**Canadian Law 2204 – Unit 2 Notes**

1. **DEFINING CRIME AND CRIMINAL OFFENCES** (p. 139-142)

* **Crime:** an act or omission of an act that is prohibited and punishable by federal law. It is an offence as stated in the *Criminal Code of Canada* (CCC).
* The *Criminal Code of Canada* falls under **federal** jurisdiction - the government in Ottawa. This means that the *CCC* applies to all Canadians equally. Crime is considered to be an offence against all of society. And criminal law is aimed at protecting people, maintaining order and preserving standards of public decency.
* However, the *administration* of the CCC is **provincial**, meaning that when crimes occur, provincial police, court systems and judges deal with them.
* 4 conditions that must exist for an act or an omission to be considered a crime:

1. it is wrong in society’s eyes

2. it will cause harm perhaps to vulnerable population like children

3. the harm is serious

4. the remedy must be handled by the courts

* **Amendments**:

What is considered harmful can vary over time and from place to place. Prostitution is legal in the Netherlands, but only partially in Canada. Since 2014, it is legal to sell sexual services in Canada, but it is illegal to purchase them.

In 1999, the *Criminal Code of Canada* was amended or changed to protect children from sexual abuse. Bill C-7 was passed allowed the police to explore the criminal background of anyone wishing to work with children.

The Criminal Code of Canada (CCC) has also been amended in attempt to accommodate technology. Changes to the CCC have attempted to address terrorism, airplane hijacking, credit card fraud, and identity theft.

Despite the many changes or amendments to the CCC, it have never been completely revised since its passage in 1892.

* **Quasi-Criminal Laws**: are laws covering less serious offences that occur at the provincial or municipal level (*Highway Traffic Act, Wildlife Act, Liquor Control Act*).

1. **THE ELEMENTS OF A CRIME (**pp.143 - 151)

* To convict a person of a criminal offence in Canada, the Crown must **usually** prove that two elements existed at the time of the offence: the ***actus reus*** and the ***mens rea.***

***1. Actus Reus***: the guilty act demonstrates a voluntary action, omission, or state of being that is prohibited by law.

- guilty act: hitting someone

- omission: failing to provide a child with the necessities of life

-state of being: being in possession of stolen goods

* *R. v MacGillivray* , [1995] 1 S.C.R. 890 (p.144) - MacGillivray drove his speedboat toward a known swimming area in Nova Scotia. He was driving too fast. Swimmers waved their arms to alert him. He plowed his boat through a group of 7 teenagers, killing one. MacGillivray was charged with dangerous operation of a motor vehicle accusing death. The Court found that **the *actus reus*** for dangerous operation of a motor vehicle was *"the creation of a significant risk of danger to others by a significant departure from the standard of a reasonably prudent person."*
* *R. v. Kerstser*, [2001] B.C.S.C. CC000227 (p.151) - Kerster, using a false name, emailed an undercover police officer requesting arrangement of sexual services of a person under the age of 18. The accused met with a "mother" who said her 11 year old daughter's name was "Leez". The Accused described the sexual relationship he wanted to have with Leez and showed the "mother" several $100 bills. The Accused then accompanied the "mother" to a hotel room. When the undercover police officer called for "Leez", another police office opened the hotel door and arrested the Accused. Kerster was charged and found guilty of attempting to obtain the sexual services of a person he believed to be under the age of 18.
* The *actus reus* of the offence of attempt was the Accused's attempt to obtain sexual services of a child.
* The *mens rea* was proven as the Accused had the necessary intent to commit the offence by showing he took steps beyond mere preparation for carrying out his intent. The actual performance of the sexual act is irrelevant to the *actus reus* of the attempt.
* The Court found that the "sting" operation was legal in convicting the Accused of **criminal attempt.**

***2. Mens Rea*** - the guilty mind which demonstrates that the wrongful act was deliberately intentional, knowing, negligent, reckless or wilfully blind.

* **Intent:** a state of mind in which someone desires to carry out a wrongful action, knows what the results will be, and is reckless regarding the consequences. Sometimes the word "intentionally" will be found in the charge, such as "applies force intentionally".
* **Motive and intent are** **not the same thing**. A motive is the reason a person commits a crime, while intent refers to that person's state of mind and willingness to break the law. If Alicia kills her mother to receive an early inheritance, the inheritance is her motive, but it does not establish her state of mind or her intent to commit murder. The Crown must establish intent by showing that the killing was "planned and deliberate".
* **General Intent**: the desire to commit a wrongful act, with no ulterior motive or purpose. Example: Paul strikes Michael to vent his anger. Paul has the general intent to commit assault. General Intent offences are easier to prove.
* **Specific Intent**: the desire to commit one wrongful act for the sake of accomplishing another. Example: If Paul strikes Michael with the intention of stealing from him, then he has committed an assault for the sake of accomplishing theft. The Crown must show that Paul had the *mens rea* to commit assault with the specific intent of stealing from him.
* **Knowledge**: is an awareness of certain facts that can be used to establish *mens rea*. Example, certain sections of the CCC will include the word "knowing" - " who *knowing* that a document is forged, uses, deals or acts upon it is guilty of the offence of circulating a forged document".
* **Criminal Negligence**: wanton or reckless disregard for the lives and safety of others, sometimes causing serious injury or death. Example: If a parent left a loaded gun on their dresser, and their child shoots the neighbour, the parent's *mens rea* for criminal negligence is the "wanton or reckless disregard".
* **Recklessness**: consciously taking an unjustifiable risk that a reasonable person would not take. Example: The *mens rea* for negligence is driving without your prescription glasses and thereby causing an accident.
* **Wilful Blindness**: A deliberate closing of one's mind to the possible consequences of one's actions.

