

Episode 5: How Does Criminal Court Work? (with Justice Mabel Lai)

Guide

Learning objectives

- To introduce students to the fundamentals of criminal law in Canada, including key concepts like criminal offences, courts, and processes
- To help students understand the role of the Crown and the Defence in criminal cases, highlighting their different duties and responsibilities
- To encourage students to critically evaluate how popular culture depicts the criminal justice system and how these portrayals compare to reality
- To explore the emotional dynamics in criminal trials and how various participants—such as the accused, complainants, and justice sector workers—are affected by the trial process
- To encourage students to explore careers that involve criminal law

Materials

- Copies of this student handout for Episode 5: How Does Criminal Court Work
- Copies of the “Emotions in the Courtroom” exercise



- Device to listen to the “[Law Syrup](#)” podcast episode

Teaching and learning strategies

- **Group discussion:** Go through the episode handout and have students complete the discussion questions. You can have students work in pairs or small groups, or go through the questions as a whole class, depending on your preference. Highlight any contrasts or conflicting viewpoints.
- **Reflective exercise:** Have students individually complete the “Emotion in the Courtroom” exercise, where they imagine the emotions felt by various courtroom participants (e.g., the accused, complainants, Crown lawyer, defence lawyer, judge). This activity encourages empathy by helping students think about the human side of criminal trials.
- **Career exploration:** Encourage students to explore careers in criminal law by researching different roles within the criminal justice system. Ask them to consider which role aligns with their interests and what steps they could take to pursue it, either through post-secondary education or community engagement.

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Handout

What is criminal law?¹

In Canada, criminal law is a set of rules designed to maintain public safety, security, peace, and order in society. These laws prohibit actions like theft, assault, fraud, and murder, and impose penalties on those who commit these acts.

Both the federal and provincial/territorial governments have roles in criminal justice. Only the federal government has the power to create criminal laws, but all levels of government are responsible for enforcing these laws. Enforcement includes investigating and prosecuting crimes and supporting complainants.

Most criminal laws are found in the *Criminal Code of Canada*, which defines criminal offences and applies across the entire country since it is federal legislation.

Criminal offences fall into two categories:

- **Summary conviction offences:** These are less serious crimes, with punishments such as a fine of up to \$5,000, six months in prison, or both.
- **Indictable offences:** These are more serious crimes, with harsher penalties.

In all criminal cases, the person facing charges is called the “accused.”

¹ <https://www.justice.gc.ca/eng/csj-sjc/ccc/index.html>

Discussion questions

Do you think it's better for only the federal government to create criminal laws, or should provinces also have that power? Consider how allowing provinces to enact their own criminal laws might lead to some behaviours being criminal in certain provinces but not in others.

Criminal courts in ontario

The main role of courts in Canada is to deliver justice. In criminal law, this means making sure crimes are prosecuted fairly and according to Canada's legal and constitutional rules.

In Ontario, there are two types of trial courts: the **Ontario Court of Justice** and the **Superior Court of Justice**. All criminal charges under the Criminal Code start in the Ontario Court of Justice. However, serious criminal offences like murder, manslaughter, or drug trafficking are handled in the Superior Court of Justice. If a trial involves a jury, it will also take place in the Superior Court of Justice, as jury trials do not happen in the Ontario Court of Justice.

If the accused is found guilty at the trial court, they may ask a higher court to review the decision. This process is called an appeal. For summary conviction offences, appeals are heard by the Superior Court of Justice. For indictable offences, appeals go to the Court of Appeal for Ontario.

Pop-quiz exercise

- An individual is charged with a minor, summary conviction offence that carries with it a maximum penalty of a \$3,000 fine. Which trial court in Ontario would hear this case? **(Answer: Ontario Court of Justice)**
- Suppose the accused is found guilty at their trial and wants to appeal the decision. Which court in Ontario would hear the appeal for this summary conviction offence? **(Answer: Superior Court of Justice)**

Two sides to a criminal case

By the time a criminal charge proceeds to trial, there are two key sides to the case: the Crown and the defence. “The Crown” refers to Canada’s government, as Canada is a constitutional monarchy with the monarch (currently King Charles III) as the head of state. Crown attorneys, often called “the Crown” or “the prosecution,” are the lawyers who prosecute criminal cases on behalf of the government.

Contrary to popular belief, the Crown’s primary duty is not to secure a conviction but to pursue justice. This involves evaluating whether there is a reasonable prospect of conviction and whether prosecuting the accused is in the public interest. If the Crown decides to proceed, they gather and review evidence, interview witnesses, and develop legal arguments to fairly present the case in court.

The defence, on the other hand, is responsible for protecting the accused’s rights and advocating for their innocence. Defence lawyers challenge the evidence presented by the Crown, explore alternative interpretations, question the relevance of evidence, and highlight weaknesses in the prosecution’s case. A strong defence is critical to ensuring that the accused receives a fair trial and that their rights are upheld.

In Canada, accused individuals are presumed innocent until proven guilty. To convict someone, the Crown must establish their guilt “beyond a reasonable doubt”. This standard is higher than “more likely than not” but does not require “absolute certainty”. This means that an accused person does not have to prove their innocence. Instead, the Crown must prove their guilt. It reflects the seriousness of criminal convictions and the potential stigma and harm they can cause.

Discussion questions

Popular culture often depicts “the best” prosecutors as those who “never lose a case”. Do you think this view aligns with the actual responsibilities and duties of the Crown in Canada’s justice system?

