

## Case

### **R. v. Bernier**

2001 BCCA 394

British Columbia Court of Appeal

A trial judge convicted Bernier of robbery while using a firearm; assault while using a weapon; breaking and entering a residence and committing theft; and possession of stolen property of a value less than \$5000. Bernier appealed the first two conviction charges but not the other convictions.

Bernier was a member of a home-invasion gang in 1997. The gang broke down the door of Dean Eve's basement apartment while one member yelled: "Police, on your hands and knees!" They handcuffed Eve, who testified that one of the gang members had a gun. The gang members told him they were looking for money and drugs. They took \$300 and then hit Eve on the head with the butt of the gun, causing injury. When the homeowner returned, he found that his upstairs apartment had been ransacked and several items were missing. When the gang members were arrested, some of the stolen items were found in their possession.

Bernier's trial judge ruled that he had intent to aid others to commit an offence. Bernier claimed that he did not know that a gun would be used during the home invasion. He felt that he should be found not guilty of the weapons offences. On appeal, the three judges could find no evidence that Bernier knew of a weapon or ought to have known that it would be used at the scene of the crime. They substituted the more serious weapons charges with the less serious charges of robbery and assault.

### **For Discussion**

1. What is a "home invasion"? What crimes are associated with it?
2. Why do you think "robbery while using a firearm" and "assault while using a weapon" are more serious than "robbery" and "assault"?
3. Why do you think the appeal court substituted the less serious charges of robbery and assault?

credit cards, they have conspired to commit a crime. Even if they do not carry out the plan, they have agreed to a conspiracy to commit the crime.

In a conspiracy, all the people involved must be serious in their intention to commit the crime. Jokes or threats are not considered conspiracy.

### **Review Your Understanding** (Pages 108 to 113)

1. Identify the two elements that must exist for a crime to be committed.
2. *Actus reus* does not always require an action to be committed. Give an example of such a circumstance.
3. Distinguish among the different categories of *mens rea* and provide an example for each.
4. Distinguish between general and specific intent.
5. How is motive used in a criminal trial?
6. For which offence is the defence of due diligence available? Explain how it would be used.
7. Identify the element of a crime that must be proven in an absolute liability offence. Why do such regulatory offences exist?
8. When does an attempt begin? Provide an example of a situation where a criminal charge of attempt could be made.
9. When could individuals be charged with conspiracy?

## 4.6 Parties to an Offence

A person who commits an offence, aids a person to commit an offence, or abets a person in committing an offence is defined as a party to a crime under section 21 of the *Criminal Code*.

### Aiding or Abetting

**Aiding** means to help someone commit a crime. **Abetting** means to encourage someone to commit a crime. Two things must be proven before an accused can be convicted of aiding or abetting. First, the accused had knowledge that the other person intended to commit the offence. Second, the accused actually helped or encouraged the person to commit the offence. Mere presence at the scene of the crime does not provide conclusive evidence of aiding or abetting. Under section 21(2) of the *Criminal Code*, a person who plans an offence is just as guilty as a person who actually commits it.

To counsel (suggest) or incite (urge) someone to commit a crime is also an offence. If Ron urges a friend to take an unlocked car with the keys in it for a joy ride, he is inciting another to commit an offence. Even if the offence is not carried out, the person who incites the offence—Ron—can receive the same penalty as the person who attempts it.

### Accessory after the Fact

An **accessory after the fact** is someone who helps a criminal escape detention or capture. Helping someone escape capture includes providing food, clothing, or shelter to the offender. One exception to this law is the favoured relationship between a legally married couple. A man or a woman cannot be held responsible for assisting in the escape of a spouse and someone escaping with the spouse.

### Did You Know?

Husbands and wives are exempt from being charged as accessories to each other because of traditional attitudes. Many of our current laws were inherited from the common law, where the wife was considered to be one with her husband. It has been suggested that these laws do not reflect current values in our society.