Example: "buying" a chrome book from a friend that bears the stamp "HTH" is being willfully blind to the distinct possibility that the owner of the chrome book is the school, not your seller friend.

*R.v. Adey* [2001] Nfld.P.C. 1300A-01158 (p.149) - Adey was found "not guilty" of possession of stolen property . He had purchased a satellite dish from a stranger at a Mall for $175. It had been stolen from a flight and its original value was ~$350. Adey did not know the dish had been stolen. The Crown had not proven that Adey had the *mens rea* to have had suspicion that the dish had been stolen because the price was not unreasonably low. He was **not wilfully blind**.

**EXCEPTIONS**: there are some crimes for which *mens rea* is not required

* **Regulatory Laws**: federal or provincial laws meant to protect public welfare, i.e., public safety. If these laws do not contain the words "wilfully" or "with intent", then *mens rea* does not have to be proven.
* **Strict Liability Offences**: offences that do not require *mens rea* but to which the accused can offer the defence of due diligence. Example: environmental pollution is often a strict liability offence. The company will admit that they contributed to the pollution, but then offer the defence of due diligence, that is, they did everything possible and reasonable to avoid polluting.
* **Due Diligence Defence**: the defence that the accused took every reasonable precaution to avoid committing a particular offence.
* **Absolute Liability Offence**: offences that do not require *mens rea* and to which the accused can offer no defence.

Example: Driving without a license or speeding are examples of absolute liability offences. There is no imprisonment . The usual penalty is a fine.

* *R. v. Hackett*, [2001] Nfld. P.C. File No. 1300A-1034 (p.159) - Hackett's lobster traps were found in an area that they should not be. Hackett admitted they were his traps, but argued **due diligence to the strict liability offence**. He said that he checked his traps regularly, but admitted that these traps had been stolen.

1. **INVOLVEMENT IN A CRIME** (pp. 152-156)

* **Perpetrator**: the person who actually commits the crime.

Example: if 2 people rob a bank, one holds a gun and the other collects the cash, they are known as **co-perpetrators**.

* **Parties to an Offence**: those people who are indirectly involved in committing a crime
* **Aiding**: a criminal offence that involves helping a perpetrator commit a crime.

Example: A pharmacy clerk gives her boyfriend the key to the pharmacy. He breaks in using her key & steals drugs. She is aiding her boyfriend even though she was not present at the break-in.

* **Abetting**: the crime of encouraging the perpetrator to commit an offence

Example: Mark assaults Nathan. Johnny eggs Mark on, urging him to hit Nathan repeatedly. Johnny has not touched Nathan, but is charged with abetting an assault.

* **Counselling:** a crime that involves advising, recommending, or persuading another person to commit a criminal offence.

Example: When Leila persuades Stella to steal items from the store where Leila works and advises her of the best way to accomplish this act, Leila commits the criminal offence of counselling Stella to steal.

*R. v. Ford [2000]* Ont. C.A. c23709 *(p.154) -* Ford, a gang member, had trouble with Bidwell, another gang member. Ford encouraged John Doe to kill Bidwell. Ford offered Doe $1500, a gun, ammunition, balaclava. Ford showed where Bidwell lived and frequented, photographed Bidwell's apartment and possible escape routes. After "constant goading: by Ford, Doe hid in Bidwell's apartment and shot him in the face. Bidwell survived. John Doe was found guilty of attempted murder and sentenced to 12 years in prison, while Ford was convicted of a single charge of **counselling** murder and given 18 months imprisonment.

* **Accessory After the Fact:** someone who knowingly receives, comforts, or assists a perpetrator in escaping from the police.

Example: Judge Fired for Lying (p.155) - in 2001, the Supreme Court of Canada ruled that Judge Richard Therrien should be removed from his position as a judge of the Court of Quebec. Thirty years previous, he had been an accessory after the fact when four of his friends had kidnapped and killed Quebec Labour Minister, PIerre Laporte. Therrien helped prepare a hideout for his friends after the crime. He had subsequently lied on his application for judgeship saying he had never been convicted of a criminal offence. It was not the conviction that got him removed from the bench. It was the fact that he lied on his application to be a judge. Judges are people in society who are held to a higher threshold than most everyone else.

* **Party to Common Intention**: the shared responsibility among criminals for any additional offences that are committed in the course of the crime they are originally intended to commit. This means that the participants can be charged with all of these additional crimes even though they were not directly involved in them.

Example: If 6 people hijack a security truck and one of them shoots and kills the driver, all 6 can be charged with murder.

* *R.v. Vang* [1999]Ont. C. A. C29539 - p.159 - Rampersaud made several racial slurs at a party. He was attached by 3 people and suffered a punctured lung and a lacerated kidney. Nguyen was found to be the perpetrator, but Vang and Thangsavath were convicted as **parties to common intention** and sentenced to 11 months each. Both had assisted the perpetrator as there was three fighting against one.
* **Incomplete Crimes**: two types of incomplete crimes are attempt and conspiracy.

**(1) Attempt**: the intention to commit a crime, even when the crime is not completed. The Crown has to prove *mens rea* by showing that the Accused took some steps attempting to commit a crime.

**(2) Conspiracy**: an agreement between two or more people to carry out an illegal act, even if that act does not actually occur.

Example: Ted and Jennifer plan to murder Jennifer's husband, Matthew. They hire a hitman, who happens to be an undercover officer. Ted and Jennifer are arrested with **conspiracy** for planning to kill Matthew, even though Matthew was never even approached, let alone harmed.