

## CHAPTER 9

# Criminal Law

### I. INTRODUCTION

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In this chapter, we will focus on the transcription tasks in the area of criminal law. Many smaller law firms specialize in criminal representation, while large firms may include a criminal department.

In a criminal case, you will be working for **defence attorneys** who are representing clients charged with criminal offences, known as the **accused**; the individual who is wronged is known as the **victim** in a criminal case. The role of defence attorney is to ensure that every person receives a fair trial. Government lawyers called **Crown attorneys** represent the state and prosecute individuals charged with a criminal offence.

The criminal process normally begins when someone brings a complaint to a police department or the police suspect that a law has been broken. If the police have enough **evidence** to support their belief that an offence was committed, they obtain an arrest **warrant** to apprehend the person or persons they suspect committed the offence. Police have the power to detain individuals for probable cause. This is called an **arrest**.

There are two types of offences: **summary conviction offences** and **indictable offences**. Summary offences are less serious than indictable offences and include things such as trespassing and causing a disturbance. Robbery and murder are examples of indictable offences.

Following an arrest and the formal laying of charges, depending on the offence, fingerprints and photographs may be taken of the accused for police records. The accused is either kept in custody until the date set for the **bail hearing** or is released with a **summons** to appear in court. If the accused does not show up for scheduled court dates, the judge will issue a **bench warrant** authorizing the police to locate and arrest the accused.

At the bail hearing, the judge will determine whether the accused can be released. The accused may be released under his or her own word to abide by certain conditions and return for the next hearing. Or, the judge may decide that someone will have to post **bail** and take responsibility that the accused will abide by the conditions set by the judge. Alternatively, the judge may find that the accused must stay in custody until the preliminary hearing.

A date will be set for a preliminary hearing. At the hearing, the charges against the accused are read and the accused makes a **plea of guilty** or not guilty in answer

to them. The accused must have legal representation in order to make a plea. If the accused is unrepresented by a lawyer, duty counsel at the courthouse can represent the accused **pro bono**. Following the hearing, the accused can be discharged, meaning that the accused will no longer face the charges, or will be ordered to face the charges at trial.

If the accused pleads guilty, a sentencing hearing date is set. If the accused pleads not guilty, a court date is set for a trial.

Before the trial can be held, the defence lawyers require the police to provide the details of the charges against the accused and a report indicating the evidence in the arrest of their client. This process is known as **disclosure**. Until it is complete, the defence lawyer will attend each court date and ask for an **adjournment**, whereby the trial is postponed until a later date.

Prior to a trial, the defence team must prepare a range of court documents. They also work with Crown attorneys in **judicial pre-trial conferences** to try to resolve the matter without a trial.

At **trial**, the Crown attorney presents evidence against the accused. It is not up to the accused to prove his or her innocence - he or she is innocent until proven guilty. The victim and **witnesses** also give **testimony**. The Crown will not allow **hearsay**, or testimony based upon indirect knowledge - for example, testimony as to what the witness was told by someone else. **Expert witnesses** hired by either the Crown or the defence may be called to provide credible opinion. All individuals who give testimony are bound to tell the truth.

The accused can opt for either a jury or a judge to make the **verdict**, or ruling. Most summary offences do not appear in front of a jury. For more serious offences, anyone charged with an offence that can result in more than five years imprisonment has a right to choose trial by jury. An **acquittal** is a ruling that the accused is not guilty of the charges, while a **conviction** is a ruling that the accused is guilty.

The sentence or order resulting from a conviction depends on the nature and severity of the crime and the criminal history of the accused. In general, conviction for a summary offence usually results in a fine or an order of **restitution** that requires the individual who is convicted to pay compensation for damage caused or gain made as a result of criminal activity. It may also include up to six months' imprisonment. Conviction for an indictable offence may result in a much heavier fine, **incarceration**, or both. It may also result in a conditional sentence, which is a term of sentence served in the community under supervision.