## Case

### *R. v. Goodine*

(1993) 141 N.B.R. (2d) 99  
New Brunswick Court of Appeal

One summer afternoon in 1992, Todd Johnston went for a ride with his girlfriend and two friends, Jason Boyd and Cory Goodine. After driving on some country roads near Arthurette, New Brunswick, Johnston stopped the truck. Without warning, he shot Boyd in the head with a revolver. He then removed Boyd's body from the truck and dragged it a short distance.

Still holding the revolver, Johnston ordered Goodine to "get off the truck and help me because

you're in on this, too." Goodine obeyed Johnston's orders to drag the body into the woods. When the victim moaned, Johnston shot Boyd again in the back of the head. Medical evidence at trial indicated that either shot would have caused Boyd's death.

A few days later, Goodine told two of his friends about the murder and led them to Boyd's body. The next day, the friends reported the incident to the police, who arrested Goodine and charged him with being an accessory after the fact to murder. The accused was acquitted following a trial by jury. The Crown appealed to the Court of Appeal, but the appeal was dismissed.

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## For Discussion

1. Why did the Crown appeal the accused's acquittal?
2. What is the *actus reus* of accessory after the fact?
3. Why was Goodine not charged with aiding and abetting?
4. What defence would be open to Goodine to explain his actions?
5. On what basis do you think the jury acquitted Goodine? Explain.

## Review Your Understanding (Pages 114 to 115)

1. According to section 21 of the *Criminal Code*, who may be a party to an offence?
2. Distinguish between “aid” and “abet.”
3. What is the significance of section 21(2) of the *Criminal Code*?
4. Identify who may be considered an accessory after the fact.

## 4.7 Our Criminal Court System

Thousands of cases go to trial each year. The cost of operating the criminal justice system, which is paid for by the taxpayer, is very high. As a result, the structure and procedures of Canadian courts are constantly changing to provide greater efficiency.

Jurisdiction over the court system is divided between the federal and provincial governments. The *Constitution Act, 1867*, gave the provincial governments jurisdiction over the administration of justice in their provinces. The provinces organize and maintain their provincial courts by, for example, providing court-houses and court staff. The federal government controls criminal law and establishes procedures to be followed in criminal matters.

The *Constitution Act, 1867*, also gave the federal government the authority to set up two other courts. One of these is the Court of Appeal for Canada, known as the Supreme Court of Canada. The other court is the Federal Court, which reviews decisions of federal boards and commissions, among other activities. It does not, however, deal with criminal law.

### The Criminal Court System in Canada

#### Supreme Court of Canada

- is the highest appeal court in Canada
- has unlimited jurisdiction in criminal matters
- hears appeals from provincial appeal courts
- hears cases of national importance; for example, interprets the *Charter* or clarifies a criminal law matter
- generally grants leave (permission) before the appeal will be heard
- sets national precedent; decisions must be followed by all judges in all courts of Canada

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### Did You Know?

The *Anti-Terrorism Act* states that someone who knowingly takes in a terrorist, takes part in terrorism, or is an accomplice commits an indictable offence and could receive up to 10 years' imprisonment. Facilitating a terrorist act could get up to 14 years. Convicted leaders of terrorist acts can receive up to life imprisonment.

### e activity

Visit [www.law.nelson.com](http://www.law.nelson.com) and follow the links to learn about the Federal Court of Canada.

## The Criminal Court System in Canada (continued)

### Provincial Supreme Court of Appeal (names vary)

- hears appeals from the Trial Division of Provincial Supreme Courts
- sets province's precedent; decisions must be followed by all judges in that province

### Provincial Supreme Court—Trial Division (names vary)

- tries the more severe crimes such as manslaughter and sexual assault, and most severe indictable offences such as murder and treason
- hears criminal appeals in summary conviction cases
- sets province's precedent; decisions must be followed by Provincial Court judges in that province

### Provincial Courts—Criminal Division

- arraigns (reads the charge and enters the plea) all criminal cases
- holds preliminary hearings in most severe indictable offences, but the accused can elect to have the case tried in higher court
- hears and tries criminal summary conviction cases and the least serious indictable offences such as theft under \$5000

### Figure 4-9

Distinguish between the “highest” and “lowest” courts in Canada. Identify the jurisdiction for each level of court.

