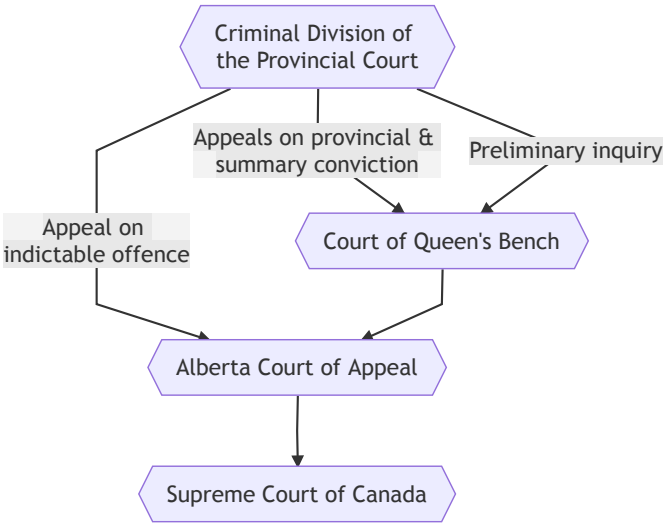
Introduction



Ethics

At a glance: Both Crown and Defence are meant to act with civility and professionalism. This does not mean that no emotions can be displayed or that one cannot responsibility but ardently voice discontent.

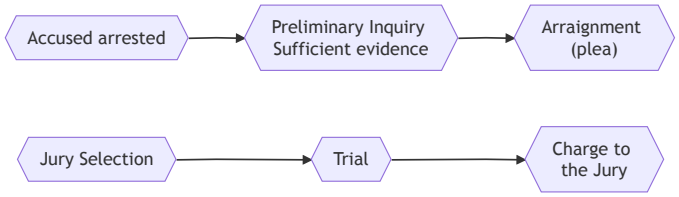
Goria v Law Society of Upper Canada: Goria was the defence counsel for Feldhorf. In the course of the trial, Goria came to believe that the Crown had broken rules of court. Goria was mistaken about the extent of the Crown's mistake. Nonetheless, Goria continually brought up the problem in court in an increasingly aggressive manor. Goria was disbarred for unprofessionalism. On appeal, Goria won.

> "Trials are not - nor are they meant to be - tea parties. A lawyer's duty to act with civility does not exist in a vacuum. Rather, it exists in concert with a series of professional obligations that both constrain and compel a lawyer's behaviour. Care must be taken to ensure that free expression, resolute advocacy and the right of an accused to make full answer and defence are not sacrificed at the altar of civility." - Moldaver J (SCC)

R v Nixon: Nixon caused an accident by driving through an intersection. The accident killed a couple and injured their son. Nixon was charged with impaired driving and various other CC violations. The Crown and defence later agreed to a joint submission which did not include any CC violations. The Acting Assistant Deputy Minister of the Criminal Justice Division of the Office of the Attorney General (ADM) believed the joint submission was a mistake and ordered it to be revoked. Defence brought a s. 7 charter application (fundamental justice) for abuse of process. Nixon lost on appeal.

- Prosecutorial misconduct: must include bad faith or improper motive.
- Abuse of process: test is whether compelling the accused to stand trial would violate principles of fundamental justice.
- The change of mind was a valid exercise of prosecutorial discretion.

