



## Chapter Three

# The People In Law

In Canada, there are approximately three million detected criminal code offences committed each year. Of these, 60 to 65 percent are property offences involving theft under \$1000—including break and enter, car theft and fraud. About six to 10 percent of the offences are violent ones. Most crimes in this category involve assault of a non-sexual nature, but rape, murder and manslaughter also come under this heading. The remaining 25 to 40 percent of offences spans the criminal code. This group involves everything from speeding and traffic violations, to underage drinking, to personation, drug trafficking and so on.

Given this statistic of two million offences annually, it is safe to presume that roughly the same number of Canadians find themselves in trouble with the law—to a lesser or greater extent—each year. In essence, it can be said that one out of ten Canadians find themselves in trouble with the law each year.

In Canada, we have a very complex legal system in place that deals with these offenders. Our legal system is a very significant facet of our society and even our economy. You are looking at a \$10 billion dollar a year business when you factor in lawyers, judges, prisons, police, corrections officers, and so on.

Thousands of Canadians are employed in law-related positions, including police, lawyers, social workers and court officials. The purpose of this chapter is to examine the roles and duties occupied by these people.

The first grouping of people involved with the law include the most important or key players in our legal system. Naturally, in this group we have the criminal, police, lawyers, judges and the jury.

## The Criminal

It can be argued that the criminal, or offender, is the focal point of every law enforcement system in the world. Laws are made to keep peace and order in a society. But if those laws were never broken—if there were no criminals—there would be no need for large police forces, complex legal structures and procedures, as well as the ever-increasing numbers of legal support people, such as criminologists, psychologists and case workers, that we see today.

### All this aside, what exactly is a criminal?

A criminal is a person who commits a criminal act. Criminologists have spent decades trying to establish a profile of a typical criminal. Mounds of research data, countless books and reports have been written on this topic. But a definite, proven and universally-acceptable explanation for criminal activities in North America continues to evade us.

However, we do know four things for sure:

1. Males, on average, commit five times more crimes than do females.
2. Male crimes tend to center around those involving physical harm (such as assault) or theft (such as break and enter). Female crimes tend to center around shoplifting and

forgery.

3. Young males, under the age of 24, commit about 30% of all detected crimes. While those males between 25 and 34 commit 35% of all detected crimes.
4. Criminal actions are usually committed by one person acting alone, or with one other person. Group criminal action is uncommon.

It appears that criminals seem to occupy several “levels”. Reviewing types of criminal actions and offenders, it appears that there are four distinct levels, progressing from an amateur “spur of the moment” type of criminal to those individuals who commit crimes of a highly organized and complex criminal nature.

### **LEVEL 1: “Petty Criminals”**

This is the lowest level. Level 1 includes first-time offenders, amateurs and petty criminals. These offenders usually commit the criminal action with little preparation, little thought and often, little consideration for the consequences of their actions.

At this level, we might have a person robbing the local grocery store for something as minor as package of cigarettes or just \$150 from the cash register. Usually, the perpetrator does not understand that this action is not worth the penalty or risk. Another example at this level might be a drunken, sexually-frustrated male at a bar, who misunderstands a young girl’s friendly nature and commits a sexual assault. Yet another might be a woman who, tired of her husband abusing both her and her children, kills him during a domestic argument. Or a teenager who really wants the latest compact disc of her favorite musical group, and tries to shoplift it from a music store.

In all cases, these crimes are committed by first-time or amateur individuals. In almost all cases, the criminal action is usually either totally unplanned or poorly planned, as well as being very spontaneous. In law, criminals at this level are considered as having committing “blue collar” or very basic criminal acts.

### **LEVEL 2: “White Collar Crime”**

Level 2 concerns “white collar” crime, which rarely involves physical injury or violence. At this level, money—or something of high materialistic value—is the main common thread, whereas at the previous level, violence occupied this niche.

Crimes at this level can take two forms. The perpetrator may be a first-time offender. But the nature of the crime is different from that at level 1. Here, the crime is carefully planned. Every detail is carefully thought out and worked to perfection. We may have someone embezzling money through computer-theft or through incorrect entries in the company books. Or a lawyer who is holding a great deal of money in trust, who diverts the money to his personal use.

The other type of criminal at this level is the “crooked cop,” “corrupt politician,” or “corrupt bureaucrat.” In this instance, a police officer might accept a cash reward or some other form of materialistic incentive to “turn the other way” or do something which prevents a criminal from being brought to justice. The corrupt politician or bureaucrat, often at the municipal level of government, accepts money or some other reward in return for allowing a development to proceed, or a substandard building to be constructed, for example. In both cases, these people misuse their position of authority in order to incorrectly—and often illegally—help others. In return for their services, they receive subtle rewards such as “payoffs” or other benefits.

