

R v. Lavel

Legal Guidance for *R v. Lavel*



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Criminal Law Basics

For a person to be found guilty of a criminal offence in Canada, they must have committed an illegal act (actus reus) and had the required “state of mind” (mens rea) for the criminal offence. The Crown must prove both elements of the offence, the actus reus and the mens rea, beyond a reasonable doubt.

To raise a reasonable doubt, the defence does not have to disprove all of the elements of the criminal offence. Instead they just have to raise a doubt about the identity of the accused, the events as presented, or the state of mind of the accused. The judge may find that the accused committed the offence, based on the evidence presented. However, if the defence raised a reasonable doubt, then the accused must be found not guilty.

In a self-defence case, the intent to kill might be justified if the finding of self-defence can be proven. This would mean that the illegal act is justified and the defendant can no longer be found guilty of murder.

The standard of fault, or *mens rea*

The law uses the terms “subjective” and “objective” to express two basic standards for judging the “fault element” or mens rea of a crime. These are broad categories, with variations depending on the offence in question.

The **subjective standard** for determining the fault element of a crime focuses on what an accused person intended and knew in the situation. It is a personalized assessment of what was going through the accused’s mind at the time, and it applies to many serious crimes, such as murder and assault.

The **objective standard** for determining the fault element of a crime does not look at what the accused was thinking or intended; instead, it holds the accused to the standard of a hypothetical “reasonable person”. What would a reasonable person in the same circumstances have done? Reasonableness is not considered through the eyes of individuals who are overly fearful, but rather by the ordinary person informed by contemporary norms of behaviour.

Moral culpability is a term tied to the mens rea, and refers to the intent of an accused. This means that an individual can commit an illegal action such as homicide, but have no moral

fault or have the moral culpability lowered if there is a reason for their actions - such as saving another person's life. The distinction between moral culpability and legal outcome can be blurry, and evidence that leads the judge to decide one way or another will be elicited during the course of the mock trial.

The guilty act, or *actus reus*

In criminal law, to find someone guilty, they must have had both a guilty mind, or mens rea, and they must have committed a guilty act, or actus reus.

There are two possible ways to establish the actus reus, depending, as with mens rea, on the offence in question:

- Commission of an act: a person does something they shouldn't
- Omission of an act: a person omits, or fails, to do something which the law requires of them.

Case specifics

In the Criminal Code, the method for determining fault in when "Defence of Person" is invoked is outlined in Section 34. The first consideration is the subjective test. This is called "reasonable belief" under s. 34(1)(a). An important thing to remember is that the belief of violence does not have to be true. Rather, if untrue, the mistaken belief of violence needs to be reasonable. This is determined through the objective standards outlined in s.34(2), since the actions of the defendant are relevant to assess the reasonableness of their actions.

Under s.34(2)(f) the fact of an abusive relationship between parties is a factor relevant in the assessment of the objective standard of the reasonableness of conduct. Section 34(2)(b) needs to be held at the same time as s.34(2)(f) - that is to say, the conditions outlined as factors to consider are not hierarchical, and need to be elements that are considered together because they are factually intertwined. Logically, the less imminent the threat, the more likely it is that there are other reasonable actions to take. But these are not rigid requirements with objective measurements, and the facts of the case – and the evidence presented in court - make the elements flexible.

This informs the moral culpability of the defendant. Consider how courts can measure the use of force against the risk of violence. It needs to be remembered that the well known "Battered Women's Syndrome" is not a defence in and of itself, but it can be a tool used to better understand a defendant's state of mind, which can inform the validity of the self-defence argument. This is how you can determine the finding of "reasonableness" outlined in s.34(1).

S.34(2)(d) refers to the “person’s role in the incident” which means what the defendant did in terms of bringing about the conflict or seeking to avoid it. Conduct includes actions, omissions, and exercises of judgment from the beginning to the end of the incident.

In self-defence cases, the objective and subjective standards of fault both need to be considered and weighed against the moral culpability of the defendant. There are different types of mental states for different criminal offences. They include:

- Intention - a person intends to commit the actus reus
- Willful blindness - a person knows of the possibility of illegality but chooses not to ask questions or investigate the situation
- Criminal negligence - while this person did not realize the consequences of their actions, a reasonable person should have

Applying the Law and Further Reading

With your teacher and lawyer coaches, you will need to work on applying the law to the facts of the case. Remember that different witnesses may have conflicting “facts” - what one witness thinks is fact does not make it the undisputed truth.