Criminal Procedure



Evidence

Sources of Evidentiary Rules

There are two main sources of rules relating to the admissibility and gathering of evidence in criminal proceedings:

- The Common law (eg. Hearsay rule)
- The Charter (eg. 10b right to counsel)
  - There are also a few statutory rules in the *Criminal Code* and the *Canada Evidence Act*

Admisibility

In general, evidence is admissible if:

- the evidence is relevant to a fact at issue
- the probative outweighs the prejudicial
- it is not excluded by any statutory or common law rule
- it is not excluded under the charter

Confession Rules

At a glance: Statements made outside court cannot be introduced as evidence of the truth of their contents (Hearsay). There are however, exceptions for confessions made outside the court to a third person or overheard by a third person (*Common law confession rule*). If the confession is made to an agent of the state (police officer) then the crown must prove the following before the confession is admissible:

- The confession was voluntary (not given in exchange for reward or to avoid punishment)
- The confession was the product of an "operating mind"
- The confession was not elicited in "oppressive" circumstances

Mr. Big confessions: In the case of "Mr. Big" operations the CLCR does not apply. The SCC found in R v. Hart that the crown must prove the probative outweighs the prejudicial before entering the confession as evidence.

Right to Cousel

> 10. Everyone has the right on arrest or detention
>
> (a) to be informed promptly of the reasons therefor;
> (b) to retain and instruct counsel without delay and to be informed of that right; and
> (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Charter 10(b) gives the accused who have been detained the right to:

- Be informed that they have the right to counsel
- Retain and instruct counsel without delay

When 10(b) is not followed the evidence may still be admitted if:

- The accused is not reasonably diligent in exercising their rights
- or) there are exigent circumstances

Once the 10(b) right is engaged the police must

- provide the accused with reasonable access to counsel
- refrain form questioning until the accused has consulted counsel
  - the right to counsel may be waived by the accused as long as they do it with full knowledge of the consequences

Exclusion of Evidence on Charter claim

Charter 24(2) exclusion: When making a charter claim, the burden of proof is on the accused to show their rights were infringed upon **and** that this infringement led to the collection of the evidence which the accused seeks to have excluded. The accused must prove:

- That their charter rights were infringed
- That the infringement led to the evidence in question
  - does not need to be a strict causal link, the collection of the evidence must be "not too remote" from the breach
- That the admission of the evidence would bring the administration of justice into disrepute

Search, Seizure, and the Right to Privacy

> 8. Everyone has the right to be secure against unreasonable search or seizure.

For a charter 8 challenge the accused must:

- have a privacy interest recognized by the courts
- the activities must be describable as "search," or "seizure"
- the activity must have been performed by state agents

Generally, for a search to be considered reasonable it must:

- Be done by a peace officer
- be done under the authority of a search warrant
- the warrant must be obtained prior to the search
- the warrant must be issued by a judicial officer

In order for police to obtain a warrant a peace officer must provide sworn testimony to a judicial officer demonstrating the reasonable belief that *particular* evidence pertaining to a *particular* crime exists in the indicated place to be searched. Searches without warrant are presumptively unreasonable.

10(b) Right to Counsel

At a glance: 10(b) of the charter has the following limitations:

- Accused has the burden of proof to show a charter violation occurred (*Grant*).
- Accused does not have a right to have counsel present during questioning (*Sinclair*).
- The police must give the accused a reasonable opportunity to contact counsel (*Taylor*).
- If the nature of the investigation changes the accused has a right to a second consultation (*Sinclair*).
- An accused can waive the right to counsel (Crown must show this took place).

R v Grant: Grant was walking down the street in a crime-heavy area of Toronto. Grant was approached by several uniformed officers. The officers questioned Grant because he looked "suspicious." The officers blocked Grant's path but did not formally arrest or detain him. After Grant admitted to having a gun and weed, he was formally arrested. Only after his confession was Grant informed of his right to counsel. Grant argued that his 8, 9, and 10(b) charter rights were violated. Grant won, but the evidence was admissible.

- Psychological detention: a person is detained when a reasonable person in their situation would not believe they had the ability to leave.
- Three principles for the exclusion of evidence due to charter breach:
  - The severity of the breach: were the officers acting in good faith?

  - The impact of the breach on the charter protected interest: did the breach act against the intentions of the charter? was it a technicality?
  - Society's interest in adjudication of the case on its merits: would citizens want to live in a society where those convicted have this kind of evidence used?

