

Ontario Justice Education Network 2007 Summer Law Institute



Criminal Law Procedure:
Beasts of Burden, Large and Small

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Overview

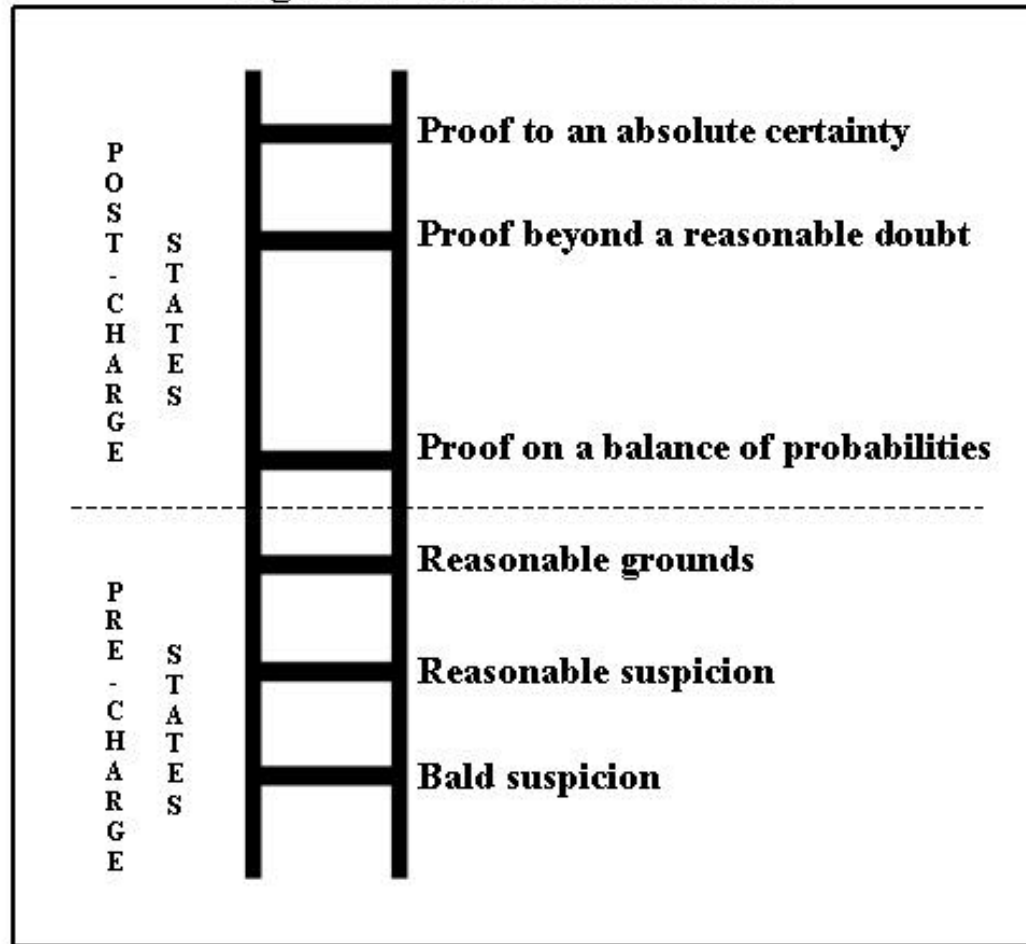
- **Mechanics of the Criminal Process**
- **The Ladder of Proof**
- **Judicial Interim Release**
- **Pre-trial Applications**
- **Trial Issues**
- **(Sentencing and Other Orders)**

Mechanics of the Criminal Process

- Investigation
- Charging Stage
- Pre-trial Custody/Release
- Pre-trial Process
- Preliminary Hearings
- Trial
- (Sentencing and Other Orders)

The Ladder of Proof

Figure 1. The Ladder of Proof[©]



Judicial Interim Release

- Usually, the prosecutor has the burden to ‘*show cause*’ why the defendant should be detained in custody until trial
- The burden is met if detention is necessary under the primary, secondary, or tertiary grounds
- In some cases, the accused must ‘show cause’ why detention is not justified (Reverse Onus)
 - S.515(6)a)i) – charged with an indictable offence while on bail for another indictable offence
 - S.515(6)a)ii) – charged with a criminal organization offence (ss.467.11-467.13)
 - S.515(6)a)iii) – a terrorism offence (ss.83.02-83.04 or ss.83.13-83.23)
 - S.515(6)a)iv) or v) - offences contrary to the *Security of Information Act* (ss.16, 17, 19, 20, 21, 22, or 23)
 - S.515(6)b) – charged with an indictable offence while not ordinarily resident in Canada
 - S.515(6)c) – charged with failing to appear in court, or failing to follow the terms of a promise to appear, an undertaking, or a recognizance (ss.145(2)-(5))
 - S.515(6)d) – charged with an offence punishable by life imprisonment under the *Controlled Drugs and Substances Act*
- Section 742.6

Pre-trial Applications

- **Eg. 1**
 - **The admissibility of the accused's statement**

- **Eg. 2**
 - **The exclusion of evidence pursuant to s.24(2) of the *Charter***

Trial Issues

- To shackle or not
- To sit at counsel table or not
- Challenge for Cause
- Evidentiary Issues
- Who speaks last, closes first
- Miscellaneous

(Sentencing and Other Orders)

- S.11(d) *Charter* no longer applies
- The rules of evidence are *generally* relaxed (s.723)
- However, note s.724 (see *R. v. Gardiner* (1982), 68 C.C.C. (2d) 477 (SCC))
- DNA Order
- Forfeiture Order
- Sexual Offender Registration Order



A Stay in School Production[©]
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