Your opening statement and your closing arguments should argue how the law applies to the evidence. Your opening statement should outline the law and how the evidence that you anticipate the witnesses will give either establishes guilt if you are the Crown, or raises a reasonable doubt if you are the defence. Then, your closing arguments should refer back to the evidence the court heard, and again put it in the context of the law.

Remember that the mock trial is really about making good arguments: whether they actually succeed in achieving a “verdict” of guilty or not guilty makes no difference to the scores.

You will likely find it helpful to do some further reading to refine your understanding of the law and how it applies to this case. Key cases are noted below. Keep a few things in mind:

- Case summaries, or “briefs”, which you can find online (even Wikipedia), can be very helpful in explaining the key points of a legal judgment. The cases themselves can all be found on the website of the Canadian Legal Information Institute: canlii.org
- Legal judgments can make for dense reading, even for lawyers. Start by reading the summary at the beginning (called the “headnote”) so you know what the judgment is about and what points are relevant to this case, then read parts of the judgment itself if you think you need more detail. Judges do not always agree with each other. The majority opinion - the judgment written by the judge who most judges agreed with, is the best statement of the law. However, dissents (the view of a minority of judges) may help you understand the majority opinion by comparison.

- There is no need, and the rules do not allow, for you to reference cases by name. Simply state what you believe the law requires in the case at hand.

Key Cases:

- [*R v. Lavallee*](#)
- [*R v. Khill*](#)
- [*R v. Angelis*](#)

Criminal Code Provisions

Criminal Code of Canada

(RSC, 1985, c. C-46, as am.)

Defence — use or threat of force

34 (1) A person is not guilty of an offence if

- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- (c) the act committed is reasonable in the circumstances.

Factors

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- (c) the person's role in the incident;
- (d) whether any party to the incident used or threatened to use a weapon;
- (e) the size, age, gender and physical capabilities of the parties to the incident;
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (f.1) any history of interaction or communication between the parties to the incident;
- (g) the nature and proportionality of the person's response to the use or threat of force; and
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

No defence

(3) Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

Defence — property

35 (1) A person is not guilty of an offence if

- (a)** they either believe on reasonable grounds that they are in peaceable possession of property or are acting under the authority of, or lawfully assisting, a person whom they believe on reasonable grounds is in peaceable possession of property;
- (b)** they believe on reasonable grounds that another person
 - (i)** is about to enter, is entering or has entered the property without being entitled by law to do so,
 - (ii)** is about to take the property, is doing so or has just done so, or
 - (iii)** is about to damage or destroy the property, or make it inoperative, or is doing so;
- (c)** the act that constitutes the offence is committed for the purpose of
 - (i)** preventing the other person from entering the property, or removing that person from the property, or
 - (ii)** preventing the other person from taking, damaging or destroying the property or from making it inoperative, or retaking the property from that person; and
- (d)** the act committed is reasonable in the circumstances.

No defence

(2) Subsection (1) does not apply if the person who believes on reasonable grounds that they are, or who is believed on reasonable grounds to be, in peaceable possession of the property does not have a claim of right to it and the other person is entitled to its possession by law.

No defence

(3) Subsection (1) does not apply if the other person is doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

Using firearm in commission of offence

85 (1) Every person commits an offence who uses a firearm, whether or not the person causes or means to cause bodily harm to any person as a result of using the firearm,

- (a)** while committing an indictable offence, other than an offence under section 220 (criminal negligence causing death), 236 (manslaughter), 239 (attempted murder), 244 (discharging firearm with intent), 244.2 (discharging firearm — recklessness), 272 (sexual

assault with a weapon) or 273 (aggravated sexual assault), subsection 279(1) (kidnapping) or section 279.1 (hostage taking), 344 (robbery) or 346 (extortion);
(b) while attempting to commit an indictable offence; or
(c) during flight after committing or attempting to commit an indictable offence.

Using imitation firearm in commission of offence

(2) Every person commits an offence who uses an imitation firearm
(a) while committing an indictable offence,
(b) while attempting to commit an indictable offence, or
(c) during flight after committing or attempting to commit an indictable offence,
whether or not the person causes or means to cause bodily harm to any person as a result of using the imitation firearm.

