicycles and skateboards do not qualify. Obviously, automobiles, trucks, motorcycles and scooters are motor vehicles. Others include boats and aircraft. In addition, snowmobiles and all-terrain vehicles (ATVs) are classified as motor vehicles.

**motor vehicle** a vehicle that moves other than by muscular power, not including railway equipment



## Dangerous Operation of a Motor Vehicle


It is an offence to operate a motor vehicle in a way that is dangerous to the public in any public place. A “public place” includes parking lots at shopping plazas and schools. This includes private roads regularly used by the public, such as a private road in a townhouse complex that is shared only by the individuals living there. However, most private property is exempt.

To convict someone of dangerous operation of a motor vehicle, the Crown must establish fault. The standard used is the care that a responsible driver would have exercised. All factors are considered. These include the nature, condition, and use of the public place where the offence occurred. In addition, the amount of traffic at the time and place is important. There does not have to be any “public” present at the time of the offence—only the possibility that someone could have been present. For example, driving at excessive speeds on a road in the middle of the night when there are no other vehicles out can still be considered “dangerous operation of a motor vehicle.”



### You Be the Judge

#### **R. v. MacGillivray**, 1995 CanLII 139 (S.C.C.)

For more information, [Go to Nelson Social Studies](#) 

On a warm, clear summer day, the beach at Cribbons Point in Nova Scotia was crowded with swimmers and boaters. One of the boaters was Daniel MacGillivray. His boat sped across the water toward a group of boys, who waved their arms and shouted to alert MacGillivray to the dangerous situation. The boat was up at such an angle that MacGillivray did not see the boys. The boat's propeller struck and killed one of them. MacGillivray was charged under section 249(4) of the

*Criminal Code* with operating a vessel in a manner that was dangerous to the public and causing the death of the victim. Some witnesses testified that the boat was speeding, and the trial judge found that no one was leaning over the side to look out for dangers.

- If you were the judge in this case, what would you have decided? Was MacGillivray using the proper standard of care in this case? Should he be criminally responsible for the boy's death?

## Failure to Stop at the Scene of an Accident

If you are involved in an accident, you must stop at the scene. The law requires you to give your name and address to the other party. If the other party has been injured or appears to require assistance, you must offer to help. This area of law is dealt with under section 252 of the *Criminal Code*.

Call 911 if anyone is injured or there is more than \$1000 damage to the vehicles. Also, you must report if you suspect that any of the other drivers involved is guilty of a *Criminal Code* offence (such as driving under the influence of drugs or alcohol). Follow the instructions given to you by the 911 emergency operator. Police will arrive as soon as possible.

If no one is injured and total damage to all the vehicles involved appears to be less than \$1000, call your local police for instructions. Police units may be dispatched to the scene. More likely, you may be instructed to report to a collision reporting centre within 24 hours.

The penalty for failure to stop was increased in 1999 because legislators were concerned that impaired drivers were leaving accident scenes to avoid being charged. Occasionally, there are good reasons for leaving the scene of an accident, such as getting help. However, there is no justification if the accused knows an accident has occurred, panics, and leaves. The punishment for failure to stop at the scene of an accident is up to five years in prison. If someone is injured, the maximum sentence is 10 years. If death results, the maximum sentence can be life imprisonment.

## Impaired Driving

Impaired driving has become the main criminal cause of death in Canada. Yet offenders have often received sentences that seem trivial compared with the consequences of their actions. Canadians have urged legislators to increase penalties for this offence as a deterrent. Section 253 of the *Criminal Code* describes the offence of impaired driving. Section 255 of the Code outlines punishments for impaired driving charges.

It is not necessary for the vehicle to be in motion, or even running, for a person to be charged with impaired driving. *Mens rea* exists when there is intent to assume the care or control of the vehicle while impaired. In addition, *mens rea* exists when the blood-alcohol level is over 80. *Actus reus* is the action of assuming care or control. Sitting in the driver's seat implies care or control, unless the driver can establish that he or she did not intend to set the car in motion (for example, if the person did not have the car keys or the car did not function). In other cases, such as when the driver is lying down in the car, the Crown must prove beyond a reasonable doubt that the accused was in care or control of the vehicle.