## A. Glossary Term Definitions

<b>accused</b>	person charged with a criminal offence
<b>acquittal</b>	ruling that the accused is not guilty
<b>adjournment</b>	postponement of a trial until a later date
<b>arrest</b>	detainment of an individual accused of having committed a crime for probable cause

<b>bail</b>	surety (money or property) pledged or deposited with the court for the release of the accused with a guarantee that the accused will appear in court on the date assigned
<b>bail hearing</b>	hearing at which a judge determines whether an accused can be released
<b>bench warrant</b>	order of a judge authorizing the police to locate and arrest an accused for failing to appear in court
<b>conviction</b>	ruling that an accused is guilty
<b>Crown attorney</b>	Crown lawyer who represents the victim
<b>defence attorney</b>	lawyer who represents the accused
<b>disclosure</b>	process required before a trial in which the police provide the defence attorney with a summary of the charges and the evidence against the accused
<b>evidence</b>	facts, which may or may not be in dispute, pertaining to a case
<b>expert witness</b>	witness hired for his or her specific knowledge, skill, or experience in a particular field
<b>guilty</b>	plea in which an accused admits to the charges
<b>hearsay</b>	indirect knowledge of an event, also called third-party knowledge
<b>incarceration</b>	confinement of a person convicted of an offence to a correctional facility to serve a sentence
<b>indictable offence</b>	serious offence that may be punishable by fines over \$5,000 and sentences greater than six months
<b>judicial pre-trial conferences</b>	conferences in which defence and Crown attorneys attempt to resolve a matter to avoid going to trial
<b>plea</b>	an answer of “guilty” or “not guilty” in response to a charge
<b>pro bono</b>	provision of legal services free of charge
<b>restitution</b>	court-ordered payment of compensation for damage caused or gain made as a result of criminal activity by an individual convicted of an offence to the victim
<b>summary conviction offence</b>	less serious offence usually punishable by fine of up to \$5,000 and/or sentence of up to six months
<b>summons</b>	legal document issued by a court ordering an individual to appear before the court and outlining the reasons for the appearance
<b>testimony</b>	formal statements made by witnesses under oath before a court
<b>trial</b>	hearing of a matter before a judge or before a judge and jury
<b>verdict</b>	ruling by a judge or a judge and jury regarding disputed issues in a trial
<b>victim</b>	in a criminal case, the person wronged
<b>warrant</b>	document issued by a judge or other official authorizing the police to make an arrest or perform other acts related to the administration of justice
<b>witness</b>	person who has first-hand knowledge of an alleged crime

## II. TERMINOLOGY EXERCISE

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### A. Fill in the blanks using the terminology found in the introduction:

In the criminal system, if the police know of a criminal act, they may have enough \_\_\_\_\_ to obtain a \_\_\_\_\_ to have the person they believe committed the offence apprehended. If the police place a person under \_\_\_\_\_, they must tell the person why he or she is being detained.

A person may be charged either with an \_\_\_\_\_ offence or a summary conviction offence. The police then decide either to \_\_\_\_\_ the accused with a promise to appear in court or to hold the accused in custody until the \_\_\_\_\_. At this hearing, the judge will either release the accused or have someone post \_\_\_\_\_ and take responsibility for the accused until the preliminary hearing.

An accused must have legal representation for this preliminary hearing. Those who do not can receive it from duty counsel \_\_\_\_\_, which means without cost; at the hearing, the accused enters a \_\_\_\_\_ of \_\_\_\_\_ or not, which determines whether the court will schedule the matter to sentencing or trial. If an accused does not show up for the court date, the judge will issue a \_\_\_\_\_ whereby the accused will be located and put under arrest for breach.

Before the trial can occur, the defence lawyer must have \_\_\_\_\_, which is full access to the police reports. Sometimes this takes weeks to obtain. The defence lawyer will attend each court date and ask for an \_\_\_\_\_, which allows the matter to be set aside until a later date.

At trial, evidence will be presented by the \_\_\_\_\_, who is a lawyer representing the state. \_\_\_\_\_ is provided by the witnesses and the victim. The court will not allow \_\_\_\_\_ evidence to be used, meaning evidence that a witness was told by a third party.

At the end of the trial, a \_\_\_\_\_ is rendered, which is the decision of the judge or jury. The outcome is either an \_\_\_\_\_, which means the accused has been found not guilty and is cleared of the charge or charges, or a \_\_\_\_\_, whereby the accused is found guilty. One penalty for serious offences is \_\_\_\_\_, whereby a person is confined to a correctional facility to serve a sentence.

