


Categories of Offences
 Not All Crimes Are Created Equally

Summary Conviction Offences

These offences are the least serious and are prosecuted in a simplified way. All provincial statute offences, such as having open alcohol in a vehicle or highway traffic offences, are summary conviction offences. There are also some Criminal Code offences which are purely summary conviction offences, such as pretending to practice witchcraft, or towing a water skier after dark.

S.365



Every one who fraudulently
(a) pretends to exercise or to use any kind of witchcraft, sorcery, enchantment or conjuration,
(b) undertakes, for a consideration, to tell fortunes, or
(c) pretends from his skill in or knowledge of an occult or crafty science to discover where or in what manner anything that is supposed to have been stolen or lost may be found,
is guilty of an offence punishable on summary conviction.

Summary Conviction Offences

The Criminal Code will indicate if an offence is a summary conviction offence by the words **'is guilty of an offence punishable on summary conviction'**. If there are no further words of limitation, the maximum punishment for a summary conviction offence is a fine of not more than \$5000, or six months imprisonment, or both.

Summary Conviction Offences

Summary conviction offences are called "summary" because they can usually be dealt with in a quick and "summary" manner. Trials for summary conviction offences are held in the Ontario Court of Justice. Trials in these courts are only held before judges (i.e., there is no option for a jury trial) and sentencing ranges from a maximum penalty of a \$5000 fine and/or imprisonment for six months, unless otherwise specified by law.

Summary Conviction Offences

Sexual Assault

s.271(1) Every one who commits a sexual assault is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Summary Conviction Offences

- The trial procedure for summary conviction offences also differs in some ways from the procedure for indictable offences.
- A person charged with a summary conviction offence does not have to appear in court personally.
- A lawyer or an agent may appear in court on that person's behalf, unless the judge asks the person charged to appear in person.
- An agent may be a friend or relative or a person hired to appear in court.

Summary Conviction Offences

- To be arrested for a summary conviction offence without a warrant, the police must actually observe the actual crime taking place.
- There is a six-month limitation period for summary conviction offences. A person cannot be charged more than six months after the facts occurred. (This can sometimes be a problem!)
- An accused cannot be fingerprinted for a summary conviction offence.

Summary Conviction Offences

Very few offences in the Criminal Code are pure summary conviction offences, though there are many dual procedure or hybrid offences that end up being prosecuted as summary conviction offences.

Indictable Offences

These offences are more serious and the trial process is more involved and can take considerable time.

There is no limitation period imposed on how much time can elapse between the alleged act and the arrest, which means that an indictable offence may be prosecuted years after it actually happened.

However, once the accused is charged, the trial must occur within a reasonable amount of time, or the accused may have an argument that his *Charter* rights have been violated.

Minor or less serious indictable offences are treated similarly to summary offences in that trials for these offences will take place in a lower Court before a judge alone, with no right to a jury trial.

The following is a list of indictable offences for which trial MUST be held in a lower Court before a Judge alone:

- theft, other than theft of cattle
- obtaining money or property by false pretences
- possession of stolen goods
- defrauding the public/a person of any property, money or valuable security
- mischief under subsection 430(4),

OR

The following is a list of indictable offences for which trial MUST be held in a lower Court before a Judge alone:

- with counseling or with a conspiracy or attempt to commit or with being an accessory after the fact to the commission of the above offences

OR

- section 201 (keeping gaming or betting house)
- section 202 (betting, pool-selling, book-making, etc.)
- section 203 (placing bets)
- section 206 (lotteries and games of chance)

The following is a list of indictable offences for which trial **MUST be held in a lower Court before a Judge alone:**

- section 209 (cheating at play)
- section 210 (keeping common bawdy-house)
- section 393 (fraud in relation to fares)
- section 811 (breach of recognizance)
- subsection 733.1(1) (failure to comply with probation order)
- paragraph 4(4)(a) of the *Controlled Drugs and Substances Act*, or subsection 5(4) of the *Controlled Drugs and Substances Act*

Indictable Offences

The most serious of indictable offences, such as murder or treason, are tried in a superior court before a **judge and jury**, and the accused has no choice in this unless both he and the provincial Attorney General agree to a change. In Canada, the maximum penalty for an indictable offence is **life imprisonment**.