In 1969, Parliament introduced Canada's first-ever Breathalyzer law. It was modelled on British legislation. This law made it illegal for someone to operate a motor vehicle with a blood-alcohol concentration (BAC) of more than 80 milligrams of alcohol in 100 millilitres of blood. This is known as a 0.08 reading. The new law also gave police officers the right to demand roadside breath samples and made it an offence to refuse one. In December 1985, the *Criminal Code* was amended to provide for stiffer penalties for impaired drivers. It allowed a blood sample to be taken where a breath sample could not be obtained.

The term "impaired" is not defined in the *Criminal Code*. The court need not factor in a blood-alcohol concentration that would establish the person as impaired. Rather, it is up to the court to determine, on the evidence presented, whether the ability to drive was impaired. It also does not matter how the accused was driving. What is important is establishing that the driver's ability



Failing to stop at the scene of an accident is an offence in the *Criminal Code*. If someone has been injured, you are required to offer assistance.

blood-alcohol concentration (BAC)  
a measure of concentration of alcohol  
in a person's blood

### ? Did You Know?

In 2005, about 380 668 people were injured in motor vehicle crashes. According to MADD Canada, about 71 413 of these were involved in impaired driving crashes. That is an average of about 196 per day.



Touching fingers to nose or walking in a straight line are two ways that police test drivers for sobriety.

to operate a vehicle is impaired. In other words, you do not have to fail a Breathalyzer test to be charged with impaired driving. A police officer can decide to charge you based on a number of tests (for example, smell, slurred speech, sobriety test, and so on). Taking a Breathalyzer test may certainly support the other evidence, but it is not essential.

An officer may also require a driver to perform a sobriety test, such as walking in a straight line. In such cases, the driver is being detained. Courts have ruled that the demand to perform such tests is valid, as long as the evidence of failing the test is used only to decide whether the person should be asked to submit a breath sample.

The issue of whether a vehicle was in the “care or control” of the accused has been central to many cases. A person standing beside his vehicle after having called a tow truck has been ruled to be in care or control, as has a person who sat in her car for 15 minutes after stopping. The following case also focused on the issue of care and control.



## Case

### R. v. Decker, 2002 NFCA 9 (CanLII)

For more information, [Go to Nelson Social Studies](#)

On Friday nights, Barry Decker would drive to St. John's, Newfoundland. There, he parked his truck near his friend's home and went partying downtown. He used taxis during the evening. Decker usually stayed at his friend's house overnight and drove home on Saturday morning. A little after 3:30 a.m.

on November 20, 1999, Decker returned by taxi to the friend's house but could not get in.

After unsuccessfully trying to locate his friends by cellphone, he decided to sleep in the truck. He lay down and went to sleep, knowing that the engine would shut off in a few minutes as pre-programmed by the remote starter. A few moments later, a police officer found Decker. He had his attention drawn to the vehicle by the fact that the lights were on. Later at the police station, breath samples were taken, and Decker

had two readings of 160 milligrams of alcohol per 100 millilitres of blood, double the legal limit. Decker was charged with having care or control of a motor vehicle and operating a vehicle while impaired.

Decker was acquitted. The court found that he did not occupy the driver's seat for the purpose of setting the vehicle in motion. The Crown appealed, but the Supreme Court of Newfoundland (in a 2-1 decision) dismissed the appeal. The courts were satisfied that Decker had no intention of driving based on the long-standing pattern of his behaviour as well as his efforts on the evening in question to find a place to stay.

### For Discussion

1. Define “care or control” of a vehicle according to the law. Do you agree with how it was applied in this case?
2. Why did the courts conclude that Decker did not have care or control in this case?
3. Make the argument on behalf of the Crown, arguing that Decker did, in fact, have care or control.
4. Should being in the driver's seat while impaired be enough for a conviction? Explain.



Being behind the wheel of a vehicle while intoxicated may be enough to establish care or control of the vehicle, even if you are not actually driving and have no intention of driving.

## Spot Checks

Some people question the right of the police to stop drivers when they have no reasonable grounds to suspect that an offence has been committed. However, the courts have recognized that the government wants to reduce the problem of drinking and driving. Therefore, the courts have ruled that spot checks are a reasonable limit prescribed by the law.