R v Le: Le (Asian) was visiting friends (all black) in the backyard of a Toronto housing collective. Police heard from security that the address Le was visiting was a "problem address." Police invaded the backyard, jumping over the fence. The police began "carding" the houseguests. When police asked Le what was in his bag he fled and was tackled. The police searched the bag and found drugs, money, and a loaded gun. Le argued that the detention was unlawful and the evidence should be excluded. Le won at the supreme court.

- Severity of the breach: extremely severe, police trespassed a private residence with no warning or cause of any kind.
- Impact on charter protected interest: severe impact on s. 8 (unreasonable search) s. 9 (unreasonable detention) rights.
- Society's interest in adjudication on the merits: mixed. Society has an interest in preventing the serious crime Le committed but also in having these severe crimes properly investigated.

R v Sinclair: Sinclair was arrested as a murder suspect. On arrest, Sinclair was informed of his right to counsel. Sinclair spoke on the phone with counsel twice. Police began questioning Sinclair in relation to the murder and Sinclair repeated multiple times that he wanted to speak with his lawyer. The officer continued questioning until Sinclair relented and admitted to the crime. At trial, Sinclair argued that his 10(b) rights were violated as he could not speak with counsel in regards to what the officer was telling him during questioning. Sinclair lost at the supreme court, the murder conviction was upheld.

- The charter gives an accused the right to speak with counsel, but not ongoing intervention by counsel.
- An accused is only mandated another meeting with counsel if the nature of the investigation significantly changes.

R v Willier: Willier was arrested on suspicion of murder. Willier asked to speak with his lawyer but the lawyer was away. Police eventually convinced Willier to speak with legal aid instead. Willier expressed satisfaction with the call to legal aid. Police questioned Willier and he confessed. Willier argued that his 10(b) rights were violated because he was not allowed to speak to his council of choice. Willier lost.

- An accused is allowed to speak with council of choice
- If council of choice is unavailable the accused may wait a "reasonable time" before police are allowed to move forward with questioning.
- By speaking with other council an accused waives the right to council of choice (reasonable diligence in exercise).

R v Taylor: Taylor crashed his vehicle, causing serious injury to the passengers. Taylor was arrested at the scene on suspicion of DUI. Taylor asked to speak with a lawyer. Taylor was then transported to the hospital and agreed to give blood samples. Taylor was never given a phone to contact counsel. Taylor argued that the blood sample was inadmissible because he was not allowed to contact counsel. Taylor won.

- Police have to give the accused reasonable access to counsel.
- Offering the accused a cell phone is reasonable.

Mr. Big Operations

At a glance: The police pose as a band of criminals. The police coax the suspect into their fake criminal organization. The police have the suspect take part in simulated crimes. The police then convince the suspect that they will have to impress the unseen crime boss "Mr. Big" at a meeting. At this meeting, Mr. Big asks the suspect if they committed the original crime. Mr. Big will coax the suspect into confessing and then use this as evidence at trial.

R v Hart: Hart was suspecting of killing his young daughters. The police lacked any evidence and so moved forward with a Mr. Big operation. Hart denied killing his daughters to Mr. Big until Mr. Big made it clear that he must confess to stay in the crime syndicate. Hart's confession was used against him. Hart argued that the confession is inadmissible. Hart won.

- Mr. Big confessions are presumptively inadmissible. The crown must prove (BOP) that the probative outweighs the prejudicial.
- Hart failed to lead police to any substantive evidence after the confession.

Charter s.8 - Search and Seizure

R v Collins: Collins was suspected of trafficking heroin in Vancouver. Heroin traffickers sometimes store their drugs in a balloon and swallow it to hide evidence if they are arrested. An officer arrested Collins by grabbing her throat and throwing her to the ground. The officer grabbed her throat to prevent her from swallowing if she had a balloon. It turned out that Collins did have a balloon full of heroin which the officer's tactics stopped her from swallowing. Collins argued that the search was unreasonable and the evidence should be excluded. Collins won.