Indictable Offences

Examples of the most serious indictable offences which must be tried in this manner are:

- s.47 (treason)
- s.49 (alarming Her Majesty),
- s.51 (intimidating Parliament or a legislature)
- s.53 (inciting to mutiny)
- s.61 (seditious offences)
- s.74 (piracy)
- s.75 (piratical acts), and
- s.235 (murder).

Indictable Offences

For all other indictable offences, the accused may **elect** whether to be tried before a Provincial Court judge alone, a Superior Court judge alone, or a Superior Court judge with a jury.

Example of Indictable Offence

Neglect to obtain assistance in childbirth

242. A female person who, being pregnant and about to be delivered, with intent that the child shall not live or with intent to conceal the birth of the child, fails to make provision for reasonable assistance in respect of her delivery **is**, if the child is permanently injured as a result thereof or dies immediately before, during or in a short time after birth, as a result thereof, **guilty of an indictable offence** and is liable to imprisonment for a term not exceeding five years.

Indictable Offences

The Criminal Code will indicate if an offence is an indictable offence by the words '**is guilty of an indictable offence** and is liable to ...'.

The Code will then usually specify a maximum sentence for the offence. It is fairly rare for the Code to specify a minimum sentence, and generally only does so for violent offences, or offences in which a firearm is used.

Hybrid Offences

Also known as **dual procedure offences**, hybrid offences may be tried as either summary or indictable offences. The Criminal Code will identify when an offence is a hybrid or dual offence by providing indictable or summary option. The Code will never state “this is a hybrid or dual procedure offence”!

Hybrid Offence (Example)

Abandoning Child

218. Every one who unlawfully abandons or exposes a child who is under the age of ten years, so that its life is or is likely to be endangered or its health is or is likely to be permanently injured,
(a) **is guilty of an indictable offence** and liable to imprisonment for a term not exceeding five years; or
(b) **is guilty of an offence punishable on summary conviction** and liable to imprisonment for a term not exceeding eighteen months.

Hybrid Offences

The Criminal Code will indicate if an offence is a hybrid offence by showing options **in the alternative**, as shown by the conjunction “**or**”. Notice also that here the maximum penalty if the offence is tried as a summary conviction offence is eighteen months. If these words of limitation were not there, the maximum penalty would be six months in jail.

Hybrid Offences

The **Crown** has the choice of proceeding **on indictment or by way of summary conviction**. The accused has no choice in how this decision is made. Further, if the offence committed was a hybrid offence and more than six months have passed since the offence occurred, the Crown has no choice but to proceed on indictment, as the six month limitation period for summary conviction offences has expired.

Hybrid Offences

Hybrid offences are treated as indictable offences until the Crown makes its **election**. This means that an accused will be fingerprinted. Factors which will influence whether the Crown will proceed summarily or on indictment include:

- whether this is the accused's first offence or if he has a lengthy criminal record;
- whether the accused used violence;
- whether a weapon was involved;
- the reason the offence was committed (e.g., stealing to feed a family, or stealing to feed a drug habit);
- whether the accused co-operated with police;
- whether the accused was a ring-leader, or just peripherally involved.

Criminal Case Citations

A criminal case will show up differently than any other type of case on the docket as it will look like this:
R. v. Accused. The "R" stands for "Rex" or "Regina", depending on whether the reigning Monarch is a King or a Queen. The monarch is referred to as the "Crown", which is why the lawyer prosecuting for the Queen (and therefore for the government, and ultimately society) is called the "**Crown Attorney**". The "v" stands for "versus" or "against", but is read as "and". Therefore, **R. v. Accused** would be "R" or "the Queen" and "Accused". Any case citation that begins "R. v." is **always** a criminal case. As it is possible to sue the Crown civilly, those cases would use the term "Her Majesty the Queen, represented by [whatever government department is involved]".
