

Review Your Understanding

1. Why is criminal law considered “public law”?
2. What is the purpose of the *Criminal Code* of Canada?
3. When might a criminal law be ruled unconstitutional by the courts?
4. How does the Charter limit or restrict people’s rights?
5. What happens when an individual’s Charter rights conflict with the *Criminal Code*?

4.4 Summary Conviction and Indictable Offences

If you visit a courthouse, you may be able to observe a criminal trial. There, people are charged with **summary conviction offences** or **indictable offences**, depending on the severity of the crime. These are the terms we use in Canada to differentiate between severe and less serious crimes. You may be familiar with the terms “felonies” and “misdemeanours” from American TV shows and films. We do not use these terms in the Canadian legal system. In Canada, less serious crimes (misdemeanours) may be summary conviction offences. More serious crimes (felonies) are indictable offences. The term **hybrid offences** refers to offences that may be treated as either summary conviction or indictable offences, depending on the decision of the prosecutor.

Summary Conviction Offences

Summary conviction offences are minor criminal offences. If Robin plays a telephone prank or yells loudly at a passerby in a mall, she can be charged with a summary conviction offence. Both telephone harassment and causing a public disturbance are summary conviction offences. A person accused of this type of offence can be arrested and charged. Under the *Criminal Code*, the maximum penalty for most summary conviction offences is a fine of \$2000 and/or six months in jail.

Unlike indictable offences, there is a six-month limitation period for laying a charge for a summary conviction offence. This means that a person must be charged within six months of the offence or she or he is free and clear. A provincial court judge hears the evidence and gives the verdict for summary conviction offences.

summary conviction offence a minor criminal offence with less severe punishments, which is usually tried soon after the charge is laid (summarily) without a preliminary hearing or jury

indictable offence a serious criminal offence with a severe penalty, proceeding by way of a formal court document called an indictment

hybrid offence a criminal offence proceeding by way of a summary conviction or an indictable offence; the Crown decides which way to proceed



Heckling or bullying can be summary conviction offences. However, if these offences escalate into serious acts of violence, offenders could be charged with indictable offences.

? Did You Know?

The courts must impose the maximum penalty—life imprisonment without becoming eligible for parole for 25 years—for only two indictable offences: high treason and first-degree murder. Treason is disloyalty to one's nation, such as giving Canadian government secrets to another country.

statute of limitations a time limit imposed by law within which a specific action must be taken

A variety of offences are always categorized as summary conviction offences. They include causing a disturbance, taking a motor vehicle without the owner's consent, and possession of a certain amount of marijuana. (For more on the issue of marijuana and the law, see the Issue feature on page 140.)

Indictable Offences

Indictable offences are serious crimes that carry more severe penalties than summary conviction offences. The *Criminal Code* sets a maximum penalty for each offence. For example, with manslaughter, the maximum penalty is life imprisonment. However, the trial judge ultimately decides on the actual time spent behind bars. Other examples of indictable offences are robbery, breaking and entering, and murder. The *Criminal Code* sets a minimum penalty for some specific offences. For example, a person convicted of an offence using a firearm as a first offender must serve a term of at least one year of imprisonment. Unlike summary conviction offences, there is no **statute of limitations** (time limit) for laying a charge of an indictable offence. For serious indictable offences, the accused can choose whether to be tried by a provincial court judge alone, by a judge of the superior court of the province or territory alone, or by a judge of the higher court with a jury.

👤 You and the Law

Journalists' coverage of real crimes is very different from the fictional portrayal of crime on TV. What law-related TV shows do you watch and why? What are the main differences between real criminal law and TV law?



Stealing a bicycle may be prosecuted as an indictable offence.

Hybrid Offences

Most offences defined in the *Criminal Code* are hybrid offences. This means that they can end up as either indictable or summary conviction charges. The Crown attorney decides whether to seek a less severe punishment (known as proceeding summarily) or to proceed by indictment. This is done to give local prosecutors some leeway in their decisions. Until the Crown makes its decision, hybrid offences remain indictable. The Crown often bases its decision on the previous record of the accused, the date of the offence (if the offence occurred less than six months in the past), and whether lesser penalties are appropriate if a conviction is obtained. Hybrid offences include impaired driving, assault, public mischief, and theft under \$5000. Maximum penalties will vary for hybrid offences from two years imprisonment to 10 years.