Popular culture vs. reality

It should come as no surprise that the way the criminal justice system is sometimes depicted in television shows and movies doesn’t always align with how it works in real life. While TV shows and movies are made for entertainment, the criminal justice system in Canada is focused on ensuring justice for real people. In reality, criminal trials are usually much less dramatic than what you might see on screen. Additionally, while criminal trials are adversarial in nature, they are typically far less confrontational than the intense, high-stakes courtroom drama often depicted in popular culture.

While courtroom dramas or crime series can be interesting and entertaining, it’s important to keep in mind that these depictions may not always reflect the realities of the justice system. Some depictions are more accurate than others. For the most accurate and reliable information about Canada’s criminal justice system, it’s always best to turn to trusted resources, like the ones linked at the end of this document.

Discussion questions

Where have you seen the criminal justice system depicted in popular culture? Based on what you’ve learned about how the Canadian criminal justice system works, do you think those depictions were accurate? How do you think they might differ from the reality of criminal trials?

Representation in the Law

Canada is an incredibly diverse country, and a key part of ensuring that our justice system serves all Canadians is having a judicial bench that reflects this diversity. While there is still a long way to go, Canada has made encouraging progress in increasing the diversity of its judges. For example, while racialized judges currently make up 76 of 1,180 federally-appointed judges, 60 of the 533 judges appointed since 2016 have been racialized. Additionally, 281 of these appointments have been women, bringing the total number of federally-appointed female judges to 552, which is approaching gender parity.² Since the federal government is responsible for appointing Superior Court judges, these developments directly affect the diversity of Ontario's judiciary.

At the Ontario Court of Justice, the Judicial Appointments Advisory Committee (JAAC) plays a significant role in the appointment process.³ The JAAC is responsible for recommending candidates for provincial judicial appointments and has actively worked to encourage legal professionals from diverse communities to apply for judicial positions. This includes changes to the judicial application form to allow applicants to self-identify as members of racialized, ethnic, or other equity-seeking groups. The JAAC also encourages applications from women, Indigenous peoples, francophones, persons with disabilities, 2SLGBTQ+ individuals, and visible and ethnocultural minorities.

Discussion question

In your opinion, what kinds of diversity are most important to have represented in our judiciary, and why? Why is this something worth prioritizing and striving for?

² <https://www.fja.gc.ca/appointments-nominations/StatisticsCandidate-StatistiquesCandidat-2023-eng.html>

³ <https://www.ontariocourts.ca/ocj/jaac/>

Discussion questions

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Emotions in the law

Criminal trials are serious matters with high stakes for everyone involved. The accused person could face a loss of liberty and the stigma of a criminal conviction, while the complainants may have suffered significant harm and may want to see justice served. As a result, emotions can run high during these trials.

To help manage the emotional aspects, our justice system places responsibility for prosecuting criminal cases in the hands of Crown attorneys, rather than the complainants or their lawyers. Crown attorneys represent the government, not the complainant, and their role is to pursue justice, not revenge. The complainant's involvement is generally limited to providing testimony or evidence during the trial.

Additionally, the judge plays a crucial role in maintaining order in the courtroom and ensuring that the proceedings remain respectful, even in the face of strong emotions.

Careers in Criminal Law

Criminal law offers a wide range of rewarding career paths, each playing a crucial role in maintaining justice and public safety. Whether you're interested in becoming a prosecutor, defence lawyer, judge, or any other legal professional involved in the criminal justice system, there are many ways to learn about the field and explore your options.

A great place to start is by consulting resources like [those provided by OJEN](#), which describe various careers in criminal law and the justice sector. These resources can help you understand the different roles within the system and what each career entails.

How Does Criminal Court Work?

Another helpful way to learn more is to connect with professionals currently working in criminal law. Reaching out to a Crown attorney, criminal defence lawyer, or even a judge can provide valuable insights. You could also visit your local courthouse to witness criminal trials in action—since trials are generally open to the public, this is an excellent opportunity to see the process firsthand.

Discussion question

Imagine you are considering a career in criminal law. What role would interest you most, and why? Consider the types of work each position involves and how they might align with your personal interests and skills. Do you think you would be more interested in representing individuals or advocating for broader public safety and justice? What would be fun and rewarding about this line of work? What would be difficult?

Exercise

Emotions in the courtroom

Instructions: Imagine you are attending a criminal trial. You are an observer in the courtroom, but you are also asked to think about the emotions of each key participant in the trial. Your task is to reflect on how different people in the courtroom might be feeling during key moments of the trial, considering their roles and personal experiences.

Consider the following participants in the trial and imagine what emotions they might be experiencing:

- **The accused:** What emotions might they feel when they first hear the charges read against them? How might they feel throughout the trial, especially if they are found guilty or not guilty?
- **The complainant:** What emotions might the complainant feel when they testify or when they see the accused in the courtroom? How might they feel if the trial doesn't result in a conviction?
- **The Crown lawyer:** What emotions might the Crown attorney feel during the trial, particularly when presenting evidence or addressing the judge? How might they feel if the case is lost or won?
- **The defence lawyer:** What emotions might the defence lawyer feel as they work to protect their client? How might they feel if their client is acquitted or convicted?
- **The judge:** What emotions might the judge experience as they oversee the trial, particularly when making rulings or delivering the verdict?

Group Discussion: After reflecting on the emotions of the different participants, discuss how these emotions could affect the trial process. Do you think any emotions might interfere with achieving justice? How does empathy for each participant help ensure a fair trial?

Further information and resources

If you want to read more about criminal law, criminal courts or Ontario's and Canada's court systems, have a look at the links below.

[Steps to Justice – Criminal Law](#)

[Civil and Criminal Cases](#)

[*The Criminal Code of Canada*](#)

[How Does Canada's Court System Work?](#)

[Roles of People in the Court](#)

[Ontario Court of Justice](#)

[Superior Court of Justice](#)