

# The Criminal Code

## Organization

### Introduction

The *Criminal Code* is a federal statute that describes the elements of criminal offences in Canada. The Code also provides the procedure for processing criminal cases.

The building blocks of the Code are its sections and parts. The Code consists of sections 1 to 849 and groups the sections together by topic. These groups are referred to as parts, and the Code consists of 28 parts. Part XXVIII / Miscellaneous, which is the last part, lists all of the forms applicable to the Code: Forms 1 to 54.

### Numbering System

Generally, Roman numerals indicate parts. For example, Part III is Firearms and Other Weapons.

Some parts have a Roman numeral followed by a decimal point and a standard number. For example, Part XII.2 is Proceeds of Crime. This form of numbering indicates that there was a legislative amendment, which means that Parliament passed a law that changed the Code. The legislature inserted Part XII.2 into the existing Code. (For further information on amendments and their effects on numbering, see Chapter 7 of this study guide.)

Standard numbers indicate sections—for example, section 16. An amendment may add, remove, or revise a section. When an amendment creates a new section that relates to the subject matter of an existing section, the new section has the same number as the existing section plus a decimal point and an added number. The same process applies to subsections, paragraphs, subparagraphs, and clauses.

### Example 3.1

Review section 434 and section 434.1 (reproduced below) of the Code, which was added by Parliament after section 434. Section 434.1 refers specifically to “causes damage by fire or explosion to property.”

First, section 434 provides the elements of the offence of arson where the person who committed arson does not own the damaged property. Second, section 434.1 further specifies the offence of arson where the person who committed arson owns the damaged property.



**EXAMPLE 3.1**  
**THE FIRST OF**  
**TWO RELATED**  
**SECTIONS**

**S. 434** MARTIN'S CRIMINAL CODE, 2020

**ARSON / Damage to property.**

**434. Every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years. R.S., c. C-34, s. 390; 1990, c. 15, s. 1.**

**CROSS-REFERENCES**

The term "property" is defined in s. 428. The term "recklessly" is not defined but reference might be made to *R. v. Sansregret*, [1985] 1 S.C.R. 570, 18 C.C.C. (3d) 223, where recklessness was defined as being found "in the attitude of one who, aware that there is danger that his conduct could bring about the result prohibited by the criminal law, nevertheless persists, despite the risk. It is, in other words, the conduct of one who sees the risk and who takes the chance." The defence of legal justification or excuse and colour of right is set out in s. 429(2).

This offence may be the basis for a conviction for constructive murder under s. 230.

Section 17 limits the availability of the statutory defence of compulsion by threats to the offence of "arson".

The accused may elect his mode of trial under s. 536(2). Release pending trial is determined under s. 515.

Related offences: s. 81, using explosives; s. 433, intentionally or recklessly causing damage by fire or explosion to property where bodily harm is caused or where person knows property is occupied; s. 434.1, intentionally or recklessly causing damage by fire or explosion to property wholly owned by accused; s. 435, causing damage by fire or explosion with intent to defraud; s. 436, causing fire or explosion through negligence; s. 436.1, possession of incendiary material.

**SYNOPSIS**

The section creates the offence of willfully or recklessly causing damage by fire or explosion to property that the accused does not wholly own. This is an indictable offence carrying a maximum sentence of 14 years.

**ANNOTATIONS**

This is a general intent offence for which intoxication falling short of automatism is not available as a defence. The *actus reus* is the damaging of property by fire. The mental element is the intentional or reckless performance of the illegal act. No additional knowledge or purpose is needed. In assessing the issue of intent, the trier of fact must consider all of the surrounding circumstances. The manner in which the fire started is likely to be an important consideration. Ultimately, the question is whether it can be inferred that the accused intended to damage someone else's property or was reckless whether damage ensued or not: *R. v. Tatton*, [2015] 2 S.C.R. 574, 323 C.C.C. (3d) 166.

The term "damage" does not require proof that the property was diminished in value by the fire. Damage may include physical harm to the property: *R. v. V. (M.)* (1998), 123 C.C.C. (3d) 138 (Ont. C.A.).

Recklessness requires proof that the accused actually knew that damage by fire to the property specified was the probable consequence of the proposed action and the accused proceeded with the conduct in the face of the risk. In this case, proof of intentional burning of a bag of chips, without knowledge of the probable consequence that the building would burn, was insufficient to establish the requisite *mens rea*: *R. v. D. (S.D.)* (2002), 164 C.C.C. (3d) 1 (Nfld. & Lab. C.A.).