Sometimes, the prosecutor decides to reduce an indictable offence to a summary conviction charge.

? Did You Know?

In Canada, unlike in the United States, cameras are rarely allowed in the courtroom.

Review Your Understanding

1. What is the difference between a summary conviction and an indictable offence?
2. What are the equivalent terms for summary conviction and indictable offences in the United States?
3. Compare the maximum penalties for summary conviction and indictable offences.
4. What choices does a Crown attorney have in dealing with a hybrid offence?
5. Why would the Crown decide to proceed summarily rather than proceed by indictment?

4.5 The Elements of a Criminal Offence

Actus non facit reum nisi mens sit rea

This phrase is Latin for “the act will not make a person guilty unless the mind is also guilty.” In other words, you must consciously intend to commit a crime; you cannot commit a crime unknowingly or by accident. Thus, to find someone guilty of an offence, the Crown must prove that a criminal act occurred—the *actus reus* (external, voluntary act meaning “wrongful deed”)—and that the accused had a criminal intention—the *mens rea* (internal act meaning “guilty mind”). If the Crown cannot prove both of these elements beyond a reasonable doubt, the accused will be acquitted and set free. For example, in any criminal case, the Crown must prove the identity of the accused. If the Crown cannot prove, beyond a reasonable doubt, that the accused was the one who actually committed the crime, then the Crown did not prove the *actus reus*. See the case below of *R. v. Parks*, 1992, for an interesting example of the need for proof of the *mens rea* in a crime.

actus reus a Latin phrase meaning “a wrongful deed”; the physical or guilty act, omission, or state of being that constitutes a crime

mens rea a Latin phrase meaning “a guilty mind”; the mental element of one’s criminal actions



Case

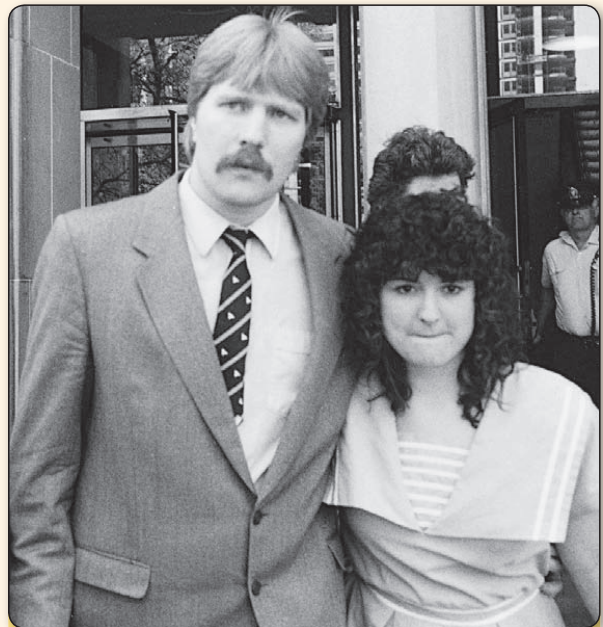
R. v. Parks, 1992 CanLII 78 (S.C.C.)

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

In 1987, Kenneth Parks got up from his bed, drove over 20 kilometres to his in-laws’ house, and stabbed both his mother-in-law and father-in-law, killing her and seriously injuring him. Immediately afterwards, Parks drove to a nearby police station and reported what he had done. Parks was charged with first-degree murder and attempted murder even though he claimed to have been sleepwalking throughout the incident. Parks testified that he had always been a deep sleeper and had a great deal of trouble waking up. (Several members of his family also suffer from sleep problems.) The year prior to the incident was particularly stressful for him, and his personal life suffered. Parks’s in-laws were aware of his problems, supported him, and had excellent relations with him.

