

Section 2: Criminal Law

Lesson 1: Introduction to Criminal Law

SNAPSHOT

Grade Level	8-10
Duration	2-4 periods

Introduction

Students will be introduced to the basic principles of criminal law and the *Criminal Code of Canada*. Students begin with some background on the elements of criminal law. They will learn that most of the criminal laws in Canada are in the *Criminal Code of Canada* and that those laws apply across the nation. Criminal defences and procedures will also be discussed. Finally, students will think critically about morality and how it is applied to criminal law.

Objectives

By the end of the lesson, students will:

- Understand the key elements and application of criminal law, the Criminal Code of Canada and the criminal court process
- Know who is involved in criminal court processes and what they do
- Be able to name some of the types of criminal offences and charges
- Know the defences in criminal cases
- Form opinions on the subject of morality and the law

Focus Questions

1. What are some of the types of crime according to the *Criminal Code of Canada*?
2. What are the elements of a crime?
3. What happens when a crime is committed?
4. Who is involved in the criminal court process? What do they do?
5. What are some criminal offences?
6. What are some criminal defences?
7. How are morals connected to criminal law? What is your opinion on the subject?

Teaching Summary

Topic 1: The Criminal Law

This is a detailed introduction to criminal law in Canada. Students will have background information to read and use while working with three case studies.

Topic 2: Criminal Court Procedure

Students will use the information on *Handout 2: Criminal Court Procedure* to answer 14 questions on *Handout 3: What do you Know?* This is an overview of how a criminal case progresses through the court.

Topic 3: Criminal Offences and Criminal Defences

Background information will list some offences and criminal defences for the students to consider. They will identify a number of offences on *Handout 5: Working with Criminal Offences and Defences* and look at some short case scenarios to decide what the offence is, why it occurred, if it could have been prevented and how the offender should be punished. Time permitting, students will do in-depth research into the elements of a specific defence and will look at precedent setting case(s). They will explain the function and the purpose of the defence.

Topic 4: Morality and Criminal Law

Students will read *Handout 6: The Wolfenden Report (1957) and Morality and the Law* and then complete the activities. A free write exercise and discussion will challenge students' critical thinking skills.

CONTENT

Topic 1: Definition and Principles

Criminal Law in Canada

Criminal law is a category of public law that punishes behaviour that results in injury to people and/or property. In Canada, most criminal law is made by the federal government. Some laws made by the provincial and municipal governments are called "quasi-criminal." For example: offences under the Motor Vehicle Act. "Quasi" is Latin for "as if". Most of the criminal laws are found in the *Criminal Code of Canada* which applies to all provinces and territories in Canada. It contains a description of crimes and criminal law procedures.

A crime occurs when an individual breaks one of our criminal laws. Every crime has two essential parts: the action or *actus reus* and the intent or *mens rea* (guilty mind). For example, the crime of arson has two parts: actually setting fire to a building and doing it wilfully and deliberately. Setting a fire by accident may not be a crime. For most criminal cases both the *actus reus* and the *mens rea* must be proven. If either element is missing, then no crime has been committed.

Principles of Criminal Law

Presumption of innocence is a principle of the Canadian criminal justice system. The accused is presumed to be innocent until proven guilty.

Burden of proof means that it is Crown counsel's responsibility to prove that the accused is guilty. The defence lawyer does not have to prove that the accused is innocent.

Beyond a reasonable doubt is the expression used when determining the likelihood that the accused committed a crime. The Crown must prove that the accused is guilty and there cannot be any reasonable doubt about it in the minds of the judge or jury. If there is a reasonable doubt then the accused must be found not guilty.

Types of Crime

In the *Criminal Code of Canada*, three broad categories of criminal offences are used. The least serious are summary conviction offences, the more serious are called indictable offences. An offence that can be a summary offence or an indictable offence is known as a dual or hybrid offence.

Summary conviction offences are punishable by no more than six months in prison or a fine. Indictable offences allow for life sentences and larger fines. The punishment for a dual or hybrid offence is determined by the Crown's election of whether to proceed summarily or by indictment, with the Code prescribing available sentences. For some hybrid offences, summary proceedings can result in penalties higher than those

allowable for straight summary offences (for example, assault causing bodily harm, upon summary conviction, is punishable by a maximum of 18 months in jail.)

The *Criminal Code of Canada* has distinguished between different types of offences for three reasons. First, some offences cause greater harm to individuals or society. Second, some offences are considered more morally repugnant than others and third because some offences are conducted against property while others are against people.

The Elements of a Crime

It is a general principle of criminal law that both the physical act (*actus reus*) and the guilty mind (*mens rea*) must be present at the same time for a crime to have occurred. Its importance is illustrated by this example. Joe picks up his shoes from the locker room at his golf club and takes them home. When he returns home he realizes that they are not his shoes but those of another club member but decides to keep them because they fit and are much better than his own. The criminal law relies on the concept that the act of depriving the owner of the shoes continues until the point at which Joe formed the guilty mind (*mens rea*) to take the shoes. That is the point at which the offence occurs – when there is both a guilty act and a guilty mind.

Actus reus

The physical act of committing an offence (*actus reus*) is more than an act, it can be an omission to act or a 'state of being'. For example if one is in possession of an illegal narcotic, one is not acting or failing to act but merely in possession. This is a state of being. Omissions to act can also be crimes (a failure to act when required to do so by law).

