



## Introduction to Criminal Law Trials

The criminal justice system is a system of rules, roles, and procedures that determine whether or not someone has committed a criminal offence, and determine the appropriate sentence if they are found guilty.

In the criminal justice system, the people of Canada, or of the particular province or territory, are represented by the Crown Attorney, or by Assistant Crown Attorneys.

### What is a criminal offence?

A criminal offence is something that the government has decided that Canadian residents are prohibited from doing. In Canada, criminal offences are contained in the *Criminal Code*, the *Controlled Drugs and Substances Act* and the *Youth Criminal Justice Act*. Criminal offences include crimes such as murder, kidnapping, theft, burglary, treason and unlawful possession of drugs.

Many offences include a range of sentences. Each Canadian province and territory also has provincial offences, which are things that the province or territory has decided that we are prohibited from doing. In Ontario, provincial offences include activities such as traffic violations, and engaging in prohibited hunting or fishing activities.

### What is a criminal charge?

The criminal charges are the list of things that the crown has to prove in order for the accused to be found guilty. For example, for a theft charge, the accused is charged with the offence under the *Criminal Code* of:

*...committing theft by fraudulently and without the right, taking for use something with the intent to deprive, temporarily or absolutely, the owner of it, of the thing...*

The elements the crown must prove at the trial are:

1. That the accused took the thing
2. That the accused intended to take the thing away from someone else
3. That the accused did not own the thing
4. That the accused was the person who committed the crime
5. The value of the thing

Refer to OJEN's *Mens Rea / Actus Reus* Handout (available at [www.ojen.ca](http://www.ojen.ca)) for more information concerning proof and intention in a criminal justice context.

### What is a criminal trial?

A trial is a kind of debate between two groups called "parties" who have different stories or versions of what actually happened. Trials are used to end disagreements when the two groups involved cannot agree on the facts. A criminal trial resolves the question of guilt when someone is charged with committing a criminal offence.

Every person charged with an offence is presumed to be innocent until proven guilty, and has a right to a trial. At the trial the Crown must prove each and every element of the charge beyond a reasonable doubt. This is a difficult standard. The Crown cannot simply show that the crime may have, or is even likely to have occurred. The Crown must present evidence that leaves no reasonable doubt that the accused is guilty. This high standard of proof is one of the cornerstones of our judicial system.



## What happens during a criminal trial?

At the start of a criminal trial, the accused has a chance to plead “guilty” or “not guilty” to the charges. If the accused pleads guilty, there is no trial and the judge sentences the accused. During the trial the Crown tries to prove that the accused is guilty of the criminal offence. The lawyers for the accused try to show that the Crown has not proven its case beyond a reasonable doubt. (The defence is not required to prove that the accused is not guilty.) The judge, or the jury (if there is a jury) then decides whether or not every element of the charge has been proven beyond a reasonable doubt, and therefore whether or not the accused is guilty.

During a trial, each party gets to present their own version by introducing the testimony of witnesses, results of forensic investigations or statements given to police about the events related to the offence. These are all types of evidence. The other side gets to ask questions and challenge the evidence in order to reveal any weaknesses or inconsistencies.

The Crown presents its case first, as it has the burden of proving the guilt of the accused. After the Crown’s opening statement and calling of evidence, the defence decides whether or not to call evidence of its own refuting the Crown’s case. The defence does not have to call any evidence if counsel thinks that the Crown has not proved the case beyond a reasonable doubt. In this situation, the judge would decide the case based on the Crown’s evidence alone. This is a risky decision for defence counsel because the judge would be making a decision having only heard one version of the evidence. If the judge finds the evidence reliable and convicts the accused, the defence will have lost the opportunity to present an alternate version of events. Therefore, in most trials the defence elects to lead evidence and proceeds with an opening statement before calling evidence through witnesses. If both sides have called evidence, the defence then presents closing arguments first, after which the crown presents closing arguments.

At trial a judge alone, or a judge and jury, (depending on the type of offence and its seriousness) will listen to the evidence presented by both sides. At the end of the trial, the judge or the jury decides whether or not the Crown has proven its case beyond a reasonable doubt. The judge or jury deliberate and render a verdict of guilty or not guilty for each charge. In a jury trial, a recommendation about the appropriate sentence will also be given; however, the sentencing decision rests with the judge.

## What does ‘beyond a reasonable doubt’ mean?

To convict the accused, the crown must provide the judge, or judge and jury, with evidence that proves each element of the offence “beyond a reasonable doubt”. Proving something “beyond a reasonable doubt” does not mean that there can be no doubt. It means that the crown’s evidence must be convincing enough that the average person would not have any “reasonable doubts” in his or her mind about whether the individual committed the offence.

To ‘raise a reasonable doubt’ the accused and his or her lawyers do not have to disprove all of the elements of the criminal offence. Instead they just have to raise a doubt about the identity of the accused, the events as presented or the state of mind of the accused. The judge or jury may find that the accused committed the offence, based on the evidence presented. If they raise “a reasonable doubt”, then the accused must be found not guilty.

## Who has to prove what in a criminal trial?

Under our criminal justice system, a person is presumed to be innocent until they either plead guilty or are found guilty. The crown therefore must prove all of the elements of the offence.