At the trial, Parks presented a defence of automatism. It is unconscious movement or functioning without conscious control. (Automatism and other defences will be discussed further in Chapter 8.) The defence called five psychiatrists and psychologists. They testified that these acts of violence were done in

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Kenneth Parks (shown here with his wife) leaves the court on bail.



Case (continued)

R. v. Parks, 1992 CanLII 78 (S.C.C.)

a genuinely hypnotic state. At issue here was whether sleepwalking should be classified as non-insane automatism, resulting in an acquittal, or as a “disease of the mind” (insane automatism), giving rise to the special verdict of not guilty by reason of insanity.

The judge and jury acquitted Parks of the charges of murder and attempted murder in the original trial. The Crown appealed, but the Court of Appeal upheld the acquittal. Upon further appeal by the Crown, the Supreme Court agreed with the acquittal because Parks had no intent or knowledge of what he was doing. It was found that the accused was genuinely sleepwalking at the time he committed murder. His somnambulism was ruled a sleep disorder, not a form of insanity.

For Discussion

1. Were *actus reus* and *mens rea* present at the time this crime was committed? Explain.
2. Why do you think the Supreme Court dismissed the Crown’s appeal?
3. Should a person be able to use a severe sleep disorder as a reason to nullify criminal responsibility? Explain your opinion.
4. Why should epileptics not be allowed to use the defence of automatism in the case of a car accident? Explain.

At trial, the Crown will first try to prove that the accused was the one who actually committed the crime. Then they move on to proving intent or knowledge. Intent is the true purpose of the accused. No one can know for sure what was in another person’s mind, but the court will make its decision based on the facts of the case at hand and on what a reasonable person would believe under the circumstances. For example, Rosanna is arrested at the airport with several balloons filled with cocaine that she had swallowed. If she tells the judge that she thought the substance was baking soda, and this is how she likes to transport it, the judge would simply not believe her as no reasonable person would do such a thing. The court will conclude that the true purpose of this act was to import narcotics.

A woman is arrested for possession of illegal drugs. No reasonable person would swallow balloons in order to carry their baking soda, making it unlikely that a judge would believe someone was not intentionally importing narcotics as a mule.



Intention

If Shivonne goes into the store and deliberately puts a lipstick in her purse, she intends to commit the act of theft. On the other hand, if she absentmindedly puts the lipstick in her purse without intending to steal it, then forgets about it, she would be found not guilty. She did not intend to commit a crime. If one student deliberately punches another in the stomach, he or she is guilty of assault. But if a group of students are playing soccer and during the game Brian kicks the ball toward the goal and strikes the goalkeeper in the stomach, criminal law would not consider this an assault. Brian had no **intent** to cause harm.

intent the state of the mind of a person who commits an action deliberately and on purpose

Criminal State of Mind

Accused persons may not intend the outcome of their actions, but they may have a certain “state of mind.” This criminal state of mind means that the accused persons knew they were doing something illegal. For example, Sharon has just shoplifted and runs from the store. She bumps into Maheen, knocking her to the ground and causing serious injuries. Sharon is not only guilty of theft, but of assault as well. Even though Sharon did not intend to assault Maheen and she did not intend this outcome, she had a “criminal state of mind” while committing the offence of theft.

willful blindness the act of deliberately choosing to ignore certain facts or information

Willful Blindness

Willful blindness is pretending not to know something. If you “turn a blind eye” and say “I don’t see anything,” but you really know what is going on, you are guilty of willful blindness. For example, if Courtney is offered \$100 to deliver a package a couple of blocks away for Zack, a known drug dealer, but does not ask what is in the package, then she could be charged and convicted of drug trafficking. The average person would be suspicious of Zack and would ask appropriate questions, such as, “What is in the package?” They would not turn a blind eye.

Packages used to smuggle drugs can take many forms, including plush toys and dolls.



Recklessness

Recklessness is the careless disregard for the possible results of an action. For example, a person who knows he or she has AIDS has unprotected sex with others without informing them of his or her medical condition. The person with AIDS could be charged with assault, attempted murder, or even murder if the victim eventually dies. The careless disregard for the possible results of an action, even though the person may not intend to hurt anyone, would result in the required *mens rea* being proven at trial. The offence was committed with knowledge and recklessness.

