Wolastoqey
Tribal Council Inc.

New Brunswick Law Foundation
Fondation pour le droit au Nouveau-Brunswick

UNDERSTANDING CIVIL AND CRIMINAL CASES

Civil and criminal cases are two different types of legal disputes that differ in the type of issues involved, the parties involved, and the outcomes sought.

Types of Civil Law Cases

- Divorce and child custody disputes
- Contract disputes
- Land ownership disputes
- Interpretations of wills
- Torts (e.g. negligence, defamation, and trespassing

Types of Criminal Law Cases

- Theft
- Arson
- Drug trafficking
- Murder



How Do Civil Cases Work?

A civil case, also known as a lawsuit, begins when one person or business takes another to court to resolve a private dispute. This typically involves legal disputes, such as issues with contracts, property, or personal injuries. The party initiating the case is called the **plaintiff,** while the person being sued is the **defendant.**

Civil cases can be complex, but typically follow these general stages:

Pleadings: The plaintiff starts a civil case by filing a complaint, and the defendant must respond or risk a default judgment (a court ruling in favour of the plaintiff due to the defendant's failure to respond).

Discovery: Both sides exchange evidence and answer questions under oath to clarify the claims.

Trial: Each side presents evidence and questions witnesses, with the plaintiff needing to prove their claim is "more likely than not" true, known as the "balance of probabilities."

Standard of proof: The court assesses if the plaintiff has met the "balance of probabilities" standard to find the defendant liable and determine an appropriate remedy.

Remedies: Remedies are legal responses used to correct or compensate for a wrong done. There are three main types of legal remedies.

- **Monetary Remedies (Damages):** The defendant pays money to the plaintiff.
- **Declaratory Remedies:** The court clarifies the rights of each party, such as ownership or the terms of a will.
- **Injunctions:** The court orders someone to start or stop doing something.

How Do Criminal Cases Work?

In a criminal case, the government (referred to as **"the Crown"**) prosecutes an individual for breaking a public law, such as those outlined in the *Criminal Code*. The offence is considered a crime against society, and the Crown's goal is to prove beyond a reasonable doubt that the accused committed the crime.

There are three classes of criminal offences:

- **Summary Conviction Offences:** Includes minor offences like causing a disturbance, with penalties of up to a $5,000 fine, up to one year and 364 days in prison, or both if no specific penalty is stated.
- **Indictable Offences:** Includes serious crimes such as manslaughter or robbery, with severe penalties, including life imprisonment for certain cases.
- **Hybrid Offences:** Includes offences that can be treated as either summary or indictable,depending on the Crown's decision; until then, they are considered indictable.

The person charged is referred to as the **"accused"** and is presumed innocent until proven guilty.





The criminal process typically follows these general stages:

- **Charges laid, arrest, bail:** Police decide on charges based on reasonable grounds. They may arrest the accused, and one of the following might happen:

  (1) Release the accused with a court date or

  (2) Hold a bail hearing within 24 hours to determine if they will be released or kept in custody.

- **Disclosure of evidence and accused's plea:** At arraignment, the judge reads the charge, the Crown shares evidence, and the accused pleads guilty (leading to sentencing) or not guilty (leading to trial).
- **Trial:** The Crown must prove guilt, while the accused can present evidence or remain silent. Any evidence obtained unlawfully (infringing on the rights of the accused) is potentially excluded, and the right to a timely trial is protected by the Canadian *Charter of Rights and Freedoms* (Charter).
- **Standard of proof:** The Crown prosecutor must prove guilt "beyond a reasonable doubt," a high standard close to absolute certainty.
- **Sentencing:** If found guilty, the judge considers factors such as the severity of the crime and the potential for rehabilitation to determine a sentence. The sentence should be a punishment that fits the crime.
- **Finding of guilt without conviction:** A judge may opt for an absolute or conditional discharge instead of a criminal record, with conditions imposed for up to three years for a conditional discharge or none for an absolute discharge.
- **Appeal:** If the accused or the Crown does not agree with the result, they may ask a higher court to review the result. The appeal court can reexamine the conviction (what an accused was found guilty of doing) and the sentence (the type and amount of court-ordered punishment). The appeal court will conduct a hearing, and each side will be allowed to present its arguments.



Judges may impose one of many kinds of sentences, or a combination of penalties.

These could include:

- **Imprisonment:** Serving time (i.e., jail sentence) in a federal penitentiary, provincial/territorial correctional centre, etc., depending on the severity of the crime.
- **Fine:** Paying money as a penalty.
- **Restitution:** Covering costs for any harm done.
- **Probation:** Releasing the accused with certain conditions.
- **Community Service:** Completing volunteer work in the community setting.

A **jury** is a group of citizens who determine the facts of a particular case. They then render a verdict based on those facts and on the instructions about the law provided by the judge.

A jury participates when required by law or when chosen by the accused, typically in more serious criminal cases (indictable offences). The right to a jury stems from the *Charter*, which says that any person charged with an offence has the right to a trial by jury when the maximum punishment for that offence is imprisonment for five years or a more severe penalty.

Every resident of the Province of New Brunswick who is 19 years of age or older and a Canadian citizen may be called for jury duty. However, there are some exceptions; for example, certain people are ineligible to serve as jurors because of their type of employment.

Who sits on a jury depends on two main steps:

- Each province or territory has its own rules for randomly summoning a group of citizens for jury service.
- Once that group is assembled, the *Criminal Code* outlines how 12 jurors are selected from it to form the actual trial jury.



Additional Terminology to Know

Criminal Code: A federal law that includes definitions of most of the criminal offences that the Parliament of Canada has enacted.

Arraignment: The formal reading of a criminal charging document in the presence of the defendant, to inform them of the criminal charges against them.

Prosecutor: A prosecutor is a lawyer who initiates the prosecution of criminal offences and presents the case for prosecution in a criminal proceeding.

Discharge: A discharge is a sentencing option available to individuals who have been found guilty of an offence but, in the court's view, do not warrant a conviction.

Conditional Discharge: The court finds you guilty, but agrees to discharge you under specific conditions, typically outlined in a probation order. Conditions may include reporting to a probation officer or attending counselling or rehabilitation.

Absolute Discharge: An absolute discharge is the most lenient sentencing option after a finding of guilt. It involves no probation, no conditions, no follow-up court appearances, and only remains on your record for one year.

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