Punishment

(3) Every person who commits an offence under subsection (1) or (2) is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

Careless use of firearm, etc.

86 (1) Every person commits an offence who, without lawful excuse, uses, carries, handles, ships, transports or stores a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any ammunition or prohibited ammunition in a careless manner or without reasonable precautions for the safety of other persons.

Pointing a firearm

87 (1) Every person commits an offence who, without lawful excuse, points a firearm at another person, whether the firearm is loaded or unloaded.

91 (1) Subject to subsection (4), every person commits an offence who possesses a prohibited firearm, a restricted firearm or a non-restricted firearm without being the holder of
(a) a licence under which the person may possess it; and
(b) in the case of a prohibited firearm or a restricted firearm, a registration certificate for it.

(4) Subsections (1) and (2) do not apply to
(a) a person who possesses a prohibited firearm, a restricted firearm, a non-restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device or any prohibited ammunition while the person is under the direct and immediate supervision of a person who may lawfully possess it, for the purpose of using it in a manner in which the supervising person may lawfully use it; or
(b) a person who comes into possession of a prohibited firearm, a restricted firearm, a non-restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device or any prohibited ammunition by the operation of law and who, within a reasonable period after acquiring possession of it,
(i) lawfully disposes of it, or
(ii) obtains a licence under which the person may possess it and, in the case of a prohibited firearm or a restricted firearm, a registration certificate for it.

Criminal negligence

219 (1) Every one is criminally negligent who
 (a) in doing anything, or
 (b) in omitting to do anything that it is his duty to do,
shows wanton or reckless disregard for the lives or safety of other persons.

Definition of *duty*

(2) For the purposes of this section, ***duty*** means a duty imposed by law.

R.S., c. C-34, s. 202

Causing death by criminal negligence

220 Every person who by criminal negligence causes death to another person is guilty of an indictable offence and liable

- (a)** where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and
- (b)** in any other case, to imprisonment for life.

Causing bodily harm by criminal negligence

221 Every person who by criminal negligence causes bodily harm to another person is guilty of

- (a)** an indictable offence and liable to imprisonment for a term of not more than 10 years; or
- (b)** an offence punishable on summary conviction.

Homicide

222 (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.

Kinds of homicide

(2) Homicide is culpable or not culpable.

Non culpable homicide

(3) Homicide that is not culpable is not an offence.

Culpable homicide

(4) Culpable homicide is murder or manslaughter or infanticide.

Idem

(5) A person commits culpable homicide when he causes the death of a human being,

- (a)** by means of an unlawful act;
- (b)** by criminal negligence;
- (c)** by causing that human being, by threats or fear of violence or by deception, to do anything that causes his death; or
- (d)** by wilfully frightening that human being, in the case of a child or sick person.

Exception

(6) Notwithstanding anything in this section, a person does not commit homicide within the meaning of this Act by reason only that he causes the death of a human being by procuring, by false evidence, the conviction and death of that human being by sentence of the law.

Murder

229 Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) if a person, for an unlawful object, does anything that they know is likely to cause death, and by doing so causes the death of a human being, even if they desire to effect their object without causing death or bodily harm to any human being.

Classification of murder

231 (1) Murder is first degree murder or second degree murder.

Planned and deliberate murder

(2) Murder is first degree murder when it is planned and deliberate.

Second degree murder

(7) All murder that is not first degree murder is second degree murder.

Murder reduced to manslaughter

232 (1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.

What is provocation

(2) Conduct of the victim that would constitute an indictable offence under this Act that is punishable by five or more years of imprisonment and that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section, if the accused acted on it on the sudden and before there was time for their passion to cool.

Questions of fact

(3) For the purposes of this section, the questions

(a) whether the conduct of the victim amounted to provocation under subsection (2), and
(b) whether the accused was deprived of the power of self-control by the provocation that he alleges he received,
are questions of fact, but no one shall be deemed to have given provocation to another by doing anything that he had a legal right to do, or by doing anything that the accused incited him to do in order to provide the accused with an excuse for causing death or bodily harm to any human being.

Manslaughter

236 Every person who commits manslaughter is guilty of an indictable offence and liable

- (a)** where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and
- (b)** in any other case, to imprisonment for life.