If a parent fails to provide the basic necessities for children's survival the failure to provide is an omission and a crime. The majority of crimes are acts or kinds of misconduct. Proof of the physical element requires more than simply determining an act, omission or state of being exists. It is necessary to consider the four C's-conduct, consequences, circumstances and causation. The *conduct* must be as described earlier an act, omission to act or a state of being as outlined in a specific section of the criminal charge. Of particular importance to the concept of conduct is that it be voluntary. The law will not hold someone criminally responsible for an involuntary act. *Consequences* refer to the outcome of a specific act. For a homicide the consequence would be the death of a human being.

The *circumstances* aspect of the *actus reus* refers to the relevant circumstances under which an act must occur to be criminal. In the case of the crime of trespassing at night the relevant circumstances would be that the act occurred at night, on someone's property other than your own and that you entered the property without consent or lawful excuse.

The final element is *causation*, meaning that the conduct of the accused person must be shown to have caused the consequence (the criminal act) to occur. If Sally is charged with murdering Bill then it must be proven that Sally's conduct caused the death of Bill.

Mens rea

The physical act represents one element in the commission of a criminal act while the guilty mind represents the second key element. The guilty mind refers to the intention, knowledge or recklessness of the accused. Essentially the law states that we must mean to cause a wrongful consequence.

Intention is commonly used in the *Criminal Code* to establish a type of guilty mind. Words like 'willfully,' 'means to' or 'intentionally' are used to describe a state of mind. There are two basic types of intention-specific and general. Specific intent offences frequently use the phrase 'with intent' or 'for the purpose of' to demonstrate a specific purpose behind the crime. General intent crimes are those that do not require a further purpose or intention and are often crimes committed in moments of uncontrolled passion or aggression.

The knowledge form of a guilty mind means that the accused must have knowledge of the specific circumstances of the crime. The phrases 'knowingly' or 'knowing' are commonly used here to indicate a specific type of knowledge. For example, to knowingly lie to a judge or jury is called perjury and is a criminal offence but to give false evidence unknowingly is not a criminal offence.

The third kind of intent is recklessness. This is type of intent is found in crimes like dangerous driving causing death. It means that the accused has been unduly careless in their actions by not exercising good judgment and foresight. If one drives 100km/h through a school zone in the daytime, with no intention of killing or harming a child, and hits a child crossing the street and that child dies, the law would use recklessness to establish the guilty mind. Contrary to TV law, it is not necessary for the Crown to establish *why* an accused has committed an offence (the motive). Motive may be used to establish intention and can be used in sentencing to mitigate or aggravate the sentence depending on the reason for committing the crime.

Other Elements of Crime

In addition to the physical act and guilty mind the criminal law also ascribes guilt in specific circumstances to incomplete offences and to those who are less than full participants in the offence. A crime is considered attempted if it can be established that there was intention, that some act toward committing the offence occurred and that the offence did not reach full completion.

Anyone that helps, aids or assists before, during or after the commission of an offence is a party to that crime and can be charged under the *Criminal Code* as though they had actually committed the offence. Aiding or assisting someone that you know to have committed a crime is also a separate offence in Canada. Where people form an

intention and common purpose to carry out an unlawful act and any one of them commits a crime in carrying out the common purpose, each person who knew that the criminal act was a likely consequence of the common purpose is also a party to that crime. Agreeing with one or more people to commit an offence is a conspiracy and is a crime in Canada. Therefore if you plan to commit a crime, even if you do not complete the act, it is a crime. Counselling others to commit an offence is also unlawful.

More information is available at <http://www.justice.gc.ca> or view the *Criminal Code* at <http://www.laws.justice.gc.ca/en/c-46>.

Topic 2: Criminal Court Procedure

Criminal Court Process

There are several ways in which an accused can be brought to court: on an arrest with warrant, an arrest without warrant, a promise to appear, an appearance notice or a summons to appear.

Appearance Notice

An appearance notice is generally given by police to an accused who has not been arrested on a minor criminal offence. It compels the accused to appear before a court on a specific date. If the accused does not appear, the court can issue a warrant for his/her arrest.

Promise to Appear

A promise to appear is sometimes given to an accused that has been arrested and released by the police. It is a personal guarantee to come to court on the date specified. If an arrested person is not released by the police, there must be a bail hearing before the court within 24 hours to determine whether the person will remain in custody pending his or her trial. A recognizance is one form of interim release and is completed by either promising to pay money or depositing money or other valuable security with the court. Then the defendant will be released pending a trial or appeal but has an order to appear. If the defendant does not appear, the money promised is due or the money or security deposited are subject to forfeiture, and an arrest warrant will be issued. When an accused is charged with a serious crime, or is considered a flight risk or is likely to re-offend, an order for secure custody will detain the accused in a correctional centre until trial.

Police Report to Crown

The police prepare a report detailing all the evidence they have collected and based on that report, Crown counsel decides whether criminal charges are appropriate.

Information or Indictment

An information or an indictment is used to charge the accused with the crime. An information is sworn and signed by a peace officer who knows the case and swears that

there are reasonable grounds to believe an offence has been committed. An Indictment is the charging document used in Supreme Court and is signed by Crown counsel.