### **LEVEL 3: “Services for Hire”**

Criminals at this level are far more sophisticated than the earlier two levels. These people are usually “professional”. Here, we have the “safe cracker”, “enforcer” (or strong arm), the “explosives expert” or the infamous “hit man”. People at this level possess a criminal skill, which is often for sale at a price determined by the success and failure of their past performances. Thus, a international hitman like “Carlos,” who is now in a European prison, commanded \$1,000,000 per hit, while another, less successful, professional might only require \$5,000.00

The difference is the risk factor. If the \$5,000 hit woman were caught, there is a risk that she could “spill the beans” under police interrogation and implicate the person who initiated the action. Under Canadian law, acquiring the services of someone to commit a crime is considered as serious an offence as actually committing the crime yourself. However, a true professional is rarely caught and thus, dramatically reduces the risk of implicating the employer. In other words, at this level, “you get what you pay for.”

### **LEVEL 4: “The Mob”**

The highest level of crime is organized crime. At this level, we have very complicated criminal structures, organized along the lines of legitimized corporations. We have discussed this level in greater detail under *Chapter One- A History of the Origins of Law*.

The “businesses” control criminal activities within specific geographic areas, which have evolved as the result of “wars” and the subsequent agreement of other “businesses”.

However, unlike a legitimate corporation which is involved in a business activity that is registered with the government, the crime corporation is involved in activities that are not known and definitely not registered. The types of crime at this level include drugs, prostitution, pornography, labour racketeering, gambling and extortion, all of which yield a high profit and are in high demand.



Illustration by Erin Morton '99

## THE POLICE

The first line of soldiers fighting criminal elements in our society is the police. Policing in Canada amounts to \$5.81 billion dollars a year. Today, in Canada, there is one police officer for every 552 Canadians.

The role of policeman is one of the most misunderstood and poorly defined. Unfortunately, in North America, we tend to see the police as a strong willed, fascist type of individual. Sensationalist television programs and print media articles tend to portray the police as hard-nosed crime fighters out “busting heads” and “throwing the guilty party into jail, often tossing away the key for life.”

Nothing can be further from the truth. In real life, a few policemen may handle several “glamorous” cases such as murder, kidnapping and assassination **during the course of their careers, but others will spend 20 or 30 years in their enforcement roles without ever becoming involved in a major crime.** In fact, one 25 year veteran of the Royal Canadian Mounted Police told a class of law students that he had only had to draw his gun once in his entire career to date.

In addition, a police officers career is very frustrated. For example, Statistics Canada reported in 1996 that there 2,832,800 criminal-related inci-

dents were reported to police. Of these, 4% were not real, false calls.

Of the remaining 96%, only 34% were “cleared.” The term “cleared” means that the police are satisfied that they have clearly identified the offender. However, not all charges can be cleared because: •the offender is dead; •the offender is under age 12 therefore not chargeable; • the offender has diplomatic immunity; and •the person is already in prison.

Now of these 34% cleared charges, 22% are classed as “cleared by charge.” This means that the police are able to lay a charge and thus bring the offender to court.

Of these 22%, the courts convict 15% of those charged. And finally, of those 15%, only 4% of those convicted are sentenced to custody which means imprisonment or in the case of young offenders, secure custody.

Very few police programs or print media articles depict the real activities which make up a large part of any police officer’s duties: traffic control, court appearances and administration (including controlling and monitoring crisis situations, preventing outbursts of criminal activity, predicting criminal outbursts, and handling the tremendous amount of paperwork and case preparations).

In fact, on a typical “police show”, the average officer deals with one to five serious crimes in a “typical “day”— which is compressed into 25 minutes or slightly less than an hour. In a recent study undertaken, it was determined that the average Toronto police officer was involved in only 39 criminal offences and two violent offences during the entire year. In Vancouver, this figure was slightly higher: 71 and eight, respectively.

One of the most common mottoes of police departments is “Serve and Protect”. It appears on the badges of the Toronto and Chicago Police Departments. National forces, like the RCMP, have a motto such as: “Maintain the Right.”

In the case of the former, these are two very important words. To serve means to serve the public and to look after their needs. The first and most important role of the police is to preserve order. The notion of order means that every person in the community should feel free from violence and any form of threats to their safety and security. The law provides us with this basis security. The police are granted powers to make sure that security is not violated by others. But the law also exists to protect the innocent from being harassed by police and arrested for crimes they did not commit. The law makes sure that the politically powerful do not abuse their power. The law guarantees that everyone has the right to a fair and impartial judicial hearing.