## Case

### Reference *Re Milgaard*

[1992] 1 S.C.R. 866  
Supreme Court of Canada



David Milgaard was found guilty of the rape and murder of Gail Miller in a trial by judge and jury in 1970. He was sentenced to life in prison at the age of 17. The Saskatchewan Court of Appeal affirmed his conviction, and his request to appeal to the Supreme Court of Canada was dismissed. Milgaard went to prison.

In 1992, the Supreme Court of Canada reviewed the case because of fresh evidence. One of the key witnesses at the original trial admitted he had lied about Milgaard's involvement in the crime. The Supreme Court ruled that the continued conviction of Milgaard was a miscarriage of justice. However, it was not satisfied beyond a reasonable doubt that Milgaard was innocent. It recommended that the conviction be quashed and a new trial ordered.

### Figure 4-10

David Milgaard and his mother, Joyce, walk through the Winnipeg Airport the day after DNA evidence cleared him of the 1969 rape and murder of Gail Miller.

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It also noted that the attorney general for the province of Saskatchewan did not have to pursue a new trial. Milgaard was released after serving 22 years in jail.

In 1997, a new forensic tool—DNA testing—proved that Milgaard was innocent of the crime, and his name was cleared forever. In 1999, Larry Fisher, a serial rapist who had seven rape convictions, was convicted of the original crime. The Canadian and Saskatchewan governments awarded David Milgaard and his family \$10 million in damages and apologized for the injustice that had been done to him. It was the largest settlement in Canadian history.

When asked about his wrongful conviction, Milgaard replied, “The question shouldn’t be, how do I feel about this? The question should be, how did this happen?”

### For Discussion

1. Should a 17-year-old be imprisoned with hardened criminals? Explain.
2. Summarize the ruling of the Supreme Court of Canada in this case.
3. Did Milgaard and his family receive adequate compensation for his 22 years spent in jail. Explain.

## Criminal Offences and Procedures

As noted earlier, summary offences and more serious indictable offences have different trial procedures. These will be examined in more detail in the following chapters.

### Examples of Categories of Indictable Offences

Least Serious Trial procedure similar to summary offences	More Serious Accused selects one of three trial procedures	Most Serious Trial usually before judge and jury
theft (under \$5000)	manslaughter	murder
mischief (under \$5000)	assault	treason
fraud (under \$5000)	sexual assault	piracy
driving while disqualified	weapon offences	bribing a judicial official

### e activity

Visit [www.law.nelson.com](http://www.law.nelson.com) and follow the links to learn more about the David Milgaard case.

**Figure 4-11**

Why do you think there are different trial procedures for different types of offences?

## Summary and Minor Indictable Offences Procedures

There is a six-month limitation period for the laying of a charge for a summary offence. This means that a person must be charged within six months of committing an offence. The provincial court judge hears the evidence and gives the verdict for summary and minor indictable offences.

For some quasi-criminal offences under provincial jurisdiction, such as traffic offences, a court appearance is not usually necessary. However, entering a plea of “not guilty” in such a situation requires a court appearance. Merely signing the “guilty” plea on the ticket citation or order is sufficient. Of course, the fine must also be paid.

## Case

### *R. v. Wust*

[2000] 1 S.C.R. 455  
Supreme Court of Canada

The accused pleaded guilty to a charge of robbery with a firearm. When he was sentenced, he had been in custody for seven and a half months. The judge sentenced him to four and a half years' imprisonment less one year for time already served.