**ARSON / Own property.**

**434.1 Every person who intentionally or recklessly causes damage by fire or explosion to property that is owned, in whole or in part, by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years, where the**



**EXAMPLE 3.1**  
**A LATER**  
**PROVISION**  
**RELATED TO**  
**SECTION 434**

**fire or explosion seriously threatens the health, safety or property of another person. 1990, c. 15, s. 1.**

#### CROSS-REFERENCES

The term "property" is defined in s. 428. The term "recklessly" is not defined but reference might be made to *R. v. Sansregret*, [1985] 1 S.C.R. 570, 18 C.C.C. (3d) 223, where recklessness was defined as being found "in the attitude of one who, aware that there is danger that his conduct could bring about the result prohibited by the criminal law, nevertheless persists, despite the risk. It is, in other words, the conduct of one who sees the risk and who takes the chance." The defence of legal justification or excuse and colour of right is set out in s. 429(2).

Section 17 limits the availability of the statutory defence of compulsion by threats to the offence of "arson".

The accused may elect his mode of trial under s. 536(2). Release pending trial is determined under s. 515.

Related offences: s. 81, using explosives; s. 433, intentionally or recklessly causing damage by fire or explosion to property where bodily harm is caused or where person knows property is occupied; s. 434, intentionally or recklessly causing damage by fire or explosion to property not wholly owned by accused; s. 435, causing damage by fire or explosion with intent to defraud; s. 436, causing fire or explosion through negligence; s. 436.1, possession of incendiary material.

#### SYNOPSIS

The section creates the offence of willfully or recklessly causing damage by fire or explosion to property owned, in whole or in part, by the accused, where the fire or explosion *seriously threatens* the health, safety or property of *another person*. This is an indictable offence carrying a maximum sentence of 14 years.

#### ANNOTATIONS

The Crown is not required to prove that the accused knew that the fire threatened the health, safety, or property of others: *R. v. Bastien* (2017), 349 C.C.C. (3d) 149 (B.C.C.A.).

#### **ARSON FOR FRAUDULENT PURPOSE / Holder or beneficiary of fire insurance policy.**

**435. (1) Every person who, with intent to defraud any other person, causes damage by fire or explosion to property, whether or not that person owns, in whole or in part, the property, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.**

**(2) Where a person is charged with an offence under subsection (1), the fact that the person was the holder of or was named as a beneficiary under a policy of fire insurance relating to the property in respect of which the offence is alleged to have been committed is a fact from which intent to defraud may be inferred by the court. R.S., c. C-34, s. 391; 1990, c. 15, s. 1.**

#### CROSS-REFERENCES

The term "property" is defined in s. 428. Section 17 limits the availability of the statutory defence of compulsion by threats to the offence of "arson". The accused may elect his mode of trial under s. 536(2). Release pending trial is determined under s. 515.

Related offences: s. 81, using explosives; s. 433, intentionally or recklessly causing damage by fire or explosion to property where bodily harm is caused or where person knows property is occupied; s. 434, intentionally or recklessly causing damage by fire or explosion to property not wholly owned by accused; s. 434.1, intentionally or recklessly causing damage by fire or explosion to property wholly owned by accused; s. 436, causing fire or explosion through negligence; s. 436.1, possession of incendiary material.

The Code numbers forms in a similar way to numbering sections. For example, Form 5.1 indicates an amendment to Form 5.

*Martin's Annual Criminal Code* provides assistance to find a particular section. At the top of each page, you will find a section number, although it does not indicate all section numbers on that page. You will find the first section printed on the left-hand page. You will find the last section printed on the right-hand page. Similarly, following section 849 of the Code, you will find form numbers at the top of the page.

## Parts, Topic Categories, and Sections

Generally, Part II through Part XIII describes the offences in the Code. Part XIV through Part XXVIII addresses criminal procedure, including Part XVI / Compelling Appearance of Accused Before a Justice and Interim Release and Part XXVII / Summary Convictions.

Each part of the Code groups the sections together according to their common characteristics. Within each part, headings identify topic categories. In the Table of Contents, each part lists headings in order of appearance.

### Example 3.2

How do you find an offence if you do not know the section number? You can use either the Index or the Table of Contents to find it.

Review Part IX / Offences Against Rights of Property in the Table of Contents (reproduced below). The Table of Contents lists the types of offences in Part IX, which are also the topic categories under Part IX. Furthermore, the Table of Contents indicates the first page of a topic category.

### Example 3.3

Part VIII / Offences Against the Person and Reputation includes the criminal offences that cause injury, death, or physical or psychological trauma to a person. The chart below lists some headings, topic categories, and sections in Part VIII.

## Definitions

The Code starts with section 1, Short Title. Next, there are six sections grouped under the heading Interpretation. The sections are section 2, Definitions; 2.1, Further Definitions; 2.2, Acting on Victim's Behalf; 2.3, Concurrent Jurisdiction; 3, Descriptive Cross-References; and 3.1, Effect of Judicial Acts.

