

---

# CANADIAN CRIMINAL LAW – STUDY GUIDE

---

## TABLE OF CONTENTS

---

|  |           |
|--|-----------|
| <b>GENERAL OVERVIEW AND PRELIMINARY MATTERS.....</b>   | <b>6</b>  |
| <b>1. The Sources of Criminal Law .....</b>  | <b>6</b>  |
| S. 8 CC.....   | 7         |
| S. 9 CC.....   | 8         |
| Frey v. Fedoruk, [1950] S.C.R. 517 .....   | 8         |
| R. v. Jobidon, [1991] 2 S.C.R. 714.....  | 9         |
| <b>2. The Power to Create Criminal Offences and Rules of Criminal Procedure .....</b>        | <b>10</b> |
| a) Constitutional Division of Powers Introduced .....  | 10        |
| b) The Canadian Charter of Rights and Freedoms.....  | 11        |
| Canada (Attorney General) v. Bedford, [2013] 3 S.C.R. 1101 .....                             | 12        |
| R. v. Oakes, [1986] 1 S.C.R. 103 .....   | 13        |
| R. v. Labaye, [2005] 3 S.C.R. 728 .....  | 14        |
| <b>3. The Procedural Classification of Offences .....</b>                                    | <b>15</b> |
| <b>4. Interpreting Criminal Provisions .....</b>   | <b>18</b> |
| a) Definitions.....  | 18        |
| b) Strict Construction.....  | 18        |
| c) Purposive Interpretation .....  | 19        |
| R. v. Pare, [1987] 2 S.C.R. 618.....   | 19        |
| d) French/English.....   | 20        |
| e) The Charter.....  | 20        |
| Canadian Foundation for Children, Youth and the Law v. Canada (AG), [2004] 1 S.C.R. 76 ..... | 21        |
| <b>THE ELEMENTS OF A CRIMINAL OR REGULATORY OFFENCE .....</b>                                | <b>22</b> |
| R. v. Williams, [2003] 2 S.C.R. 134 .....  | 22        |
| <b>5. The Actus Reus .....</b>   | <b>23</b> |
| a) Acts and Statutory Conditions .....   | 23        |

|   |           |
|---|-----------|
| b) The “Act” of Possession .....                    | 24        |
| S. 4(3) CC.....                                     | 24        |
| c) Consent as an Element of the Actus Reus.....     | 25        |
| S. 265 CC .....                                     | 26        |
| S. 273.1(2) CC .....                                | 27        |
| d) Causation .....                                  | 28        |
| SS. 224 – 226 CC .....                              | 29        |
| R. v. Smithers, [1978] 1 S.C.R. 506 .....           | 29        |
| R. v. Nette, [2001] 3 S.C.R. 488 .....              | 30        |
| e) Omissions.....                                   | 31        |
| <b>6. Subjective Mens Rea .....</b>                 | <b>32</b> |
| a) Intention, purpose, and willfulness.....         | 32        |
| b) Subjective Mens Rea with Objective Features..... | 33        |
| c) Knowledge .....                                  | 35        |
| R. v. ADH, [2013] 2 S.C.R. 269 .....                | 36        |
| S. 265(4) CC (Assault) .....                        | 37        |
| S. 273.2 CC .....                                   | 37        |
| d) Willful Blindness.....                           | 38        |
| e) Recklessness.....                                | 38        |
| <b>7. Objective Mens Rea and True Crimes.....</b>   | <b>39</b> |
| R. v. Martineau, [1990] 2 S.C.R. 633.....           | 40        |
| <b>8. Regulatory Offences.....</b>                  | <b>41</b> |
| <b>EXTENSIONS OF CRIMINAL LIABILITY.....</b>        | <b>43</b> |
| <b>9. Aiding and Abetting .....</b>                 | <b>43</b> |
| S. 21 CC .....                                      | 43        |
| <b>10. Counselling.....</b>                         | <b>46</b> |
| S. 22 CC .....                                      | 46        |
| R. v. Hamilton, [2005] 2 S.C.R. 432.....            | 47        |
| <b>11. Attempts.....</b>                            | <b>48</b> |
| R. v. Dery, [2006] 2 S.C.R. 669.....                | 49        |
| SS. 24 CC .....                                     | 50        |
| S. 463 CC .....                                     | 50        |

|  |           |
|--|-----------|
| S. 465 CC .....  | 51        |
| S. 660 CC .....  | 52        |
| <b>12. Corporate and Association Liability .....</b>                       | <b>52</b> |
| <b>SELECT CRIMINAL DEFENCES .....</b>                                      | <b>53</b> |
| <b>13. Mental Disorder .....</b>   | <b>54</b> |
| S. 16 CC .....   | 55        |
| R. v. Parks, [1992] 2 S.C.R. 871 .....                                     | 55        |
| <b>14. Automatism and Involuntary Acts “Negating” the Actus Reus .....</b> | <b>57</b> |
| <b>15. Simple Intoxication and Specific Intent Crimes.....</b>             | <b>58</b> |
| <b>16. Extreme Intoxication and General Intent Crimes.....</b>             | <b>59</b> |
| S. 33.1 CC .....   | 60        |
| <b>17. Defence of the Person .....</b>                                     | <b>60</b> |
| S. 34 CC .....   | 61        |
| <b>18. Necessity.....</b>  | <b>63</b> |
| R. v. Latimer, [2001] 1 S.C.R. 3.....                                      | 63        |
| <b>19. Duress.....</b>   | <b>65</b> |
| S. 17 CC .....   | 65        |
| R. v. Ryan, [2013] 1 S.C.R. 14 .....                                       | 67        |
| <b>20. Provocation.....</b>  | <b>68</b> |
| S. 232(1), (2) CC – prior to R. v. Simard .....                            | 69        |
| <b>21. Entrapment.....</b>   | <b>69</b> |
| R. v. Barnes, [1991] 1 S.C.R. 449 .....                                    | 71        |
| <b>22. Error of Law .....</b>  | <b>72</b> |
| S. 19 CC .....   | 73        |
| <b>THE ADVERSARIAL PROCEEDING .....</b>                                    | <b>74</b> |
| <b>23. The Adversarial Process.....</b>                                    | <b>74</b> |
| a) The Presumption of Innocence and the Ultimate Standard of Proof.....    | 75        |
| b) Other Evidentiary Burdens.....  | 76        |
| c) The Neutral Impartial Trier .....                                       | 77        |
| d) The Role of the Prosecutor .....  | 78        |
| e) The Role of the Defence.....  | 79        |
| <b>GETTING TO THE TRIAL: THE CRIMINAL INVESTIGATION.....</b>               | <b>80</b> |