- The test for reasonable search is
  - Is the search authorized by law
  - Is the law itself reasonable
  - Is the manor in which the search is carried out reasonable: in this case the answer was "no."

- Warrantless searches are presumptively unreasonable.

R v Patrick: Police suspected Patrick of operating a drug lab out of his home. Police took garbage from just inside his property line. The garbage gave enough evidence to warrant a search. The search proved Patrick was operating a drug lab. Patrick argued that the garbage was his own property and the search was therefore unreasonable. Patrick lost.

- Garbage is abandoned property. Once it is left out for collection it belongs to no one.

Electronic Devices

R v Cole: An IT technician was working on computer maintenance for a school. The technician discovered child porn on a machine used by a particular teacher. The technician turned the machine over to the police who searched it without warrant. The teacher -Cole- was convicted on the evidence from the computer. Cole argued that the warrantless search was unreasonable and the evidence should be excluded. Cole lost.

- There is a reasonable expectation of privacy on a work computer. The search was therefore unreasonable.
- The search failed to meet the standards of the *Grant* test to justify exclusion.

R v Vu: Vu was suspected of stealing electricity and having a grow op in his home. The police obtained a warrant to search the house. The police seized computers and phones in the search. Vu argued that the evidence from his computers and phone should be excluded as they were not mentioned in the warrant. Vu won.

- Electronic devices are highly personal and therefore have specific privacy interests attached to them.
- Police must obtain a warrant to search electronic devices.

R v Fearon: Fearon was arrested shortly after an armed robbery. In a search incident to arrest the police searched Fearon's mobile phone. The police found evidence on the phone tending to guilt. Fearon argued that the evidence should be excluded as the search was done without warrant. Fearon lost, the evidence was admissible.

- The police were acting in good faith and the evidence should not be excluded by the Grant test. The court defined four principles for phone searches moving forward:

1. The arrest must be lawful.

2. The search must be truly incidental to the arrest.

3. The nature and extent of the search must be tailored to its purpose.

4. The police must take detailed notes of what they examined and for what duration.

Onus of Proof

> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Principles of Fundamental Justice

At a glance: PFJ includes:

- Presumption of innocence: burden of proof (BARD) on the Crown
- Nullem Crimen: The offence must be a crime *at the time* it is committed. The law must be sufficiently clear as to what is an offence.
- Conduct must be connected to prosecuting state: the level of government (provincial/federal) must have a clear interest in punishing the crime.
- The accused must be blameworthy: the accused must have committed a morally evil act with the requisite intention.

Crown Burden: The crown bears the burden of proof that:

- They have valid jurisdiction
- The accused is the perpetrator of the crime
- Actus reus (the act occured)
- Mens rea (criminal intent of the accused)

The trier of fact will determine if this burden has been met holistically. The trier of fact does not have to consider each point by itself.

Case to meet: For either party (Crown/defence) to bring an issue into consideration for the trier of fact they must adduce "some evidence." This standard is lower than balance of probabilities (BOP) or BARD. Once the trier of law is satisfied that the "some evidence" burden has been discharged the party may bring arguments to the trier of fact.

Woolmington v D.P.P.: Woolmington was on trial for murder. Woolmington admitted to taking a gun to his mother-in-law's house. Woolmington stated that he intended to threaten to shoot himself if his wife did not come home. Woolmington further submitted that there was an accident and the gun went off, killing his wife. At trial, the judge charged the jury with the instructions that Woolmington had the burden to prove a defence. He was convicted. Woolmington won on appeal, BOP is always on Crown.

- The trial judged erred in the charge to the jury.
- In all cases, the accused has no BOP as to innocence.

R v Lifchus: Lifchus was a stockbroker accused of fraud. In her charge to the jurry, the judge stated that the Crown must prove guilt beyond a reasonable doubt. Lifchus appealed, arguing the judge erred in not fully explaining BARD. Lifchus won, a new trial was ordered.