In Canada there are three types of criminal offences: summary conviction, indictable and dual (hybrid) offences. An example of a summary conviction offence is trespassing by night. An example of an indictable offence is armed robbery. An example of a dual (hybrid) offence is assault. For hybrid offences, the Crown chooses whether to proceed summarily or by indictment and for the application of all further procedural rules, the offence is deemed to be the type of offence the Crown has chosen.

Form of Trial

When an accused is charged with an indictable offence, in most cases they have a right to choose between three forms of trial: to be tried by a Provincial Court judge, or by a Supreme Court judge alone or by a Supreme Court judge with a jury. This is called an election. In some serious cases like murder, the trial must be by judge and jury, unless both the Crown and the accused consent to a trial by a Supreme Court judge alone.

First Appearance

The first appearance is where an accused or his or her lawyer (counsel), makes their election (if required), enters a plea to the charge(s) and/or asks for time to retain counsel. The issue of whether or not an accused can be released on bail pending trial is often decided at the first appearance. It may take time for the accused and counsel to decide what to do about the charge so there may be a number of appearances. If the accused decides to plead guilty, sentencing may be done on a different date because a pre-sentence report may have to be prepared by a probation officer. If the accused pleads not guilty then a date for the trial or preliminary hearing is set depending on the type of offence.

Preliminary Hearing or Inquiry

If an accused is charged with an indictable offence and has elected a trial by other than the Provincial Court, a preliminary hearing is held where the Crown must present sufficient evidence to commit the accused for trial. This allows the court an opportunity to determine whether the charges against the accused are valid. The preliminary inquiry is held in Provincial Court. The accused does not have to present evidence at this time because the burden is on the Crown to establish they can convict on the evidence.

The Trial

The judge is the sole arbitrator of the law as it applies to each case and its facts but also provides a judgment in non-jury trials. The court clerk is in charge of all exhibits, physical evidence, court files and the recording of the proceedings during any type of court hearing. The sheriff manages courtroom security and escorts the accused to and from court if he or she is being held in jail during the trial. Not all persons accused of serious crimes are held in custody prior to trial.

Prosecutors in Canada represent the people through the “Crown” - a term we use because our Head of State is the Queen. The state charges the accused and is referred to as Crown Counsel/Prosecutor. Defence counsel is the lawyer for the accused in a criminal trial.

In a criminal matter, the onus is on the Crown to prove the case beyond a reasonable doubt. The judge or jurors must consider all the evidence to decide if it convinces them beyond a reasonable doubt of the guilt of the accused.

When a criminal case is brought to court and if the accused might go to jail for a term of five years or more then the accused has the opportunity to choose to have either a trial by judge alone or a trial by a judge and jury. The jury will consist of 12 members.

At the end of the trial, when both sides have stated their cases, a verdict will be reached. The verdict is the decision made about whether or not the accused person is guilty in a criminal trial. In a criminal trial with a jury this verdict must be unanimous. If the jury cannot reach a unanimous verdict it is called a "hung jury" and a new trial must be held.

Appeal

In the BC Court of Appeal there are usually only three judges sitting on an appeal unless the court is being asked to overturn one of its own decisions. In that case five judges would hear the appeal.

Learn more about the [Court of Appeal](http://www.courtsofbc.ca/) on their website or watch a video on <http://www.courtsofbc.ca/>. You may also visit <http://www.justiceeducation.ca> for more information.

Topic 3: Criminal Offences and Defences

Criminal Offences

Robbery

Physical force or threats of violence to steal property from someone. The penalty is up to life imprisonment.

Assault

Physical force directly or indirectly without permission on another person or attempting or threatening by act or gesture to apply force to another person. The penalty is up to five years imprisonment.

Possession of Drugs

Having illegal or prohibited drugs in your possession. The penalty is up to six months imprisonment and/or a \$1000 fine if prosecuted by summary conviction; penalty depends on what substance it is and how much is in possession; if prosecuted as an indictable offence it could be up to seven years.

Trespassing by Night

Being on someone else's property at night without permission or lawful excuse. The penalty up to six months imprisonment and/or a \$2000 fine.

Breaking and Entering

Definition gaining entry into someone's house or commercial premises and committing or intending to commit another offence. The penalty is up to life imprisonment if the property is a house; up to seven years if the property is a commercial property.

Failing to Stop

Not stopping at a "Stop" sign. The penalty is fines and driver's licence suspension.

Causing a Disturbance

Disturbing the peace and quiet of the occupants of a dwelling house (Note: it could also be making noise at night contrary to a city bylaw.). The penalty is up to six months imprisonment and/or a \$2000 fine.

Parking in a "No-Parking" Zone

Leaving your car in a place where parking is not allowed. The penalty is having your car towed away and fines.

Dog off Leash

Walking your dog without a leash. The penalty is having your dog impounded and fines.

Mischief

Causing willful damage to someone else's property. The penalty is up to two years on summary conviction but if over \$500.00 in value then up to ten years by indictment.