Today, in Canada, the main duties of the police in our legal system are:

- **preserving the peace;**
- **preventing robberies as well as other crimes and offences;**
- **apprehending offenders;**
- **laying informations before proper tribunals;**
- **prosecuting and aiding the prosecution of offenders.**

But neither this list of duties (*as written in the Police Act of Ontario*) nor the various police shows on television offers a very accurate picture of the real role of police.

Legal Scholar Herman Goldstein, with The American Bar Association, set out a list of eight things that police actually do after working in the legal community, interviewing and noting the public response to police, and watching the policemen performing their daily tasks.

#### **Goldstein's eight duties are:**

- to prevent and control conduct widely recognized as threatening to life and property (serious crime).
- to aid individuals who are in serious danger of physical harm, such as the victim of a criminal attack, or an accident.
- to protect constitutional guarantees, such as the right of free speech and assembly.
- to facilitate the movement of people and vehicles.
- to assist those who cannot care for themselves: the intoxicated, the addicted, the mentally ill, the physically disabled, the old and the young.
- to resolve conflict, whether it be between individuals, groups of individuals or their government.
- to identify problems that have the potential of becoming more serious problems for the individual citizen, for the police, or for the government.
- to create and maintain a feeling of security in the community.

#### **But how does a typical police officer actually spend his time?**

The percentage of activity ranges from force to force and from community to community. But on average, the average policeman spends his time this way:

**40%: crime prevention.** This includes everything from sitting parked on the side of the road in an effort to deter traffic offenders, to checking store window and doors to ensure they are locked.

**20-25%: administrative activities.** This includes various bureaucratic activities such as reports, preparation of activity logs, and case preparation.

**20-25%: responding to calls from citizens.** Many of these can be solved upon the arrival of the member. He or she may be required to resolve a domestic dispute or a quarrel among people, or settle down a party which has gotten a bit loud.

Of all calls received by police, various studies have indicated that 10 percent or less require immediate response to a crime that is actually in progress at the time of the call. About 25 percent to 30 percent of the calls come about as the result of a crime which has already occurred—the criminals have left and a certain amount of time has elapsed. The remaining 55 percent to 60 percent of the calls can be handled over the telephone. It should be noted, from a police point of view, that only five to 10 percent of the calls are considered exciting, 10 to 15 percent are considered boring or unnecessary, while the remainder are seen as routine.



**10-20%: various investigative roles.** These roles are designed to quell a problem before it gets out of hand. This includes undercover work and special investigation.

#### **And how does “glamorous” detective actually spend his time each day?**

The **detective** is portrayed in books and television in an often “glamorous” and “deadly” role. Again, recent research studies have shown that this is not the case. On the average, a typical detective in a large urban center spends:

**45-55%** of their time in the office taking part in **bureaucratic activities** NOT involving actual case work.

**20-25%** of their time in **actual case investigation**. This includes visiting the scene, interviewing witnesses, gathering information and solving cases.

**15-20%** of their time in **interviewing suspects, processing accused criminals, and so on.**

**10%** of their time in **non-police activities** such as school visits, and public relations visits to senior citizens homes.

**5-8%** of their time in a **variety of activities** ranging from special security details to waiting by the telephone for information dealing with a case.

**2-5%** of their time in **court** either as a witness, investigator or just waiting for their case to conclude.

**3-5%** of their time **on patrol** around the community in a deterrent role.

One facet of police work which should be noted is the matter of **police discretion**. The police, in dealing with an incident, have a wide range of options available to them in handling or resolving the matter. These options are referred to as police discretion. In essence, some of the discretionary powers given to police include the right to:

- **ignore an incident since it appears to be of a minor nature or is capable of self resolution.**
- **Stop and question a person or persons about the incident.**
- **Issue a warning to the offender.**
- **Search the premises or frisk the person(s) involved.**

- **Start a full-fledged investigation into the incident with the intent of bringing those guilty to justice.**
- **Detain a person or persons as part of the investigative process. This is usually the offender or the main suspect.**
- **Keep the suspect or offender under surveillance.**
- **Detain a person for their own protection. This is common in the case of people who are intoxicated or who are mentally unstable.**
- **Order the people to stop their actions, then issue a warning or make an arrest.**
- **Order the people to depart the premises with either a warning issued or an appearance notice.**
- **Threaten to use force if the offenders fail to comply with the order.**
- **Use force.**

The decision as to which discretionary powers to use is left in the hands of the individual police officer as well as the senior officers. Since the police forces are structured along military lines, discretion exercised at one level may be reversed at the next level.