The Crown appealed the sentence, arguing that it was far too light. It wanted a sentence of seven to eight years with no time off for time served. It argued that the three-and-a-half-year sentence was less than the four-year mandatory sentence required for using a gun while committing a crime. In its opinion, the judge had made an error when deciding the sentence.

The Supreme Court of Canada disagreed. It ruled that the goal of sentencing is to provide a fair sentence and the best person to do this is the judge who passes sentence. Judges give credit for time already served when deciding the sentence and this is what happened here. The Supreme Court ruled that the original sentence must stand.

### For Discussion

1. How would you classify the offence of robbery?
2. What is the mandatory sentence required for using a gun while committing a crime?
3. Do you think the Supreme Court is setting a precedent in this case? Explain.

### Did You Know?

In 1998, 76 percent of violent crimes in Canada were assaults. Of these, 90 percent did not involve a weapon or result in serious injury. The next largest category of violent crimes was robbery. Less than 1 percent of violent crimes involved homicide or attempted homicide. Violent crimes accounted for 12 percent of all crimes committed.

### Indictable Offences Procedures

If an offence is indictable, there is no time limit for the laying of a charge after the offence has been committed. Minor indictable offences are treated very much like summary offences. For more serious indictable offences, the accused is allowed to choose the trial procedure: by a provincial court judge, a higher court judge, or a judge and jury. Most indictable offences are classified as serious. They include such offences as sexual assault and weapons offences. The most serious indictable offences are tried by a judge and jury. These include murder and treason.

### Review Your Understanding (Pages 115 to 118)

1. What types of cases does the Supreme Court of Canada handle?
2. What is the legal effect when a decision is made by the Supreme Court of Canada?
3. What types of cases are handled by the Federal Court of Canada?
4. What functions do the provincial Supreme Courts perform?
5. How are summary, minor indictable, and quasi-criminal offences handled?

# CAREERS

## In Criminal Law

Careers in police work or correctional services are well suited to people who are self-confident and assertive and who can remain calm in hazardous situations. Being a keen observer of people and having an ability to work independently, as well as part of a team, are other desirable qualities for this line of work.

**e** Visit [www.law.nelson.com](http://www.law.nelson.com) and follow the links to research the different programs in criminology offered by Canadian colleges and universities.

## In Focus

### Police Officer

Police officers are responsible for maintaining public safety and order and enforcing laws and regulations. Police assigned to criminal investigations gather evidence from crime scenes, interview witnesses, make arrests, and testify in court. Officers assigned to traffic patrol enforce traffic laws, provide emergency assistance, and investigate traffic accidents. Police officers visit classrooms or community centres to talk about crime prevention and safety.

### Probation Officer

Probation officers interview offenders to determine if they can safely rejoin the community. They help



**Figure 4-12**  
Police officers



**Figure 4-13**  
Correctional services officer

to plan rehabilitation programs and set limits on the conduct of offenders. Clients must meet with their probation officers on a regular basis to evaluate progress and to determine if probation orders are being followed.

### Correctional Services Officer

Correctional services officers watch over prisoners and maintain order in correctional facilities. They supervise prisoners during work periods, mealtimes, and recreational breaks. They also guard prisoners moving between correctional facilities and monitor any potential prison disturbances and escape attempts. Officers work outdoors in all kinds of weather conditions. Indoors, conditions for these officers can be noisy and overcrowded.

## Career Exploration Activity

As a class, explore the career opportunities in police work and correctional services. The information you compile can be used to profile various law-related careers for a guidance bulletin-board display, or you may choose to run a law-related career fair.

1. Use the Internet, your local employment information centre, or contact the local authorities to conduct research into these careers.
2. Briefly summarize the education and training requirements, wage rates, working conditions, and future job prospects for police, probation, and correctional officers. Record the information on index cards.



## Will Stricter Gun Control Make Canada a Safer Place?



**Figure 4-14**

This pro-gun rally was held in Ottawa in September 1998 to protest the *Firearms Act*. What do some of the signs about protesters' views?