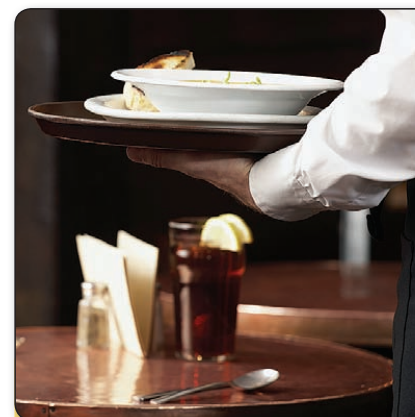
recklessness a state of acting carelessly without regard for the consequences of one's actions

criminal negligence wanton and reckless disregard for the lives and safety of other people

Criminal Negligence

Criminal negligence is the wanton and reckless disregard for the lives and safety of other people. For example, head chef Samad works on his science experiments in his restaurant's kitchen. A waiter picks up what appears to be the soup of the day and serves it to a customer who dies from poisoning. Samad may be guilty of manslaughter and would be charged. A reasonable person would have realized the possible consequences of her or his actions and the fact that the restaurant soup bowls are normally filled with harmless liquid.

The Supreme Court of Canada has defined the required state of mind in the case of criminal negligence. The court decided that if a reasonable, objective analysis were made, and the act would carry the risk of harm, then the person was negligent. In this case, the Crown must show that Samad's actions were unreasonable, as the average person would have known that this action could cause harm. See the case on the next page of *R. v. Williams*, 2003, for a real-life example of criminal negligence.




A reasonable person would expect the contents of a restaurant soup bowl to be harmless.



You Be the Judge

R. v. Collins and French, 2006 BCSC 1531 (CanLII)

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

Sometime in the afternoon of December 2, 2004, victim Thelma Pete was brutally beaten, receiving approximately 25 blows to the head. Later, she was with the accused, Richard Collins and James French, in a darkened entrance to an abandoned school building where the pair were drinking alcohol. At approximately 10:00 p.m., Collins and French took Pete by taxi to French's apartment. They laid her on the apartment floor and continued to drink. She died from her injuries sometime during the night.

Collins and French were charged with manslaughter. The Crown did not allege that they had anything to

do with her beating. The Crown argued that they were guilty of manslaughter because their actions amounted to criminal negligence. Interestingly, they would have been in less trouble if they had left Pete to freeze to death instead of taking her with them. This is because the *Criminal Code* states that everyone is under a legal duty to provide the necessities of life to a person under his or her charge if that person is unable to care for themselves.

- How do you think the court ruled? Explain.



Case

R. v. Williams, 2003 SCC 41 (CanLII)

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

Harold Williams and the victim were in a relationship for a year that ended in November 1992. Williams had tested positive for HIV but did not tell the victim. Williams received counselling by health care professionals about HIV, its transmission, safer practices, and his duty to disclose his HIV status to sexual partners. However, he continued to practise unprotected sex with the victim. After the relationship ended, Williams's partner tested positive for HIV. Williams was arrested, charged, and convicted of aggravated assault but was acquitted on appeal. The Court of Appeal substituted a conviction for attempted aggravated assault. It ruled that the crime of attempted aggravated assault must establish intent. Intent was established but only for attempt, not the actual assault. The Crown did not like this decision and appealed to the Supreme Court of Canada. In 2001, the Supreme Court of Canada unanimously (7–0) upheld this decision. There was no way to prove

the victim did not have AIDS before having sexual relations with Williams.

For Discussion

1. Was there intent, recklessness, or criminal negligence in this case? Explain.
2. When you hear the word “assault,” what do you think of? How does this case make you think of assault in a different way?
3. If Williams had a common sexually transmitted disease, would the charge still be aggravated assault? Why or why not?
4. Critics have denounced the Supreme Court decision as sexist and a setback for female victims of sexual abuse. Do you agree or disagree? Justify your opinion by using the facts from the case to support your view.