### III. CITATION EXERCISE

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A. Rewrite each of the following by putting the units in the correct order with the correct punctuation:

1. RSC 1985

*Criminal Code*

c C-46.

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2. SOR/2000-303

*Criminal Records Regulations*

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3. *Criminal Notoriety Act*

c 14

SNS 2006

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4. c C-47

RSC 1985

*Criminal Records Act*

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5. *Criminal Injuries Compensation Regulations*

NS Reg 24/94

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6. *R v Westergard* (2004)

70 OR (3d) 382

(CA)

24 CR (6th) 375

185 OAC 281

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7. 122 CRR (2d) 241

*R v Falkner*

188 (volume)

2004 BCSC 986

(3d)

406 (page)

CCC

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8. *R v Willier*

2007 ABCA 132

404 AR 174

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9. *R v Jackson*

573 (page)

[1993]

4 (volume)

SCR

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10. *R v Nette*

SCR

[2001]

2001 SCC 78

3 (volume)

488 (page)

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B. Rewrite each of the following citations by fixing all errors in format, spacing, and punctuation:

1. Criminal Records Review Act, RSBC 1996, c. 86.
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2. Criminal Notoriety Act Designation Regulation, Alta. Reg. 236/2006
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3. *Criminal Enterprise Suppression Act*, SS 2005, C. C-46.1.
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4. *Criminal Prosecution Expenses Act*, RSNB 2011, c 134.
- 

5. *Youth Criminal Justice Act*, SC 2002, c. 1.
- 

6. *R. v. Leduc* (1994), 76 OAC 73 (CA)
- 

7. *R. v. Arkell* (1988), 43 C.C.C. (3) 402, (1988), 64 C.R. (3d) 340, (1988), 30 B.C.L.R. (2d) 179 (C.A.).
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8. *R. v. Tran* 2004 ABCA 35, 346 A.R. 127
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9. *R. v. Twigge*, [1997] 5 W.W.R. 572, (1996), 148 Sask. R. 254 (C.A.).
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10. *R. v. Ross*, 2003 M.B.C.A. 70, 173 Man. R. (2nd) 284
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## IV. GRAMMAR RULES: SUBJECTS AND VERBS

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1. A verb must agree with its subject. If the subject is singular, the verb must be singular. If the subject is plural, the verb must be plural.

I am pleased to be providing you with examples to use.

They are planning to work on the project later this evening.

2. If there are two subjects and they are referring to one person, the verb is singular.

Our secretary and treasurer is Leslie Avery.

3. Either/or and neither/nor take a singular verb if the subjects are singular. If both subjects are plural, then the verb is plural. If the subject is made up of both singular and plural words, the verb agrees with the nearer part of the subject.

Neither Nathan nor Myles is able to participate in the event.

Neither Nathan nor his employees are able to participate in the event.

Neither the employees nor the clients are available on that date.

Either May or June is best for the event.

Either Nathan or his employees are able to attend.

4. Non-essential phrases should be disregarded, and the verb agrees with the main subject.

The key element, the skills of the employees, is to be considered.

The invoice for the computers is to be emailed shortly.

5. If the following words appear before the subject, the verb is singular: one of, each, every, either, neither, much, one.

One of the computers is defective.

Each person is to be treated with the greatest respect.

Every person is to be provided with a gift of appreciation.

Either person is to be considered for the person.

Neither person is to be excluded from the short list.

Much work has to be done to be ready in time for the closing date.

One person is to volunteer to organize the celebration.

6. If the following words appear before the subject, the verb is plural: both, few, many, others, several.

Both members of the organizing party are to be available for questions.

Few people are aware of the recent changes.

Many members will be participating in the upcoming fundraiser.

Others are available to assist if required.

Several members have declined from attending due to illness.

7. Geographic names, organizational names, publications, and product names are normally considered by the unit as singular.

Algonquin College is one of Ontario's community colleges.

The *Ottawa Citizen* has a tremendous subscriber base.

Canada is a beautiful country.

## V. GRAMMAR EXERCISE: SUBJECTS AND VERBS

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Fill in the blanks with the correct word.