When stopped in a roadside spot check, a driver may be asked by the police to undergo a roadside screening test. The officer will demand that the driver breathe into an approved testing device. The demand may be made only if the officer has reasonable grounds to suspect that the driver has been drinking. It is an offence to refuse the demand. Approved roadside screening devices are described in section 254(1) of the *Criminal Code*. Failing the screening test does not mean one is automatically charged with an offence. The results can be used only to show that the officer had grounds to demand a breath sample. The screening test only provides the police officer with the reasonable grounds to take someone to the police station for a formal Breathalyzer test.

If the roadside test indicates that a breath sample is required, the officer will take the driver to the police station for more breath tests. Because the driver is required to accompany the officer, that person is being detained, and arrest or release should soon follow.



**roadside screening test** a test given by police to check for impaired driving

### ? Did You Know?

Sometimes a person cannot give a breath sample (because he or she is unconscious or injured). In these cases, the officer may demand a blood sample. It is taken by a qualified medical practitioner such as a doctor or registered nurse. Two blood samples are taken, and one is available to the accused for independent testing. A warrant must be obtained if the accused refuses to give a blood sample.

Peterborough County OPP takes part in the Reduce Impaired Driving Everywhere (RIDE) program. RIDE is a roadside spot check program that pulls drivers over at random to test for sobriety. It began in 1977 as Reduce Impaired Driving in Etobicoke (a suburb of Toronto) and quickly spread across the province of Ontario. There are similar programs across Canada.



## Increase to Impaired Driving Penalties since February 2008

	Prior to February 2008	Since February 2008
Fine for first-time offence	\$600	\$1000
Minimum imprisonment term for a second offence	14 days	30 days
Minimum imprisonment term for a third or more offence	90 days	120 days
Maximum imprisonment term if tried as a summary conviction offence	6 months	18 months

In February 2008, section 255 of the Criminal Code was amended. The penalties for impaired driving were increased. The punishments also apply to cases where the accused fails an alcohol or drug test or refuses to take such tests when ordered to by the police.



Everyone knows that drinking and driving are illegal and dangerous.

## Impaired Driving: Provincial and Territorial

The provinces and territories have the right to regulate motor vehicles. That is why they are trying to keep drunk drivers off the road. Certain laws allow vehicles to be stopped at random. When a police officer stops someone this way, the officer may see or smell alcohol or drugs. He or she may also discover evidence during a safety check. This may lead to further investigation. However, the officer must have grounds for searching the automobile. He or she cannot undertake a search simply on a hunch that the driver is hiding illegal drugs.

The provinces and territories may also suspend the licences of persons convicted under the *Criminal Code*. Therefore, a person may be subject to a fine or imprisonment. His or her driver's licence may also be suspended. The provinces and territories are permitted to suspend a driver's licence for a short period of time (12 to 24 hours) if the driver has consumed even small amounts of alcohol. In Ontario, a driver's licence can be taken away for 12 hours if an approved screening device shows a blood-alcohol level of over 50. Removal of a driver's licence in British Columbia can occur if the reading is over 30. Anyone who drives during this period can, of course, be charged with the additional offence of driving without a licence.

### Impaired Driving Licence Suspensions, Ontario

Offence	Penalty
First conviction	One-year suspension of driver's licence
Second conviction	Three-year suspension
Third offence	Lifetime suspension

Provinces and territories have the right to suspend a person's driver's licence if convicted of impaired driving.

Under provincial or territorial law, the offender may have to install an “anti-lock” device on the vehicle. The driver must blow into a mouthpiece located on the dashboard. If the reading is over a set limit, the car will not start. Some provinces require impaired drivers to complete an alcohol education and treatment program before their licence can be reinstated. All provinces have similar restrictions requiring that all new drivers must maintain a zero blood-alcohol concentration (BAC) while driving.

In 2008, the Ontario government passed a new law that allows the civil courts to impound and confiscate a vehicle for the following reasons:

- The vehicle was involved in a drinking and driving offence.
- The vehicle is owned or driven by a person whose licence has been suspended for impaired driving two or more times in the preceding 10 years.

### The Cost of Impaired Driving in Ontario

Item	Cost
Legal costs (estimated range)	\$2000–\$10 000
Criminal Code fine	\$1000
Back On Track program	\$475
Administrative fee for licence reinstatement	\$150
Increased insurance (\$4500 extra per year for three years)	\$13 500 (estimate)
Ignition locking device	\$1300
Total minimum cost* (plus applicable taxes on some items)	\$18 425

\* Other potential costs include property damage, loss of employment income, and uninsured medical costs. Actual costs may be higher.