Knowledge

The knowledge of certain facts can also provide the necessary *mens rea* for a criminal conviction. For example, the *Criminal Code* states that anyone knowingly using a revoked or cancelled credit card is guilty of the indictable offence of fraud. The Crown only needs to prove that the person used the credit card and that he or she knew the card was not good. It is not necessary to prove that there was intent to defraud.

Motive

If an accused had a reason to commit the offence, it is called his or her **motive**. Having a reason or motive, however, does not establish the guilt of the accused. Motive is not knowledge. The fact that Rosanna was in financial difficulty is not relevant to her guilt in the earlier example of cocaine smuggling. Many of us have motives, but never follow through on them with a criminal act. Suppose that a married woman, who is having an affair, is killed in a suspicious fire. Her husband may have had a motive to kill her, but unless it can be shown that he caused the fire, he has not committed an offence.

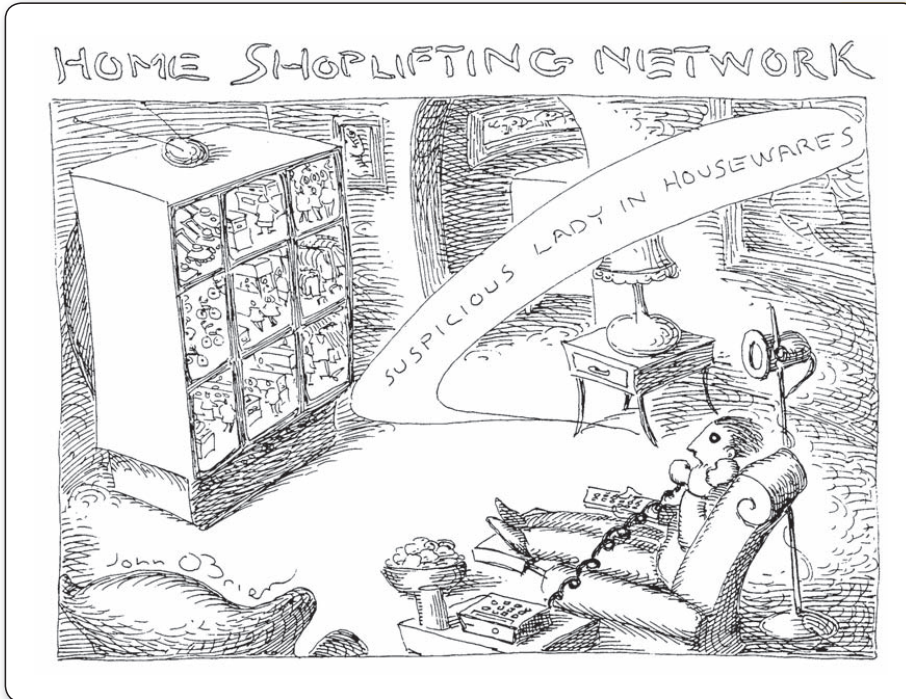
During a trial, the Crown may refer to the motive of the accused for committing the crime. This is called indirect or circumstantial evidence. The Crown must try to make the judge or jury conclude that the accused is guilty with no direct evidence such as an eyewitness. If a guilty verdict is returned, the judge may also consider the motive during sentencing.

motive the reason for committing a certain act



Did You Know?

If a husband sets a fire as part of an insurance fraud scheme, and does not know that his wife was in the building, he would still be guilty of first-degree murder because he was committing an indictable offence at the time.



Might this be a good way for security guards to look for shoplifters?

Attempt

A person who intends to commit a crime but fails to complete the act may still be guilty of a criminal offence. In Rosanna's case (the woman smuggling cocaine into the country by swallowing balloons containing the drugs), if she vomited up the cocaine balloons on the plane, she would still be charged with attempted importation (and possession for the purpose of trafficking). Even though she failed to actually import the drug, it was the **attempt** that was important.