1. Every law firm \_\_\_\_\_ become more cautious recently since a local firm was vandalized.  
a. has      b. have
2. Neither the legal assistants nor the lawyer \_\_\_\_\_ to relocate.  
a. want      b. wants
3. One of the causes for errors \_\_\_\_\_ poor proofreading.  
a. is      b. are
4. The criteria for opening new files \_\_\_\_\_ to be reviewed with new staff.  
a. has      b. have
5. There \_\_\_\_\_ been no news from the managing partner in two weeks with respect to our bonuses.  
a. has      b. have
6. Our receptionist and office assistant \_\_\_\_\_ Heather.  
a. is      b. are
7. Mr. Smith, along with his three assistants, \_\_\_\_\_ going to court today.  
a. is      b. are
8. Either of the assistants \_\_\_\_\_ willing to stay late to work on the file.  
a. is      b. are
9. Attached \_\_\_\_\_ four copies of the separation agreement.  
a. is      b. are
10. Only a small percentage of our employees \_\_\_\_\_ chosen the optional benefit plan.  
a. has      b. have
11. Cameron is only one of our employees who \_\_\_\_\_ consistently working hard.  
a. is      b. are

12. Every law clerk and legal assistant on staff \_\_\_\_\_ to work on the class action law suit.  
a. want      b. wants
13. Our survey, along with the previous study, \_\_\_\_\_ that the students are satisfied.  
a. prove      b. proves
14. Here \_\_\_\_\_ a descriptive report and a copy of the document.  
a. is              b. are
15. Berry & Asselin \_\_\_\_\_ provided many students with community service hours.  
a. has            b. have
16. Every legal assistant \_\_\_\_\_ been provided with a new computer.  
a. has            b. have
17. Both the paralegals and the legal assistants \_\_\_\_\_ to undertake training on the new software programs.  
a. is              b. are
18. None of the paralegals \_\_\_\_\_ to be reassigned at the moment to the new branch office.  
a. wish          b. wishes
19. Neither the managing partner nor the director of finance \_\_\_\_\_ to lift the hiring freeze.  
a. want          b. wants
20. The management committee \_\_\_\_\_ voting today on the new directives.  
a. is              b. are

## VI. BEGINNER VOICE FILES

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### A. Beginner Voice File 1

Voice file: docs > CH9 > ch9beg1.mp3

Word template: docs > templates > voice.doc

Instructions: This is a voice message. Use the voice message template above or a template provided by your professor.

### B. Beginner Voice File 2

Voice file: docs > CH9 > ch9beg2.mp3

Word template: docs > templates > letter.doc

Instructions: This is a letter. Use the letter template above or a template provided by your professor.

### C. Beginner Voice File 3

Voice file: docs > CH9 > ch9beg3.mp3

Word template: docs > templates > letter.doc

Instructions: This is a letter. Use the letter template above or a template provided by your professor.

## VII. INTERMEDIATE VOICE FILES

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### A. Intermediate Voice File 1

Voice file: docs > CH9 > ch9int1.mp3

Word template: docs > templates > letter.doc

Instructions: This is a letter. Use the letter template above or a template provided by your professor.

### B. Intermediate Voice File 2

Voice file: docs > CH9 > ch9int2.mp3

Word template: docs > templates > letter.doc

Instructions: This is a letter. Use the letter template above or a template provided by your professor.

### C. Intermediate Voice File 3

Voice file: docs > CH9 > ch9int3.mp3

Word template: docs > templates > memo.doc

Instructions: This is an interoffice memorandum. Use the interoffice memorandum template above or a template provided by your professor.

## VIII. ADVANCED VOICE FILES

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### A. Advanced Voice File 1

Voice file: docs > CH9 > ch9adv1.mp3

Word template: docs > templates > letter.doc

Instructions: This is a letter. Use the letter template above or a template provided by your professor.

### B. Advanced Voice File 2

Voice file: docs > CH9 > ch9adv2.mp3

Word template: docs > templates > memo.doc

Instructions: This is an interoffice memorandum. Use the interoffice memorandum template above or a template provided by your professor.

### C. Advanced Voice File 3

Voice file: docs > CH9 > ch9adv3.mp3

Word template: docs > templates > account.doc

Instructions: This is a statement of account. Use the statement of account template above or a template provided by your professor.