- The jury must fully understand the meaning of BARD to uphold the PFJ.
- BARD is central to PFJ.

R v W.(D): He said she said sexual assault case. The Judge made a standard fair charge to the jury. The defence and Crown agreed that the jury should be recharged on the issue of credibility. The judge's recharge made it seem that the jury must choose whose testimony to believe. The jury delivered a guilty verdict. The defence argued that the judged erred in the recharge. The supreme court found that the judge erred but it was not severe enough to override the original charge.

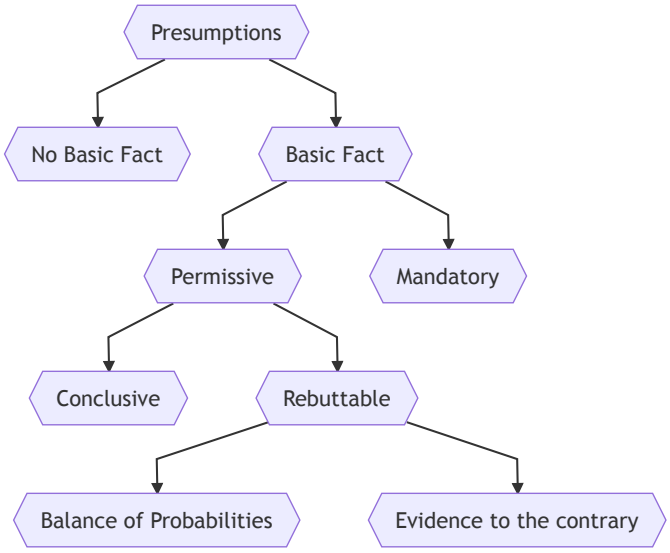
- A criminal case is never a credibility contest.
- The Crown must show evidence BARD, not just beyond the evidence of the defence.

R v Layton: Layton was accused of sexual assault. The judge correctly explained BARD according to the *Lifchus* standard. The jury asked for clarification on the meaning of "beyond a reasonable doubt." The judge simply repeated the initial charge. The jury found Layton guilty. Layton appealed on the grounds that the jury must fully understand BARD. Layton won, new trial ordered.

- Trial judges have a responsibility to fully answer questions by the jury.

Presumptions

The common law and legislators have created presumptions through which some facts may be automatically established. For example: if a person is sitting in the driver's seat then they are presumed to be the driver.



Charter limits - s. 1

At a glance: The charter of rights and freedoms is meant to be flexible. It therefore begins with the clause that the following limits on government power can be broken within reasonable limits that can be justified in a free and democratic society. Essentially, the government may at times break certain charter rules but it cannot offend the core purpose of the charter.

R v Oakes: Oakes was caught with several viles of hash oil. Oakes claimed the drugs were for personal use. A legislative presumption held that possession of a certain amount of drugs led to a rebuttable presumption of intent to traffic. Oakes argued that the statute violated his s. 11 right to presumption of innocence. The Crown argued that the presumption was enabled by s.1 of the charter. Oakes won, establishing the *Oakes test* for a statute enabled by s.1.

- The government must establish that the law under review addresses a concern which is pressing and substantial
- The government must establish that the law is proportionate to the severity of the evil which includes:
  - The law is rationally connected to its purpose
  - The law minimally impairs a charter right
  - The law has proportionate effects

R v Keegstra: Keegstra was a high school teacher in a small town in Alberta. Keegstra taught his students that the holocaust was fake and the Jews are evil. Keegstra was charged with promoting hatred against an identifiable group (hate speech). Keegstra argued firstly that the hate speech law limited his free expression under the charter 2(b). Secondly, he argued that the hate speech law violated his 11(d) right by requiring him to prove that his statements were true.[1] Keegstra lost, the violations are acceptable under s.1.