Theft

Taking something that doesn't belong to you without the owner's permission. The penalty is up to ten years if property stolen over \$5000.00 in value; up to two years where property value is less than \$5000.00

Criminal Defences**Automatism**

Involuntary conduct may allow an accused to raise the defence of automatism, meaning that a person has no conscious control over his or her body movements. If the defence of automatism is successful, the accused will be lacking the necessary mens rea for a

conviction. There are two kinds of automatism, mental disorder and non-mental disorder. Automatism that derives from a state of temporary insanity is classified as mental disorder automatism. If a physical blow to the body or existing medical condition triggers a state of automatism it is classified as a non-mental disorder.

Consent

In very limited situations an accused may claim that the victim consented to the accused's act (for example, if two parties agree to fist fight). Even in a consensual fight, consent is vitiated (i.e. is no longer a defence) if the accused intended to and actually caused serious bodily harm to the victim. Consent is never a defence to murder. Consent to borrow property is a defence to theft because if the Crown wants to successfully prosecute an accused, it would need to show that there was an absence of consent from the property owner.

Duress/Compulsion

This defence is also quite limited because the duress must occur at the moment the crime occurs. To establish duress, the evidence must show that an accused has been compelled to act by threats of immediate bodily harm and that he or she believes at the time of committing the offence that the threats will be carried out. It does not apply to persons that form a conspiracy or are parties to an offence. The defence is limited in that it cannot be used in cases of treason, murder, piracy, attempted murder, sexual assault, forcible abduction, arson or robbery, The person delivering the threat must be present at the time the offence was committed.

Entrapment

This defence applies if an accused has been 'set up' or trapped into committing a crime by the police. Common areas for this defence are in narcotics crimes and prostitution offences. In essence, the defence is one that recognizes the abuse of process by the police. Two basic guidelines that the police must follow to avoid an entrapment defence are that the investigation must target someone already engaged in crime and they must be carrying on a bona fide (genuine) investigation.

Intoxication

As a general rule, intoxication is not a defence to a criminal charge though it can alter the appropriate charge in a given set of circumstances. However, it can be used as a partial defence to what are known as specific intent crimes. If an accused was too intoxicated to form the necessary intent to knowingly carry out a specific crime then intoxication may successfully be used as a defence. Robbery would be an example of a specific intent crime that might be mitigated by an extreme state of intoxication. The Supreme Court of Canada stated in *R. v. Perrault* that the degree of drunkenness must render a person "so stupid by drink that he does not know what he is doing" (Barnhorst, 1992, p.69). It is also possible to use the defence of intoxication if it leads to a state of automatism or temporary insanity (*R. v. Bernard*, SCC 1988).

Insanity

The test of insanity allows for three elements: natural imbecility, a disease of the mind or an inability to appreciate the nature and quality of an act. One of these conditions must exist at the time of an offence to secure the defence of insanity.

Natural imbecility means that the person's mental development is not complete and that the condition has been caused at birth or by natural decay. A disease of the mind is a more complicated element to determine and is left to a judge to decide based upon evidence provided in court. Some recognized disorders are schizophrenia, dementia, paranoia and some types of epilepsy. The accused must suffer from the impairment at the time of the crime, though they need not have a permanent condition. The burden of proving one's state of insanity rests with the accused and not with the Crown. Although this is a clear violation of the right to be presumed innocent, under the Charter, the Supreme Court of Canada has ruled that it would be unreasonable for the Crown to disprove insanity in every case.

Mistake of Fact/Mistake of Law

Mistake of fact occurs when an accused believes that his or her actions are not criminal by virtue of the circumstances. The mistake must be a) an honest one and b) such that no offence would have been committed if the circumstances had been as the accused believed them. If Harold takes Emma's lighter, believing it to be his, a mistake of fact has occurred and no crime has been committed. The mistake relates to the mens rea because the accused, if the facts are as they believe them to be, is not acting with a guilty mind. A mistake of law is not mere ignorance of the law as this is not an excuse to commit crimes. Mistake of law is a limited defence but it can be used with many regulatory offences made to protect public safety or health. If an official provides consent or permission to act, but the act is found in violation of the law, then one may use the defence of mistake of law. In some cases mistake of law and mistake of fact coexist. For example if a tow truck driver is asked to remove a vehicle from private property, by colour of right he is not committing a theft. Colour of right refers to an honest mistake of fact or law that causes a person to believe they have a legal right to possess property.

Necessity

Duress is one type of the general defence of necessity. The broader defence of necessity is rarely used in our system. The defence essentially comes to play when an ordinary person is compelled to break the law in an emergency situation. If one has to illegally enter a building to save a child from fire, the defence would be applicable.

Self-Defence/Provocation

Self defence is another specific type of the defence of necessity. Provocation is not a defence in itself but a condition relevant to the use of self-defence of one's property or personal safety. Self defence occurs under two strict conditions a) the accused must be under reasonable fear of death or serious bodily harm and b) the accused must believe there was no other way to save himself or herself. It is possible to use self-defence even if the victim initiated the assault by verbal threats or a physical act. One may also act in

defence of others but one cannot use more force than is necessary to prevent the assault or its repetition. We also have the right to defend personal property either fixed or moveable, but very specific rules apply to each type and to the various circumstances that create the trespass. Provocation can also, if established by the evidence, reduce murder to manslaughter.