As with any crime, proving attempt means showing that there was intent to commit the offence. The *actus reus* for an attempt begins when the person takes the first step toward committing the crime. It is the judge who decides—even in trial by jury—when the preparation stage ends and the attempt stage begins. For example, Rosanna prepared for her crime by buying plane tickets, balloons, milk to coat her stomach, and a laxative to help her retrieve the drugs. She further prepared by swallowing the drug-filled balloons. However, it was only when she stepped onto the plane that she attempted the crime of importation. If she was arrested just after she swallowed the drugs, she would not be charged with importing, but with possession. If she threw up on the plane and did not actually step onto Canadian soil, she would be charged with attempted importation.

During a trial, if the Crown is unable to prove that the offence was committed but only that an attempt was made, the accused may be convicted of the attempt. If the accused was originally charged with the attempt, but the evidence indicates that the offence was actually committed, the judge may order the accused to be tried for the offence itself.

attempt an act done with the intent to commit a criminal offence but without success

? Did You Know?

The law considers some people to be incapable of forming the intent necessary to commit a crime. Examples include people suffering from some forms of mental illness and children under the age of 12.

Conspiracy

conspiracy an agreement between two or more people to commit an unlawful act

A **conspiracy** is an agreement between two or more people to commit a crime or to achieve something legal by doing something illegal. For example, if Roberto and Hank discuss their plans to break into Katiya's house to steal her credit cards, they have conspired to commit a crime. Even if they do not carry out the plan, they have agreed to a conspiracy to commit the crime. In a conspiracy, all the people involved must be serious in their intention to commit the crime. Jokes or threats are not considered conspiracy.

Conspiracy is the agreement to commit an illegal act, whether the individuals carry out the crime or not.

? Did You Know?

The *Anti-Terrorism Act* states that someone who knowingly takes in a terrorist, takes part in terrorism, or is an accomplice to terrorism commits an indictable offence and could receive up to 10 years of imprisonment. Facilitating a terrorist act could get someone up to 14 years. Convicted leaders of terrorist acts can receive up to life imprisonment.



Review Your Understanding

1. Identify the two elements that must exist for a crime to be committed.
2. *Actus reus* does not always require an action to be committed. Give an example of such a circumstance.
3. Distinguish among the different categories of *mens rea*, and provide an example for each.
4. How is motive used in a criminal trial?
5. When does an attempt begin? Provide an example of a situation where a criminal charge of attempt could be made.

4.6 Parties to an Offence

Aiding or Abetting

If you help someone to commit a crime, you are guilty of **aiding** that person to commit the crime. If you encourage a person to commit a crime, you are guilty of **abetting** that person. In other words, to advise or give suggestions about a crime is aiding. To incite, instigate, or urge someone to commit a crime is abetting. To be convicted of aiding or abetting, you must believe that the other person truly intended to commit the offence. Onlookers who merely witness a criminal act are not guilty of aiding or abetting. However, if onlookers do anything that could be seen as urging or inciting a criminal act, they could be guilty of abetting.

Under section 21(2) of the *Criminal Code*, a person who aids or abets a criminal is just as guilty of the crime as the person who actually carries it out. For example, Patrick urges Paolo to take a wallet from the gym change room. Patrick is inciting Paolo to commit an offence (abetting). If Paolo is caught trying to steal the wallet, Patrick would receive the same charge (attempted theft) and the same penalty as Paolo because he encouraged Paolo to commit the crime.

aiding assisting someone to commit a criminal offence

abetting encouraging or urging another person to commit a crime

A person who urges someone to steal is just as guilty as the person who actually steals.



You Be the Judge

R. v. Goodine, 1993 CanLII 5379 (NB C.A.)

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

One summer afternoon in 1992, Todd Johnston went for a ride with his girlfriend and two friends, Jason Boyd and Cory Goodine. After driving on country roads near Arthurette, New Brunswick, Johnston stopped the truck. Without warning, he shot Boyd in the head with a revolver. He then removed Boyd's body from the truck and dragged it a short distance.

Still holding the revolver, Johnston ordered Goodine to "get off the truck and help me because you are in on this, too." Goodine obeyed Johnston's orders to drag the body into the woods. When the victim moaned, Johnston shot Boyd again in the back

of the head. Medical evidence at trial indicated that either shot would have caused Boyd's death.