- The law violated Keegstra's 2(b) and 11(d) charter rights.
- Hate speech is pressing and substantial.
- The law is rationally connected to protecting identifiable groups.
- The law minimally impairs free expression as anti-semitism is legal in private conversation.
- The effects of the law are reasonable. If the onus of proof for the "truth" defence were not on the Crown then most hate speech could not be punished.

Actus Reus

At a glance: Actus reus can be positive (assault) or negative (neglect of a child). Importantly, there is a mental element to the actus reus. A criminal act must be voluntary; this is separate from the mens rea analysis.

R v Dunlop & Sylvester: The two accused were part of a criminal gang. The gang had an initiation ritual where a would-be-member would rape an innocent person. The two accused were present when one of these rapes occurred. The complainant testified that the two accused were there but she did not testify that they participated in the assault itself. In the judge's charge he told the jury to

[1] Yes. They really wanted him to prove that Jews are evil.

consider whether the accused had aided and abetted **and** whether they had the intention to aid and abet. The defence argued that the trial judge erred in the charge. Dunlop and Sylvester won, the accused were acquitted.

- Witnessing a crime and doing nothing is not necessarily criminal.
- There is no positive duty to intervene or call for help.

R v Moore: Moore rode his bike through a red light. A peace officer attempted to stop Moore but he evaded the officer, yelling profanities. Moore was charged with obstructing a peace officer in performance of his duties. Moore argued that he was never arrested and so had no duty to stop. Moore lost, he had a duty to stop and ID.

- It is reasonable to ask that cyclist ID when a peace officer directly observes a crime.
- The dissent would have allowed the appeal. Justice Dickson argued that the criminal law should not be used to create implied duties. Additionally, the officer could have simply arrested Moore to ID him.

Voluntariness

R v Daviault: Daviault drank an insane amount on the night in question. He then raped a woman in a wheelchair. At trial, a doctor testified that at D's level of intoxication he would not have been in control of his actions. The criminal code eliminated intoxication as a defence for general intent violations. Daviault appealed, arguing that the defence should be allowed. Daviault won, new trial ordered.

- Intoxication is an allowed defence **if** it is so severe that it leads to automatism (dissociation).

R v Wolfe: Wolfe was a part owner of a hotel in Ontario. A visitor was kicked out of the hotel but trespassed later. Wolfe picked up the phone to call the police. The trespasser hit Wolfe. Wolfe **reflexively** turned around and smacked the attacker over the head with the phone; causing serious injury. Wolfe was charged with assault. Wolfe argued that his actions were reflexive and therefore not intentional. Wolfe won.

- A pure reflex is not voluntary.

De minimis

At a glance: The maxim "*De Minimis Non Curat Lex*" (Eng: the law does not concern itself with trifles): sets the minimum standard for a criminal offence. An offence must be sufficiently serious to justify state prosecution.

R v Kubassek: K was a strongly christian woman who did not like the big gay. K believed that God wanted her to go to a pro-gay church to teach the truth of the Bible. K disrupted the service, shouting Bible verses and causing a scene. The pastor tried to convince K to chill out. K pushed the pastor backwards. The pastor suffered no injury. The trial court dismissed the assault charge as the judge believed it fell below the de minimis range. K lost on appeal, she was guilty of assault.

- Though the act itself was not very serious, the context around it was.
- Disrupting a church service and physically assaulting a pastor is sufficiently serious for an assault charge.

Causation: Some offences are cause-based. The offending cause must be outside the de minimis range to contribute to a guilty verdict in a cause-based charge.

Smithers v The Queen: Smithers was a young black hockey player. Cole, a member of the opposing team yelled the n-word at Smithers during a game. The two continued a profane verbal exchange with Smithers vowing to meet Cole "in the parking lot." Smithers found Cole in the parking lot and punched him once in the face, then kicked him in the stomach. Smithers stopped the attack after the two blows. Cole chocked on his own vomit and died. Smithers was charged with manslaughter. Smithers argued that it was impossible to prove that the kick was the sole or main cause of Cole's death. Two blows of this kind would almost never be fatal. Smithers lost, guilty of manslaughter.