More information is available at <http://www.justice.gc.ca> or you can view the *Criminal Code* at <http://www.laws.justice.gc.ca/en/c-46>

Topic 4: Morality and Criminal Law

The Wolfenden Report (1957)

The *Criminal Code of Canada* carries specific restrictions on our conduct in both public and private domains. Some of these restrictions keep us safe, some protect our property and some protect us from ourselves. A significant number of these laws reflect popular morality and societal values. However, moral positions and social standards change over time, altering what conduct is deemed criminal. Into the 1950s, many democratic nations had laws that made it a criminal offence to be gay, lesbian or bisexual. These laws regulated the private conduct of citizens even when it involved consent by both parties.

Vice has always reflected societal values and popular morality in that our tolerance has changed with time and location. Gambling, prostitution, pornography, alcohol, and drugs are described by some people as 'victimless' crimes because they may involve voluntary conduct on the part of producer and consumer, yet all have been regulated by criminal laws. These laws are needed especially where the prostitute and the children who are subjects of child pornography are being forced to participate and have not consented.

Morality is about knowing right from wrong and ethics is acting on our moral compass. Our moral compass develops as we age and acquire new knowledge and experiences that shape what we view as right or wrong conduct. Family, friends, religion, society, teachers and popular media each have an impact on the development of our moral compass. The difficulty in basing criminal laws on moral standards is that society cannot always find agreement on the standards used to determine right and wrong, good or bad. This leads to moral relativism, meaning that our view of right and wrong shifts relative to time, place and our personal value system.

One hundred years ago, people thought nothing of executing criminals for crimes less serious than murder; now the death penalty has been abolished in Canada. The decriminalization of narcotics, same-sex marriage, stem cell research or casino gambling are current issues that trigger strong but divergent reactions by many Canadians. It is the challenge of the criminal law to represent the shifting sands of our moral framework with enduring moral standards that should not rest on a time or place.

Over 50 years ago an important debate took place in England between opposing sides on the criminality of prostitution and homosexuality. The Wolfenden Report (1957) was produced for a parliamentary committee to examine the issue and in doing so opened a debate on public vs. private morality. The report's major recommendations made headlines; one such recommendation stated that homosexual behavior in private between consenting adults should no longer be classed as a crime. In its findings the report stated that the criminal law should be used to "preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are vulnerable..." (Dyzenhaus and Ripstein, 2001, p.309)

The Wolfenden Report spurred public debate and eventually led to a change in the laws of England. Lord Patrick Devlin, a famous British judge, disagreed with the report's conclusion. He argued that popular morality should be allowed to influence lawmaking and that even private acts should be subject to legal sanction if they were held to be morally unacceptable by the "reasonable man"... in order to preserve the moral fabric of society. The will of the majority would carry more weight than the measured reflection on common moral principles like equality. The debate led to a change in English law in the 1960s and highlights the importance of understanding the role of the state in regulating our private lives.

ACTIVITIES

Activity 1: The Criminal Law

Provide each student with a copy of *Handout 1: The Criminal Law*. Explain that they will be learning about the legal elements of crime, which they will then apply to case studies. Review the terms and clarify student questions using examples wherever possible.

Assign the case studies on page 4 of the handout only after students have some comfort with the terms and concepts. Review the answers.

See Answer Key for *Handout 1* in the Assessment section.

Activity 2: Criminal Court Procedure

Provide students with *Handout 2: Criminal Court Procedure*. This can be given in the preceding lesson as a homework reading assignment. Students may also look at www.CourtsofBC.ca for additional information. Hand out a copy of *Handout 3: What Do You Know?* to each student or alternatively assign section a, b, c and d to groups to complete. Conduct a review on individual questions or have the groups present answers on a whiteboard, overhead or chalkboard.

See Answer Key for *Handout 2* in the Assessment section.

Activity 3: Criminal Offences and Criminal Defences

Give students *Handout 4: Criminal Offences and Criminal Defences* to read prior to class. Review the highlights with your students. Give out *Handout 5: Working with Criminal Cases* and have them complete it. They can work individually, in pairs or in groups. Students will apply what they have learned. After they have finished discuss the answers with the whole class for the first three pages. If you have time you can assign the fourth page for a homework assignment and have students do a class presentation.

See Answer Key for *Handout 4* and *Handout 5* in the Assessment section.

Activity 4: Morality and Criminal Law

This activity engages students in some critical thinking about morality and criminal law. Provide students with the following pre-reading questions to prepare them for the discussion on morality and law:

1. Has society the right to pass judgment on public matters of morals?
2. Ought there be a public morality or are morals a matter for private judgment alone?

3. If society has the right to pass judgment, has it also the right to make laws that impose morality on the people?
4. What principles should separate laws that deal with public moral issues (eg. pornography, prostitution, narcotics) and ones that regulate private moral conduct (sexual acts between consenting adults, internet use, production of narcotics)?

These are difficult questions for students and you will want to spend some time discussing them prior to allowing students to complete them. Begin the next class with a debriefing of student answers; you may want to assign groups and use a placemat activity to have them record some thoughts on public vs. private morality.

Hand a copy of *Handout 5: The Wolfenden Report (1957)* on morality and law and have the students complete a set of two-column or Cornell notes. Alternatively, have the class read the passage and use an active listening strategy to review the material and open a discussion. Keep the discussion to clarification of the salient points as the students will be conducting a free write to express their thoughts on the issue in the next step.