### You and the Law

Young drivers are considered high risk by car insurance companies because of their age and the fact that they are new and inexperienced drivers. As a result, they pay higher insurance rates. Do you feel that this is fair? Should all drivers pay the same insurance rates? Explain.

The cost of being convicted of impaired driving can be very high.

### Review Your Understanding

1. What must a driver do at the scene of an accident in which he or she is involved?
2. What does “care or control” mean regarding a motor vehicle?
3. What procedures must the police follow when administering a roadside test?
4. When can blood samples be taken as evidence of impaired driving?
5. Summarize the provincial and territorial laws that are aimed at reducing drinking and driving.

## Do Mandatory Minimum Sentences Work?



Following a violent sexual assault in Banff, Alberta, in August 2008, MP Myron Thompson said he was "disgusted" that a violent attack occurred in his riding. He wants to see longer sentences for violent offenders to prevent such attacks from happening again. "The justice system has to start thinking about the victims. We have to stop putting so much emphasis on the rights of the criminal," Thompson said. Do you agree with his opinion? Explain.

The main purpose of sentencing (as outlined in section 718 of the *Criminal Code*) is to encourage respect for the law and to maintain a just, peaceful, and safe society. Mandatory minimum sentences (MMS) come into play during sentencing. MMS limits the judge's power to reduce sentences. Someone convicted of a crime with an MMS must be punished with a minimum sentence.

In Canada, minimum sentences were first established for firearms offences. That was back in 1977. In 1995, further changes were made to the *Criminal Code*. Today, there are about 40 offences in the *Criminal Code* that carry mandatory minimum sentences. Examples include murder, impaired driving, and various sexual offences involving children.

Some examples of recent changes to mandatory minimum sentences include the following:

- In November 2007, law reforms were introduced to include mandatory jail time for people who produce or sell illegal drugs. Before, there were no minimum sentences for these offences.
- In February 2008, Parliament passed into law tougher mandatory prison sentences for serious gun crimes. The minimum sentence was increased from four years to five years for a first offence. The penalty for second or subsequent offences was increased to seven years.

## On One Side

Recent studies on mandatory minimum sentences demonstrate that they do not seem to prevent crime for the following reasons:

- They prevent judges from using their own judgment on how to sentence individuals. As a result, prosecutors and police often choose not to charge people with offences that would automatically land them in jail.
- They sometimes lower conviction rates. This is because juries do not want to convict accused people who face automatic and perhaps unfair prison terms.
- By and large, many offenders sentenced under MMS are not violent. These people were not the intended targets of this sentencing policy.
- Most of the serious and violent offenders were the intended targets of MMS. These offenders usually receive long prison terms anyway. So, mandatory minimum sentences in these cases are not necessary.

Opponents of MMS feel that it is unfair. This system sets sentences without considering the circumstances of particular offenders.

## On the Other Side

Supporters of mandatory minimum sentences think that this system will help to meet the goals of imprisonment. Those goals include punishing offenders and keeping them from committing more crimes (at least for a period of time). Another goal is to prevent others from committing similar crimes. Also, unfairness in sentencing would be removed because people who had committed the same crime would receive at least the same minimum sentence.

Mandatory minimum sentences may also be a way of dealing with drug-related crimes. Those arrested on such charges would be more likely to co-operate to avoid extremely long prison sentences. This would help the government put gangs and major drug traffickers out of business.

## The Bottom Line

Mandatory minimum sentences in Canada are here to stay. In *R. v. Ferguson*, 2008, the Supreme Court delivered a unanimous landmark ruling. It defended Parliament's right to create mandatory minimum sentences and for judges to carry out these sentences.

## What Do You Think?

1. Why has the government of Canada introduced mandatory minimum sentences for certain crimes?
2. Should judges have the power over sentencing for all offences? Explain.
3. Do MMS comply with section 718 of the *Criminal Code*? Explain.
4. Do other countries use MMS? Conduct research to find out what other countries do.
5. What is your opinion on MMS? What offences should they be used for? For what offences should the judge be free to decide the appropriate sentence? Should they be used in Canada's criminal justice system? Explain.