- Thin skull rule: you take your victim as you find them.
- The causal connection was close enough and the attack was outside the de minimis range.

R v Nette: Nette robbed an old woman and tied her to a bed. The woman later died. Nette argued that the judges charge did not properly explain the standard of causation in second degree murder. Nette lost.

- The test for causation is whether the criminal act is "more than a trivial cause" of the result (in this case: death).

R v Maybin: The Maybin brothers started a fight at a bar. They left their opponent passed out on a pool-table. The bouncer then asked who started the fight; the maybin brothers blamed the passed-out opponent. The bouncer hit the passed-out man on the head, killing him. The Maybin brothers were convicted of manslaughter. They argued that the bouncer was the real cause of the man's death. The Maybin brothers lost.

- By incapacitating their victim, the brothers left him open to being attacked.
- Causation does not require that the perpetrator foresees what happens. Only that the resulting acts flow reasonably from the accused's acts.

Mens rea

At a glance: The morally innocent should not be punished. The criminal law therefore requires a criminal mind in conjunction with a criminal act. This is distinct from the voluntariness of a criminal act. A criminal act is involuntary if the person has no mental *control.* One might have mental

control but no criminal intent. If someone threatens an accused family and forces them to rob a bank they have met the requisite intent of the actus reus. The bank robber in this case would not have the requisite mens rea for a criminal charge.

Recklessness and **wilful blindness** can serve as the requisite mens rea for a criminal act.

R v Sandhu: Sandhu came back from India with a tonne of drugs on his person. S claimed that he was duped into bringing drugs by a woman with whom he had an affair. Sandhu claimed that the judge improperly explained the difference between recklessness and wilful blindness. Sandhu won, new trial ordered.

- Judge did not explain that wilful blindness requires **actual knowledge** while recklessness does not.
- The jury should have been told that the Crown must prove there was a point where S knew he needed to inquire but chose not to.

R v Vinokurov: V owned a pawn shop where he purchased stolen goods. He was charged with possession of stolen property. The trial judge concluded that V was not wilfully blind but he was reckless. The trial judge found him guilty. V argued that the CC violation contained the word "wilfully" which excludes recklessness as a sufficient mens rea. V won, conviction quashed.

- If a violation states that the act is "wilful," then recklessness is excluded.
- Only true knowledge that the goods were stolen or wilful blindness could apply to the violation.

R v Buzzanga and Durocher: The two accused were french Canadians. They distributed satirical pamphlets mocking french Canadians. The two intended the pamphlets to spur other french Canadians to action. They were convicted of hate speech (against french Canadians). The two argued that "wilful promotion of hatred" cannot mean "accidental promotion of hatred." B and D won, conviction quashed.

- Wilful does not mean accidental.
- For something to be wilful, the Crown must prove that the accused was aware that the prohibited consequence was certain, substantially certain, or morally certain to result from the act.

Herbert v The Queen: Herbert admitted to lying in a trial over attempted robbery. H was then convicted of perjury. H argued that he was not guilty of perjury because he only wanted to get the judges attention to talk to him in private. Herbert won, new trial ordered.

- Perjury requires an actual intent to mislead the court.

R v Mathe: Mathe walked into a bank while drunk. M then told the teller he had a gun and ordered her to hand over money. The teller tried to hand him the cash but he laughed it off and said it was a prank. M then left the scene and was arrested for attempted robbery. M was convicted. M argued that he clearly did not intend to actually steal from the bank. M won, conviction quashed.

- A drunken prank is not robbery.

General vs Specific Intent

General intent: Intent to commit the act (eg, intent to shoot the victim).

Specific intent: Intent to commit the act with a prohibited purpose (eg. intent to shoot the victim *so that* he dies). In general, any offence with the word "wilfully" or "attempted" is a specific intent offence.