Section 2 provides the definitions that apply to the entire Code. The first words of section 2 are "In this Act." Therefore, every word or phrase defined in section 2 has that same meaning throughout the Code.

In contrast, definitions found elsewhere in the Code apply only to a particular part or section.

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**EXAMPLE 3.2**  
**TOPIC**  
**CATEGORIES**  
**INDICATE PAGE**  
**NUMBERS**  
**RELATED TO**  
**TYPES OF CODE**  
**OFFENCES**

## PART VIII / OFFENCES AGAINST THE PERSON AND REPUTATION

### MURDER, MANSLAUGHTER AND INFANTICIDE

Murder, section 229  
Murder Reduced to Manslaughter, section 232  
Punishment for Murder, section 235

### ASSAULTS

Assault with a Weapon or Causing Bodily Harm, section 267  
Aggravated Assault, section 268  
Disarming a Peace Officer, section 270.1  
Sexual Assault, section 271

### HATE PROPAGANDA

Advocating Genocide, section 318  
Public Incitement of Hatred, section 319



**EXAMPLE 3.3**  
**SOME HEADINGS,**  
**TOPIC CATEGORIES,**  
**AND SECTIONS IN**  
**PART VIII**

## EXERCISES

3.1 What part of the Code addresses sexual offences? (Hint: use the Table of Contents.)

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3.2 What is the section number at the top corner of the first page of the part that includes sexual offences?

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3.3 What is at the bottom corner of the same page?

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### Example 3.4

Section 118 of the Code (reproduced below) is the first section in Part IV / Offences Against the Administration of Law and Justice. The first words of the section are “In this Part,” followed by definitions of several words and phrases. These definitions only apply to Part IV.

The cross-references for section 118 indicate that it is necessary to refer back to section 2 of the Code for the definitions of other words and phrases that are used in Part IV.

Remember that some definitions apply only to the individual part, whereas other definitions apply to the entire Code.

#### S. 117.15 MARTIN'S CRIMINAL CODE, 2020

##### Amnesty period

(3) The amnesty period begins on the day on which this Order is registered and ends on February 28, 2021.

##### Coming into force

3. This Order comes into force on the day on which it is registered. **SOR/2018-46.**

##### REGULATIONS / Restriction/ Non-restricted firearm / Restricted firearm.

**117.15 (1) Subject to subsection (2), the Governor in Council may make regulations prescribing anything that by this Part is to be or may be prescribed.**

**(2) In making regulations, the Governor in Council may not prescribe any thing to be a prohibited firearm, a restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device or prohibited ammunition if, in the opinion of the Governor in Council, the thing to be prescribed is reasonable for use in Canada for hunting or sporting purposes.**

**(3) Despite the definitions "prohibited firearm" and "restricted firearm" in subsection 84(1), a firearm that is prescribed to be a non-restricted firearm is deemed not to be a prohibited firearm or a restricted firearm.**

**(4) Despite the definition "prohibited firearm" in subsection 84(1), a firearm that is prescribed to be a restricted firearm is deemed not to be a prohibited firearm. 1995, c. 39, s. 139; 2015, c. 27, s. 34.**

##### CROSS-REFERENCES

"Prohibited firearm", "restricted firearm", "non-restricted firearm", "prohibited weapon", "restricted weapon", "prohibited device" and "prohibited ammunition" are defined in s. 84(1). Publication of regulations is governed by the *Statutory Instruments Act*, R.S.C. 1985, c. S-22. A much wider regulation power is included in s. 117 of the *Firearms Act*.

##### SYNOPSIS

This section gives the Governor in Council the power to make regulations prescribing anything that may be prescribed under this part, for example, prohibited ammunition, prohibited device, prohibited firearm, prohibited weapon, restricted firearm and restricted weapon. However, subsec. (2) prevents the Governor in Council from prescribing anything as prohibited ammunition, prohibited device, prohibited firearm, prohibited weapon, restricted firearm and restricted weapon if the thing to be prescribed is reasonable for use in Canada for hunting or sporting purposes. Subsections (3) and (4), respectively, entail that, notwithstanding the definitions given in s. 84(1), no firearm prescribed to be a non-restricted firearm can be considered to be a prohibited firearm or a restricted firearm, and that no firearm prescribed to be a restricted firearm can be considered to be a prohibited firearm.

#### Part IV / OFFENCES AGAINST THE ADMINISTRATION OF LAW AND JUSTICE

##### Interpretation

DEFINITIONS / "Evidence" or "statement" / "Government" / "Judicial proceeding" / "Office" / "Official" / "Witness".