Provide each student with a copy of the *Handout 6: Morality and the Law* and complete the free write activity in class. If time permits run the continuum debate; if not set this up for the beginning of next class.

Continuum Debate

The continuum debate begins by selecting two students with opposing views on the role of the state in regulating private morality (conduct). Once you have two volunteers, have them stand at opposite ends of the classroom wall (you will need room enough for all of your students to stand shoulder to shoulder facing you; space permitting, students can also form a “U” shape and face each other).

From this point instruct all of the others to pick a place along the line that best fits how they feel about the topic - extremists at either end, those leaning to one side move to one end or the other and those uncertain or clearly on middle ground take up the centre. Now have each student (alter as time requires) present their viewpoint and one reason for holding that view. After all (or most) have spoken allow students to shift positions in the line based on changes to their thinking on the issue. Allow a maximum of 20 minutes before ending the debate.

Read, Reflect and Write

Move the students to the next activity reflecting on the reading and discussion to clarify their thinking on the issue of private and public morality. Review the quote in the Wolfenden Report on the role of criminal law. Inform them that this quote will be used to focus their thinking about criminal law in Canada. Have each student (or groups) choose a common moral issue like gambling, prostitution, pornography or narcotics and ask them to argue against making it a criminal offence. Create balance by assigning or

manipulating which topics are chosen and in what number. Students use the guidelines on the handout to complete the writing on the issue and prepare to present their views to the class.

Devlin's View of Vice (Optional)

The last activity can be completed as a bonus or assigned to students looking for enriched opportunities in class. Use the quote by Lord Devlin to have the student's reflect on the nature of vice, exploitation, human weakness and the role of the state in protecting the weak, inexperienced, poor, immoral and immature. Students examine the issue of what creates vice (human weakness according to Devlin) but also tap into the question of state regulation of vice to protect both consumers and producers. The format you choose for the product may vary with the student (essay, oral presentation, PowerPoint slideshow or case study analysis).

RESOURCES

Activity 1: The Criminal Law

Handout 1: The Criminal Law

Activity 2: The Criminal Court Procedure

Handout 2: Criminal Court Procedure

Handout 3: What Do You Know?

Activity 3: Criminal Offences and Criminal Defences

Handout 4: Criminal Offences and Defences

Handout 5: Working with Criminal Offences and Defences

Activity 4: Morality and Criminal Law

Handout 6: The Wolfenden Report and Morality and the Law

ASSESSMENT

Activity 1: The Criminal Law

Use the answer key for *Criminal Case Studies* to complete your teacher assessment. Student responses can be graded on completion or a raw score.

Answer Key: *Handout 1: Criminal Case Studies*

Case 1

Marion asked Sarah to take care of her infant boy for a few days. Marion also asked Sarah to give the infant a teaspoonful of “medicine” every night. In fact, the medicine was poison. Sarah did not think that the infant needed medicine so she did not give it to him. She put the medicine on a shelf in her living room. Later, Sarah’s five-year-old son gave the infant a large dose of the ‘medicine’ and the infant died. Marion was charged with murder.

Is Sarah or Marion guilty of murder? Explain.

Sarah would not be guilty of any crime because 1) she did not cause the death of the infant 2) she had no knowledge of the poison in the bottle 3) she did not give the infant the poison. Marion could be found guilty of murder if the Crown could prove she knowingly put poison in the medicine bottle and could reasonably have expected it would be given to the infant boy and that he would die.

Case 2

Eva, Donna, and Claudia are walking through the park when they see their enemy Jim walking with a friend. They decide to “have some fun.” So Donna and Claudia hold back Jim’s friend while Eva punches and kicks him. Donna and Claudia laugh and yell their support to Eva. Meanwhile Mike, who is walking his dog, stops for a moment to see what is going on. Mike decides not to get involved and walks on. Eva is convicted of assault causing bodily harm.

Should Donna or Claudia be charged with an offence? Explain.

Donna, Eva, and Claudia are parties to an assault causing bodily harm. They formed an intention in common to hurt (assuming that is what “have some fun” meant) Jim and to assist each other to do so. Donna and Claudia also assisted Eva by holding back Jim’s friend to allow her to punch and kick Jim, which also makes them parties to the assault. Their “yelling support” indicates their awareness that the assault was an anticipated part of the plan to “have some fun”, as well as their awareness that what they were doing assisted Eva.

What about Mike? Explain.

It is not a criminal offence in Canada to observe a criminal act and do nothing, though most Canadians would find it repugnant.

Case 3

Murray, Josie (Murray's wife) and Rosa agree to steal some money from Pete's clothing store. They also agree that Pete will not be harmed and that no weapons will be used. Murray enters the store and gets Pete's attention by asking him questions about an article of clothing. Then Josie enters the store and walks toward the cash register while Rosa acts as a lookout near the store entrance. Pete notices Josie reaching into the drawer of the cash register and yells loudly. Rosa panics, pulls a gun, and shoots Pete, severely wounding him. Murray, Josie, and Rosa run from the store and go to Russ's apartment around the corner. Russ agrees to let them use his car and Murray, Josie, and Rosa drive to a hiding place. Pete later dies from the wound he received.

Explain the criminal acts of Murray, Josie, Rosa, and Russ.