In 1995, Parliament passed the *Firearms Act*. This law required any Canadian who had a gun to obtain a licence for it by January 1, 2001. A licence allows a person to own or buy guns and ammunition. Gun owners who fail to obtain a licence can be imprisoned for up to five years or have their guns seized. Canadians who applied for a gun licence in time paid \$10 for a licence. Those who did not make the deadline have to pay \$60 and attend a firearms course costing up to \$60.

About 1.8 million gun owners applied for licences and met the deadline, but there are still an estimated 400 000 owners who have not. According to the Fire Arms Centre, 2238 licences have been refused. Anyone who does not have a licence will have his or her firearms seized by the police and can receive up to five years in prison.

By January 1, 2003, gun owners must also register each gun that they own with the government. Anyone “knowingly neglecting to register a firearm” can be imprisoned for up to 10 years.

The licensing and registration of firearms gives authorities a computerized record of all gun owners and the weapons in their possession.

The *Firearms Act* also sets a compulsory minimum four-year prison term for anyone convicted of using a gun in a serious crime such as murder, robbery, or sexual assault.

### On One Side

Opponents of the *Firearms Act* view it as a threat to gun ownership in Canada. Hunters, target shooters, and gun collectors say they should be allowed to pursue their hobbies without being regulated. The National Firearms Association, with 100 000 members, argues that the new law will make it more difficult for Canadians to defend themselves and their property. It claims that the new law puts unfair restrictions on law-abiding citizens.

Others view gun ownership as a democratic right that government has no right to limit. This group points out that since firearms are used in only 6 percent of adult crimes, restricting the rights of all Canadians is unfair. They say gun registration is the first step toward banning guns altogether.

### On the Other Side

Supporters of the *Firearms Act* include police, victims' groups, women's groups, experts in suicide prevention, and emergency room physicians. This side believes that stricter gun controls are making Canada a safer place. Firearms are responsible for 1400 deaths in Canada each year. Of these, 75 percent are suicides and 15 percent are homicides. Firearms are also a leading cause of death among teens. Tougher gun laws could make it more difficult to own guns and could reduce impulsive suicides in this age group.

Some supporters of gun controls want the government to go further. They want to make it illegal to own or use any kind of gun. They say that if this step were taken, there would be a dramatic drop in gun-related crimes. They point to the high rate of crime and violence in the United States, where citizens own an estimated 212 million firearms.



## The Bottom Line

In 1997, the Alberta government challenged the legality of the *Firearms Act* in court. It argued that guns were property and that property falls under the jurisdiction of the provincial governments.

In 2000, the Supreme Court of Canada ruled that the *Firearms Act* was legal. The federal government has control over criminal law and guns are linked to crime, not property. By requiring gun owners to get licences and register their weapons, the government is keeping guns out of the hands of criminals. Investigating the backgrounds of those who apply for licences ensures that only those who are law-abiding citizens will receive one.

## What Do You Think?

1. Briefly outline the requirements for gun ownership under the *Firearms Act*.
2. Distinguish between a licence and a registration.
3. Under what circumstances do you think a licence application would be refused?
4. Identify the arguments that are presented for and against the *Firearms Act*.
5. Why did the Alberta government challenge the *Firearms Act*? How did the Supreme Court rule on this issue?

### e activity

Visit [www.law.nelson.com](http://www.law.nelson.com) and follow the links to learn more about gun control in Canada.

## Agents of Change

### Suzanne Laplante-Edward

On December 6, 1989, a gunman entered Montreal's École Polytechnique. He killed 14 female engineering students and injured 13 others before killing himself. This event, known as the Montreal Massacre, was the worst mass murder in Canada's history.

The Montreal Massacre was a major impetus for gun control legislation in Canada. Parents of the slain victims became some of the most effective lobbyists for Bill C-68 (the *Firearms Act*). Suzanne Laplante-Edward is the mother of Anne-Marie Edward, one of the victims. She describes Canada's gun control legislation "as our daughter's legacy."