##### 118. In this Part

"evidence" or "statement" means an assertion of fact, opinion, belief or knowledge, whether material or not and whether admissible or not;



"government" means

- (a) the Government of Canada,
- (b) the government of a province, or
- (c) Her Majesty in right of Canada or a province;

"judicial proceeding" means a proceeding

- (a) in or under the authority of a court of justice,
- (b) before the Senate or House of Commons or a committee of the Senate or House of Commons, or before a legislative council, legislative assembly or house of assembly or a committee thereof that is authorized by law to administer an oath,
- (c) before a court, judge, justice, provincial court judge or coroner,
- (d) before an arbitrator or umpire, or a person or body of persons authorized by law to make an inquiry and take evidence therein under oath, or
- (e) before a tribunal by which a legal right or legal liability may be established, whether or not the proceeding is invalid for want of jurisdiction or for any other reason;

"office" includes

- (a) an office or appointment under the government,
- (b) a civil or military commission, and
- (c) a position or an employment in a public department;

"official" means a person who

- (a) holds an office, or
- (b) is appointed or elected to discharge a public duty;

"witness" means a person who gives evidence orally under oath or by affidavit in a judicial proceeding, whether or not he is competent to be a witness, and includes a child of tender years who gives evidence but does not give it under oath, because, in the opinion of the person presiding, the child does not understand the nature of an oath. R.S., c. C-34, s. 107; R.S.C. 1985, c. 27 (1st Supp.), s. 15; 2007, c. 13, s. 2.

#### CROSS-REFERENCES

In addition to the definitions set out in this section, applicable to offences created by this Part, reference should also be made to s. 2 and in particular the definitions of "justice", "provincial court judge", "peace officer", "public department", "public officer" and "Attorney General".

#### SYNOPSIS

This contains definitions which apply to this Part of the Code.

#### ANNOTATIONS

"evidence" – This definition, which has appeared in slightly different forms since the 1982 Code, was intended to avoid the difficulty at common law that, to prove perjury, it was necessary to show that the statement was material in the sense that, unless it related to the exact issue which was under consideration then the offence was not made out: *R. v. Drew* (1902), 6 C.C.C. 241 (Que. K.B., App. Side), affd 6 C.C.C. 424, 33 S.C.R. 228.

"judicial proceeding" – While it had been held in several earlier cases, notably *R. v. Kohel* (1926), 46 C.C.C. 279, [1926] 3 W.W.R. 478 (Sask. K.B.); *R. v. Rulofson* (1908), 14 C.C.C. 253 (B.C.S.C.), and *R. v. Allen* (1924), 43 C.C.C. 118, [1925] 1 D.L.R. 57 (Man. K.B.), that a civil examination for discovery is not a judicial proceeding where the official who administered the oath was not present during the examination, the Saskatchewan Court of Appeal has now held to the contrary in *R. v. Foster and Walton-Ball* (1982), 69 C.C.C. (2d) 484, and overruled *R. v. Kohel*. The absence of the official, in this case the deputy local registrar, was held not to invalidate the proceedings.

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### EXAMPLE 3.4 OTHER RELEVANT DEFINITIONS

Section 2 and other sections of the Code may define the same word. Which is the correct definition if there are multiple definitions of the same word?

### Example 3.5

Section 2 and subsection 270.1(2), Definition of Weapon, define the word "weapon." A review of the two definitions reveals that the definition of "weapon" in subsection 270.1(2) is more specific and more restrictive than the section 2 definition.



The broader section 2 definition means

any thing used, designed to be used or intended for use

(a) in causing death or injury to any person, or

(b) for the purpose of threatening or intimidating any person

and, without restricting the generality of the foregoing, includes a firearm and, for the purposes of sections 88, 267 and 272, any thing used, designed to be used or intended for use in binding or tying up a person against their will.

The narrower subsection 270.1(2) definition means “any thing that is designed to be used to cause injury or death to, or to temporarily incapacitate, a person.”

The subsection 270.1(2) definition of “weapon” only applies to section 270.1 and the offence it creates.

## EXERCISES

- 3.4 When working with section 177 of the Code, Trespassing at Night, you will need to understand the meaning of “prowls at night.” What is the definition of “night”? Identify the relevant section of the Code.

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- 3.5 Where and how does the Code define “theft,” “steal,” and “robbery”? (Hint: use the Index.) Identify the relevant sections of the Code.

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- 3.6 When working with section 348 of the Code, Breaking and Entering with Intent, Committing Offence or Breaking Out, you will need to understand the meaning of “break,” “enter,” and “place.” Where are the definitions for these terms? Identify the relevant sections in the Code.

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