Josie, Murray and Rosa planned to commit a theft and all would be guilty of that offence. They all took an active part in assisting one another to carry out the theft, as well. Rosa would be guilty of robbery (theft with violence) and murder. Josie and Murray would only be parties to those offences if it could be proven that the use of a weapon and harm to someone was something they knew or ought to have known. As the fact pattern specifically indicates the plan was for no violence or weapons, this would not likely be able to be proven. Russ would be found guilty of aiding and abetting a criminal act by knowingly allowing them to use his car to flee the area. The Crown would need to lead evidence showing that Russ knew they had just committed a crime and was assisting them.

Activity 2: Criminal Court Procedure

For *Handout 3: What Do You Know?* use the answer key and review the questions. Assign participation marks for individual students or mark the groups based on completion and accuracy of answers. Alternatively, have students hand the questions in for grading.

Answer Key: *Handout 3: What do you know?*

1. Provide examples of criminal matters.
Criminal-impaired driving, dangerous driving, theft, assault, criminal negligence causing death, murder.
2. Which court hears the majority of criminal cases in BC?
99% of all criminal cases begin and end in Provincial court.
3. Which court hears the most serious criminal cases?
Most serious criminal cases are heard in the Supreme Court of BC.
4. Describe the role and responsibilities of each of the following court personnel: court clerk, sheriff and judge.
Court Clerk-in charge of all exhibits and physical evidence and records the proceedings of the trial. Sheriff-manages courtroom security and escorts those

accused detained in prison to and from court. Also does jury management. Judge-the sole arbitrator of the law as applied to a case and its facts. Also provides a judgment in non-jury trials.

5. Why is the prosecuting lawyer called “Crown Counsel”?
Prosecutors in Canada represent the people through the “Crown” because our Head of State is the Queen. When an accused is on trial, it is the state that is placing them on trial, thus we refer to the lawyer of the state as the Crown Counsel/ Prosecutor. Civil cases are between private individuals or bodies and the state has no role in such litigation unless it is being sued or is suing someone. In the latter case, a lawyer would present the case for the government just like they would for any other defendant or plaintiff.
6. How many jurors sit on criminal matters? How many must agree in a criminal case?
12 jurors. Criminal juries must be unanimous in finding an accused guilty or not guilty.
7. Describe the four ways in which an accused can be brought to court.
An accused can be brought to court on arrest with warrant, arrest without warrant, a promise to appear, an appearance notice or a summons to appear.
8. What is an “information” and how is it obtained? What is its purpose?
An information is used to charge the accused with the crime. A police officer who knows the facts that form the basis for the charge swears before a justice of the peace that he or she believes there are reasonable grounds to believe the offence has been committed and signs the information to initiate or start a case.
9. What is a Promise to Appear (PTA)?
A Promise to Appear is given to a person that has been arrested and released by the police. It is a personal guarantee to show up to court on the date provided.
10. What are the options for the court when deciding what to do with a person arrested without a warrant?
The court may release the accused on an Undertaking to Appear, which is the accused’s promise to attend court, with or without prescribed conditions added with the intent of controlling the accused’s behaviour in the community. The court may release the accused on a Recognizance in a monetary amount, with or without deposit or surety, with or without conditions or the court may detain the accused in custody pending trial.
11. What is a “first appearance”? What happens if an accused fails to meet his/her first appearance?
The first appearance is where an accused, or his or her lawyer (counsel), makes an election if charged with an indictable offence, enters a plea to the charge(s)

and/or asks for time to retain counsel. If the accused has been arrested and is not appearing as the result of an Appearance Notice, a PTA or a summons, the issue of whether or not an accused can be released on bail pending trial is often decided at the first appearance. It may take time for the accused and counsel to decide what to do about the charge so there may be a number of appearances. If the accused decides to plead guilty then sentencing may be done on a different date because a pre-sentence report may have to be prepared by a probation officer. If the accused pleads not guilty then a date for the trial or preliminary hearing is set depending on the type of offence. If an accused does not appear when he or she has been served with a Summons, given an Appearance Notice or been released on a PTA, the court will issue a warrant for their arrest.

12. What is a preliminary hearing and why is it an important step in the criminal court process?

The preliminary inquiry is in Provincial Court before a case is heard in Supreme Court. At this stage, evidence is presented to the judge because the Crown must prove there is sufficient evidence to bring the accused to trial in the Supreme Court. The accused does not have to present evidence at this time.

13. List and describe the three different categories of criminal offences. Provide an example of each type of offence.

Summary Conviction, Indictable and Hybrid offences.

Summary Conviction – trespass by night.

Soliciting Indictable Offence – robbery Hybrid Offence – assault can be proceeded with as an indictable offence or as a summary conviction offence.

By indictment the maximum sentence would be 5 years; by summary conviction the maximum sentence would be 6 months and/or a fine up to \$5000.

14. In the criminal process what is an “election”? What types of offences have elections? Why?

When an accused is charged with most indictable offences, he or she is given the choice of the mode of trial and can choose between a trial by a Provincial Court judge, a trial by a Supreme Court of BC judge alone or a trial by a Supreme Court of BC judge and jury. In some very serious cases such as murder, there must be a trial before a judge and jury unless both the accused and the Crown consent to a trial by a Supreme Court judge alone.

