

Legal Guidance

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.

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.

Case specifics

To be found guilty of criminal harassment as defined under section 264 (1), the Crown needs to demonstrate that the accused person has shown one of listed behaviours under section (2) “prohibited conduct”.

CRIMINAL HARASSMENT

264 (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

PROHIBITED CONDUCT

(2) The conduct mentioned in subsection (1) consists of

- (a) repeatedly following from place to place the other person or anyone known to them;*
- (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;*
- (c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or*
- (d) engaging in threatening conduct directed at the other person or any member of their family.*

For this mock trial, the Crown team will need to establish that one (or more) of the behaviours listed in subsection 2 would make a reasonable person fear for their safety. To be successful, the Crown will also have to provide arguments that the defendant had the intent to commit the crime (the mens rea for the actus reus). This team should look for evidence to support that the defendant knew what they were doing and had intentions to cause harm. The Crown team will need to be clear about which specific subsection 2 behaviours are being used in their charge.

The Defence team will need to create reasonable doubt for the charge. The team should seek to show that the behaviour in the scenario demonstrates neither the actus reus (the crime itself) nor the mens rea (the intention of crime) for the charge. If the Defence team can create enough reasonable doubt, the defendant cannot be found guilty.

This case involves competing accounts between certain witnesses. Part of your job will be to establish that your witnesses are credible (believable) and reliable (their evidence accords with the objective facts). This will involve careful witness preparation, examination, cross-examination, and arguments made to the judges.

Witnesses can only speak to the facts – things that they actually saw, heard, or felt. Witnesses are not permitted to express their opinions about evidence. Teams should especially focus on the process for cross-examining on an inconsistency (also known as “impeaching” the witness).

Remember, that “winning” the case does not mean that you will get the most points for your team. It is more important to demonstrate an understanding of the law and show that your team knows the process of a criminal trial.

Some key pieces of evidence to consider:

- The tension between internet personalities and reasonable expectations of limiting communication or interaction (the dynamics of parasocial relationships on the internet)
- Public space vs stalking - the limitations of s.264 (2)(a)
- The misunderstandings that can occur in relationships and how different people might view the same situation completely differently
- The different timelines that different people can use to tell the same story
- The significance of Amaru telling Jo to stop; whether or not that happened, and why it is important
- Whether or not it is reasonable for Amaru to be fearful in those circumstances