A few days later, Goodine told two of his friends about the murder and led them to Boyd's body. The next day, the friends reported the incident to the police. They arrested Goodine and charged him with being an accessory after the fact to murder. The jury acquitted the accused following a trial. The Crown appealed to the Court of Appeal, but the appeal was dismissed.

• Goodine was not charged with aiding and abetting. Why do you think that was? Explain your reasoning.

Accessory after the Fact

If you knowingly help a person to escape or hide from the police after a crime, you are an **accessory after the fact**. Even providing food, clothing, or shelter to the offender is an offence.

accessory after the fact someone who knows that a crime has been committed and who helps the person who committed the crime to hide or escape from the police

Organized Crime

A group is three or more individuals who share a common identity. This could be comprised of Scouts, members of a gymnastics team, political protesters, *Canadian Idol* groupies, or Facebook friends. As soon as a group defines itself by opposing authority and engaging in ongoing criminal activity, the group becomes a criminal organization that defies our mainstream values. For example, see the case below of *R. v. Lindsay*, 2005.



Case

R. v. Lindsay, 2005 CanLII 24240 (ON S.C.)

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

In 2002, Stephen (Tiger) Lindsay and Raymond (Razor) Bonner wore their Hells Angels' jackets when they visited a Barrie, Ontario, businessman in his home. They demanded \$75 000 to settle a dispute over a satellite TV system. The businessman testified to their threats. He tape-recorded Lindsay saying, "If you toy with me, your days are numbered."

Lindsay and Bonner were charged with extortion. The Crown sought to have the Hells Angels formally declared a "criminal organization" under the federal anti-gang legislation. At the conclusion of the trial in June 2005, the Ontario Superior Court of Justice ruled that Lindsay and Bonner had

continues...



In an effort to combat organized crime, the Ontario Superior Court of Justice declared the Hells Angels a criminal organization.



Case (continued)

R. v. Lindsay, 2005 CanLII 24240 (ON S.C.)

committed extortion in association with a criminal organization and had used the Hells Angels' reputation as a weapon. This was the first time a Canadian court declared a group, as opposed to individuals, to be "criminal" in a move to combat organized crime. The government also added new penalties for being part of a criminal gang. They include an extra 14 years in prison on top of the sentence you received for the crime you were convicted of in the first place.

For Discussion

1. Should organized criminals and gang members face stiffer penalties than individuals?
2. Do you think that organized crime is a problem in our society?
3. How do people act differently in a group than when they are alone? Explain your answer.
4. Do you believe the Hells Angels is a criminal organization? Why or why not?

Canadians are becoming more concerned with gangs that commit crime. There are media reports about organized crime almost every day. It is becoming a more complex phenomenon. Criminal organizations have evolved into intricate international networks where they combine illegal activities with legal businesses. They take advantage of open markets and the differing levels of commitment and ability that various governments have to combat them. In 2008, the Ontario government continued to focus on putting an end to gang violence. It included building a \$26-million operation centre for the Anti-Guns and Gangs Task Force. Two years earlier, Criminal Intelligence Service Canada (CISC) issued its annual report, focusing on organized crime and street gangs. The report provided a provincial breakdown of crime. Gang activity continues to thrive in the Greater Toronto Area, home to roughly 80 of the country's 300-plus gangs.

To help put a stop to gangs and organized crime, section 467.11 of the *Criminal Code* states that a person who facilitates a gang-related offence is just as guilty as the person who actually commits it. This is known as a criminal organization offence.



Did You Know?

Criminal Intelligence Service Canada (CISC) said the Hells Angels motorcycle gang remains the largest and most powerful outlaw gang in Canada.

All About Law DVD

"Gang Wars: Bloodbath in Vancouver"
from *All About Law DVD*

Review Your Understanding

1. According to the *Criminal Code*, who may be a party to an offence?
2. Distinguish between "aiding" and "abetting."
3. Identify who may be considered an accessory after the fact.
4. What is the significance of anti-gang legislation?
5. What is a criminal organization offence?