In recent years, Laplante-Edward has openly criticized opponents of the *Firearms Act*. "Now that the law is passed and being implemented, we resent having to continually defend it against the gun lobby's relentless attempts to undermine it," she said recently. "Opponents argue that the law 'punishes' law-abiding gun owners. I ask you: how does registration and licensing compare to the loss of a child? What sane person could make such an argument?"

Chief Brian Ford, of the Ottawa–Carleton Regional Police and Secretary–Treasurer for the Canadian Association of Chiefs of Police (CACF), said that the parents of the Montreal Massacre victims had a huge impact on the system: "In many ways, December 6, 1989 ... highlighted the flaws in Canada's old gun laws." Ford pointed out that without information about gun ownership, police

"cannot control the illegal gun trade or enforce safe storage requirements. Police chiefs across Canada remain committed to the new gun control legislation."

## For Discussion

1. How did the Montreal Massacre affect gun control legislation in Canada?
2. Some people argue that the Montreal Massacre was not a typical crime and that the push for gun control legislation in its wake was based on emotion rather than true need. Argue for or against this statement.



**Figure 4-15**  
Suzanne Laplante-Edward

# Chapter Review

## Chapter Highlights

- Criminal law deals with offences against society.
- Civil law deals with offences against individuals.
- Through penalties, criminal law deters people from committing offences.
- Civil law emphasizes compensation for damages.
- Criminal law is the responsibility of the federal government.
- Quasi-criminal law deals with offences such as traffic violations.
- Summary offences are minor criminal offences.
- Indictable offences are more serious criminal offences.
- The Crown must prove its case beyond a reasonable doubt.
- *Actus reus* and *mens rea* must exist to prove someone guilty.
- Ignorance of the law is no excuse.
- Aiding and abetting a criminal is a crime.
- Supreme Court of Canada decisions must be followed by lower courts.
- Each province has a Trial Division and an Appeal Division for important criminal cases.
- All criminal cases start in provincial court, Criminal Division.
- Provincial court judges try summary and minor indictable offences.
- An accused has a choice of trial procedures for more serious indictable offences.
- The most serious indictable offences are tried by judge and jury.

## Review Key Terms

Name the key terms that are described below.

- a) a person who helps an offender escape detention
- b) cause or reason to commit a criminal act
- c) failing to pay attention to the possible injuries that might result from an action
- d) planning and acting together for an unlawful purpose
- e) law that deals with offences against society
- f) taking reasonable care not to commit an offence
- g) Latin phrase meaning “a wrongful action”

- h) Latin phrase meaning “a guilty mind”
- i) knowing certain facts, which provides the necessary *mens rea* for an offence
- j) the first step toward committing the crime
- k) minor criminal offences that are tried immediately
- l) serious crimes that carry more severe penalties than summary conviction offences
- m) offences that are punishable as indictable or summary offences
- n) criminal liability based on the commission of an offence
- o) criminal liability in which intent is assumed to be present but need not be proven
- p) encouraging another person to commit a crime

## Check Your Knowledge

1. What is a crime and how is it dealt with in Canadian society?
2. Explain the types of criminal offences and provide an example of each.
3. Distinguish between the *actus reus* and *mens rea* in a criminal offence and provide an example for each.
4. Summarize the structure of the criminal court system and identify the types of cases heard in each court.

## Apply Your Learning

5. In groups, examine the Law Commission’s four conditions that must exist in order for something to be considered a crime. Apply them to child pornography. What are your conclusions regarding each of the four conditions as they relate to this offence?
6. *R. v. Oommen*, [1994] 2 S.C.R. 507 (Supreme Court of Canada)  
In the early morning hours, Oommen killed Beaton as she lay sleeping on a mattress in his apartment. He fired nine to 13 shots at