|   |            |
|---|------------|
| <b>24. Police Powers .....</b>  | <b>80</b>  |
| SS. 8 – 10 Charter .....  | 83         |
| S. 495 CC .....   | 83         |
| S. 29 CC .....  | 85         |
| R. v. Le, [2019] SCC 34 .....   | 86         |
| <b>GETTING TO THE TRIAL: TAKING CONTROL OVER THE ACCUSED .....</b>                  | <b>88</b>  |
| <b>25. Securing Jurisdiction over the Accused and Interim Release .....</b>         | <b>88</b>  |
| S. 494(1) – (3) CC .....  | 90         |
| <b>GETTING READY FOR TRIAL .....</b>  | <b>91</b>  |
| <b>26. Disclosure and Production .....</b>  | <b>91</b>  |
| <b>27. Preliminary Inquiries .....</b>  | <b>93</b>  |
| <b>28. The Jury Trial .....</b>   | <b>94</b>  |
| R. v. Williams, [1998] 1 S.C.R. 1128.....   | 96         |
| R. v. Kokopenace, [2015] 2 S.C.R. 398.....  | 97         |
| <b>29. Pre-Trial Motions .....</b>  | <b>99</b>  |
| <b>30. Trial Within a Reasonable Time Applications.....</b>                         | <b>100</b> |
| R. v. Jordan, [2016] 1 S.C.R. 631 .....   | 100        |
| <b>SENTENCING .....</b>   | <b>101</b> |
| <b>31. General Principles of Sentencing.....</b>                                    | <b>101</b> |
| S. 718 CC .....   | 103        |
| S. 718.2 CC .....   | 104        |
| <b>APPEALS AND REVIEW .....</b>   | <b>105</b> |
| <b>32. Appeals of Final Decisions and Judicial Review of Interim Decisions.....</b> | <b>105</b> |

This study guide makes reference to:

- Kent Roach, *Criminal Law*, 7th ed. (Toronto: Irwin Law, 2018) [Roach]
- Steve Coughlan, *Criminal Procedure*, 4th ed. (Toronto: Irwin Law, 2020) [Coughlan]

## GENERAL OVERVIEW AND PRELIMINARY MATTERS

### 1. THE SOURCES OF CRIMINAL LAW

---

- There are **three sources** of criminal law in Canada (see Roach, at p. 6):
  - The Constitution, including the division of powers and the *Canadian Charter of Rights and Freedoms* (hereinafter referred to as the “*Charter*”);
  - Statutes enacted by legislatures, including the *Criminal Code* (hereinafter referred to as the “*Code*” or “*CC*”) and other statutes creating offences; and
  - Judge-made common law in the form of defences that have not been codified in the *Code* and common law presumptions of fault.
- Criminal **offences** in Canada are created by statute:
  - Most offences are created by the *Code* – a federal statute
  - Criminal offences are also created under other federal statutes, e.g. the *Controlled Substances Act* (drug trafficking), *Income Tax Act* (tax evasion)
  - Provinces create regulatory offences / public welfare offences, e.g. *Highway Traffic Act* (speeding), *Canadian Environmental Protection Act*
  - Common law cannot create criminal offences (principle of legality, criminal offences should be clear, certain, and should pre-exist the act being prosecuted), the one exception is contempt of court, see s. 9 of the *Code*, below.
  - International law can be seen as an emerging source of criminal law (see Roach, at p. 6, last para)
- Rules of criminal **procedure** are both created in the *Code* and common law based
- The common law can create **defences** (see *Levis (City) v. Tetrault*, [2006] 1 S.C.R. 420 and *R. v. Mack*, [1988] 2 S.C.R. 903, below)

- The common law can influence the way statutory criminal offences are interpreted, particularly the mental elements (see *R. v. Jobidon*, below).

## S. 8 CC

---

### **Application to territories**

**8 (1)** The provisions of this Act apply throughout Canada except

(a) in Yukon, in so far as they are inconsistent with the *Yukon Act*;

(b) in the Northwest Territories, in so far as they are inconsistent with the *Northwest Territories Act*; and

(c) in Nunavut, in so far as they are inconsistent with the *Nunavut Act*.

### **Application of criminal law of England**

**(2)** The criminal law of England that was in force in a province immediately before April 1, 1955 continues in force in the province except as altered, varied, modified or affected by this Act or any other Act of the Parliament of Canada.

### **Common law principles continued**

**(3)** Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of proceedings for an offence under this Act or any other Act of Parliament except in so far as they are altered by or are inconsistent with this Act or any other Act of Parliament.