R v Bernard: Bernard sexually assaulted the complainant causing bodily harm. Bernard was drunk at the time. Bernard argues that he should be allowed to use intoxication as evidence against general intent. Bernard lost, conviction upheld.

- For policy reasons, intoxication cannot be used as a defence in general intent cases.

Motive

At a glance: Motive is not part of mens rea. The Crown can prove a conviction without proving any motive. The defence can however, use lack of motive as evidence.

R v Lewis: Lewis and Tately were accused of murdering Tately's daughter and the daughter's husband. Lewis admitted to mailing a bomb, but stated he did not know it was a bomb. Tately disliked the victims, but Lewis had no reason to dislike them. The two were convicted. Lewis argued that the judge erred in not describing the concept of motive to the jury. Lewis lost, conviction upheld.

- Motive is not needed for conviction.

R v A.D.H: The accused was unaware she was pregnant. She gave birth in a Wal-Mart bathroom. She left the infant there, assuming the baby was still-born. The trial judge dismissed, finding that the subjective mens rea was not made out. The Crown appealed, arguing that the fault standard for child abandonment should be objective. Crown lost, appeal dismissed.

- In the absence of wording to the contrary (wilful, attempt), the courts will assume that Parliament intends a subjective fault standard.

R v Tatton: Tatton was an alcoholic staying with his girlfriend. He set a pan full of oil on the stove to make bacon then left and forgot about it. He returned to the house on fire. Tatton was tried for arson and acquitted. The trial judge and appeals court found that arson was a specific intent offence. The crown argued that arson was a general intent offence. The crown won, new trial ordered.

- Arson is a general intent offence, even if it seems harsh.

R v Theroux: T operated a real estate development company. An operation like this obviously requires a lot of investment. T produced fake certificates of insurance to investors. These certificates led investors to believe that their money was safe no matter what. T intended to move forward with the company and pay back all the investors when profits were made. T's company became insolvent and the investors lost everything. T was convicted of fraud for the certificates. T appealed, arguing that he did not have the subjective intent to deprive investors. T lost, conviction upheld.

- The actus reus of fraud is a dishonest act which causes deprivation to the victim: this was made out.
- The Crown only needs to prove that the accused intentionally committed the dishonest act. The deprivation is a matter of fact.
- Theroux was reckless as to how the dishonest act could hurt investors.

R v Robinson: R beat and stabbed the deceased. R presented intoxication as a defence against second degree murder. The judge charged the jury stating that there is a "presumption that the accused intends the natural consequences of his actions." R appealed, arguing the judge erred in the charge. R won, new trial ordered.

- There is no "presumption," only a permissive inference.
- The jury is allowed (not required) to concluded that a person intends the natural consequences of their actions.

R v Blodin: Blodin imported a scuba tank from Japan. The tank contained 23 lbs of hash. B was tried for importing narcotics. B claimed that he only knew the tank had "something" ilegal, but he did not know it was hash. The judge charged the jury stating that the mens rea would be satisfied if Blodin knew the tank had hash. The Crown appealed, stating the judge erred in the charge. The crown won, now trial ordered.

- It was only required that the accused knew or was wilfully blind to the fact that the tank contained some kind of narcotic.
- Blodin was accused under the Narcotics Control Act, so his intent must be in relation **only** to narcotics. This could still be satisfied by wilful blindness.

Charter Quick Reference

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

8. Everyone has the right to be secure against unreasonable search or seizure.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

10. Everyone has the right on arrest or detention

- a) to be informed promptly of the reasons therefor;
- b) to retain and instruct counsel without delay and to be informed of that right; and
- c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

11. Any person charged with an offence has the right

- a) to be informed without unreasonable delay of the specific offence;
- b) to be tried within a reasonable time;
- c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- e) not to be denied reasonable bail without just cause;
- f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.