# Chapter Review

## Chapter Highlights

- Homicide can be either culpable (the person is to blame) or non-culpable (the death was a complete accident and no blame is laid).
- There are three categories for assault and sexual assault charges, depending on the severity of the attack.
- Consent is frequently an issue in a sexual assault trial.
- Arson is the intentional causing of damage by fire.
- Identity theft crimes are on the rise and harm thousands of victims each year.
- Making false statements to obtain credit is considered fraud.
- Weapons are classified as non-restricted, restricted, and prohibited.
- Prostitution is legal, but soliciting for the purpose of prostitution is illegal.
- The courts use the community standards test when determining obscenity.
- The laws concerning use of drugs are found in the *Controlled Drugs and Substances Act*.
- In particular circumstances, individuals can legally use marijuana for medicinal purposes.
- Impaired driving is the main criminal cause of death in Canada.

## Check Your Knowledge

1. What are some examples of crimes of violence?
2. Identify the actions that are considered property crimes. Provide examples.
3. Provide examples of laws in the *Criminal Code* that are specifically designed to protect children.
4. Distinguish among the various drug-related offences and provide examples for each.
5. Summarize the main *Criminal Code* offences associated with a motor vehicle.

## Apply Your Learning

6. For each of the following incidents, indicate the offence that will be charged, the elements that must be proven for a successful conviction, and the maximum penalty.
  - a) The accused killed her child shortly after childbirth.
  - b) The accused threatened someone using an imitation weapon.
  - c) The accused robbed a bank using a gun.
  - d) The accused entered a home and stole a television.
  - e) The accused set fire to his friend's car.
  - f) The accused pushed his friend down the stairs. The friend died.
  - g) The accused was speeding down the street with another car, and a pedestrian was killed when the cars lost control.
  - h) The accused was observed by undercover police communicating in a public place for the purpose of buying sexual services.
  - i) The accused is stalking someone.
  - j) The accused is selling marijuana to students in a park near a school.
  - k) The accused is pulled over by police and is asked to undergo a roadside screening test. He refuses.
7. Review the current Canadian *Criminal Code*, and research an area not discussed in this chapter. Provide a report that includes the following:
  - section of the *Criminal Code*
  - area of law that the section deals with
  - what the Crown must prove in order to prosecute the offence
  - the maximum penalty for the offence

## Communicate Your Understanding

8. Assume that the next session of Parliament is going to be debating the *Criminal Code* in relation to the following topics:

- censorship
- euthanasia
- legalized gambling
- decriminalization of marijuana
- cruelty to animals

Select one topic to research. Write a letter to your local Member of Parliament outlining your opinion on the topic and showing how to properly balance the interests of individuals and society. Provide examples from the news and how other countries address these issues.

9. Investigate current issues in criminal law by selecting three news articles from print or online sources that deal with criminal law matters. For each article, complete the following:
- a) Briefly summarize the article.
  - b) Outline at least two main criminal issues discussed.
  - c) Where possible, identify the opinion of the author.
  - d) Express your opinion on this criminal matter. Justify your view by providing examples to support it.
10. Research a lobby group in Canada whose main focus is to influence areas of criminal law. Identify the lobby group, summarize its mission statement and what the group is lobbying for, and identify any progress it has made in influencing legislation.

## Develop Your Thinking

11. How have changes in the attitudes and values of society brought about changes in criminal law? Support your answer by providing examples of recent changes to criminal law in Canada.
12. The *Criminal Code* specifies a number of offences that are often referred to as “crimes without victims.” They include communicating for the purpose of prostitution, obscenity, and keeping a bawdyhouse (brothel). Should the police control such activities, or should people be allowed to decide for themselves whether or not to engage in them? Explain. Explain how there can be victims to these offences.
13. “What people fear most is not the fine but the loss of their vehicle.” Express your opinion on this statement about drinking and driving. Support your view by researching current laws that may result in the loss of a vehicle for drinking and driving convictions.
14. A proposal by the Vancouver Police Department would require convicted drunk drivers to display the letter “D” on their car window. In Ohio, judges are permitted to issue a special licence plate to convicted drunk drivers who need their cars for work. Police then know that the car is only to be used for that purpose. In your opinion, should sentencing of impaired drivers include identifying them to the general public? Why or why not?
15. Examine your own community, and identify some of the most pressing criminal issues that exist. Comment on the initiatives that have been taken to address them. Provide some of your own ideas as to why these crimes are common in your community and what can be done to deal with them.