Why is an election given for serious offences? It is a policy driven by part of the criminal common law, codified by the Criminal Code and protected by the constitution, based on our society’s belief that those charged with more serious offences have the right to a trial by their peers – in other words, a trial by jury.

Activity 3: Criminal Offences and Criminal Defences

Students can complete the activities on the first three pages of *Handout 5: Working with Criminal Offences and Defences* and submit them for marks. The class presentations for the Types of Defences can be marked according to the criteria.

Answer Key: *Handout 5: Working with Criminal Offences and Defences*

Can You Name the Crime?

1. Robbery
2. Assault
3. Possession of Drugs
4. Trespassing by Night
5. Breaking and Entering
6. Failing to Stop
7. Causing a Disturbance
8. Parking in a "No-Parking" Zone
9. Dog off Leash
10. Mischief
11. Theft

Match the Crime to Its Definition

1. Having something in your possession or control that you knew was stolen.
Possession of stolen property
2. Lying to or deceiving someone to gain a personal benefit.
Fraud
3. Causing and intending to cause another person's death.
Second degree murder
4. Intending to and killing someone according to a plan.
First degree murder
5. Using physical force and a weapon to take property away from someone.
Armed robbery
6. Disregarding and disobeying an order made by a judge.
Contempt of court
7. Selling illegal or prohibited substances such as cocaine or heroin.
Trafficking in a narcotic

8. Causing another person's death without intent.
Manslaughter
9. Operating a vehicle while physically and mentally unable to do so.
Impaired driving
10. Failing to come to court when you have been required to do so.
Failure to appear
11. Carrying a weapon that might be dangerous to the safety of others.
Possession of a weapon
12. Willfully and deliberately setting a fire to damage property.
Arson

Examining Criminal Case Scenarios

The possible offences in each of the scenarios are listed below:

1. *Theft under \$5000.00 and possession of stolen property*
2. *Possession of stolen property with a value over \$5000.00*
3. *Possession of a controlled substance and if a large quantity than the charge could be Possession of a controlled substance for the purposes of trafficking*
4. *Shoplifting, which is theft under \$5000.00*
5. *Breaking and entering, theft either under or over \$5000.00 and possession of stolen property*
6. *Mischief*
7. *Assault causing bodily harm*
8. *Impaired driving*

Activity 4: Morality and Criminal Law

The activities outlined for this lesson contain writing elements, public speaking, class participation and note-taking. The answers in all cases will be fluid, divergent - developing and grading should take this into consideration. Most of the written output is centred on organizing and clarifying student thinking and should be graded for completion as opposed to set answers. The speaking components can be evaluated using a standard rubric as supplied at the end of these units.

ENRICHMENT

1. View the film “12 Angry Men” and use this as a basis for analysis of the jury system.
2. Visit your local provincial court and observe the proceedings of a variety of court cases. Watch one case from each division (Family, Criminal, Small Claims and Youth) and prepare a written report on your observations.
3. Go to the website on Canadian Mysteries and find the story titled “Who Killed William Robinson.” The case outlines the murder of William Robinson, an African American on Salt Spring Island in the 19th century. Following the guidelines on the site and prepare an analysis of the key facts, issues and judgment.
4. Contact a criminal defence lawyer and conduct an interview or have them come to the class for a presentation. Prepare your interview questions in advance. If you are inviting them as a guest speaker, meet in advance to plan out what will be discussed and how you can make the presentation interesting for the class.
5. Contact the liaison officer for your school or the local police and bring them in to the classroom for a discussion on vice crimes. <http://www.rcmp.ca> or <http://vancouver.ca/police/>.
6. Write your own crime scenarios based on fact or fiction. Exchange them with another student and answer the following questions:
 - What are the crimes in the scenarios?
 - Do you think the accused will be found guilty? Explain why.
7. Using the Internet, or other resources, research five crimes that you have not discussed in class. Name the crime, define it and outline the punishments for that crime. Combine all the crimes together into a classroom glossary or a worksheet. This activity can also be done in groups. You can type in *Criminal Code of Canada* on the Internet for information on the code and for the specific offences it contains.
8. Organize a visit from a media reporter who reports on the courts and interesting cases and issues that are being dealt with by the courts. Prepare a report including the information listed below:
 - What is the name of the guest speaker?
 - Place of work and position with news organization.
 - How does s/he choose the cases they report on?
 - How does s/he report the stories? How does s/he decide?
 - Does s/he report all the facts or just portions of the story?

- Does s/he have a bias when reporting?
 - What is difference between news articles or segments and editorials?
9. Dorothy and Toto find themselves in a strange land with some very strange characters! Assume that our laws exist in Oz and have students answer Yes or No to the following:
- Is it a crime for the Wicked Witch of the West to imprison Dorothy in her castle? Is it a crime for the Wizard to pretend he has special powers in order to control people?
 - Does Dorothy need to have Toto on a leash in Emerald City?
 - Can the Witch sue Dorothy for damaging her house when she landed in Oz?
 - When Dorothy is in Emerald City does she have to obey the city's laws?
 - Can the Witch be charged with a crime if she tries to set fire to the Scarecrow?
 - Can Dorothy be charged with murder for throwing water on the Witch, which supposedly killed her?
 - Can Dorothy take the Wizard to Court if he does not give the transportation back to Kansas that he promised her?