One of the nine principles set out by Sir Robert Peel when he established the first modern-day police force in 1829 (see [Chapter One-History of the Origins of Law](#)), was that policemen must **“maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen, in the interests of community welfare and existence.”**

But in Canada and even the United States, during the 1950s and up until 1980s, this concept appears to have become amended to: “The police are the police and the public are the public.” Police were viewed as a separate entity from the people—not to be cooperated with, but at the same time, not to be questioned or tampered with. In some cases this could be argued as a left over from the two World Wars. After all, following these wars as well as the Korean and Vietnam wars, many policeman came from the ranks of the soldiers who were involved in these conflicts.

But, today, there are dramatic changes in the delivery of police services in Canada. People at all levels of government have begun taking a long, hard look at their police forces. In many parts of Canada, local police forces have been disbanded and replaced with the Royal Canadian Mounted Police. In New Brunswick, the “Highway Patrol” is losing parts of its policing function to the RCMP. In Nova Scotia, certain aspects of highway patrol (such as weights and measures) have come under

the direction of a provincial force. In some municipalities, local by-laws are now enforced by a special constable rather than the RCMP. Change is underway and will continue until Canadians get a police force which they can trust, respect and are completely comfortable with.

Today, it looks as though we have come a complete circle in our policing. Organizations such as “Block Parents” and “Neighbourhood Watch” are very similar in structure and mandate to those which existed during the time of King Alfred the Great. In addition, operations such as “Crime-stoppers” and television programs which re-enact crimes, encouraging people to telephone with information, all reinforce the policing philosophy of Sir Robert Peel: “The police are the public and the public are the police.”

A final note on police centers on accountability and function. Unlike most areas of government, the police are rarely questioned and their activities are rarely scrutinized. By 1996, about 80,000 Canadians were members of local, provincial or federal police forces in Canada. Most of these forces have expanded dramatically over the years without any questions being raised as to their function, structure and system of accountability. The total cost of policing in Canada amounts to a more than \$2 billion. Yet, since public debate on police policy rarely occurs and since the functions and activities of police are rarely questioned, it is difficult, if not impossible, to determine whether or not the police are doing the sort of job expected and demanded by the citizens.



Illustration by Trevor Cook '99

## The Lawyer

### What is a lawyer?

One of the earliest reference to lawyers was made by Jesus Christ, who once said to Saint Luke: “*Woe unto you, lawyers, for ye have taken away the key of knowledge.*” This comment referred to man’s ignorance about many facets of his daily life. We require lawyers to unravel the complexities surrounding such important matters as a house purchase, divorce and estate settlement. It is accepted that only lawyers can understand the “fine print” and thus it is a necessity to have one to do just that.

Just like the police, if we watch various legal programs on television, we get a very theatrical

and often inaccurate picture of a very difficult profession. The role of lawyer is critical to our system of justice. In Canada, they are often referred to as “officers of the court”, a title which reflects the special responsibilities and duties which they possess in maintaining our justice system and upholding our laws.

The primary function of lawyers is to represent various parties appearing before the courts in both civil and criminal litigations. In this role, they are referred to as “counsel” or “barrister.” In addition, they also assist and advise individuals, groups, businesses and corporations in a wide range of activities that may possess legal elements. This include anything from the settlement of a deceased’s estate to drawing up incorporation agreements for a new business. If the lawyer appears in court, the earlier titles apply. But in many of these activities, a court appearance is not necessary and thus they are referred to as “solicitors”, a term we will explore later.

Not everyone can become a lawyer. It takes considerable time and money. One does not simply decide that he or she is going to become a lawyer and enroll in the nearest law school.

First, an applicant must be accepted. This part is not easy. Before a candidate can be enrolled, an Admissions Committee must examine his or her academic record (a B+ or 75 to 79 percent average is considered the minimum), letters of reference and the results of the Law School Admission Test. Each applicant has to write a **LSAT**, which are given four times a year in several centres in Canada. Similar to an SAT test, the LSAT has a top score of 800, with 500 considered the minimum admission score. Then, there are three years of coursing which concludes with the LL.B. or B.C.L. degree. But the graduate is still far from becoming a lawyer.

Next, the candidate must **article**—spend eight to 12 months working under the supervision of a lawyer in his or her office. Then, comes a **Bar Admission Course**, which lasts anywhere from six weeks to eight months. These practice-oriented courses are given by lawyers, sometimes while the candidate is articling. Finally, once all of this is completed, the candidate may apply for admission to the Bar. If all requirements, including age, citizenship and residence are met, as governed by the **provincial law society**, the person is admitted to the bar as both a barrister and a solicitor.

In order to fully understand the role of the lawyer in Canada today, we must step back into our past and examine the origins of this profession. As we have seen, our Common Law system traces its roots back to England. There, the legal profession has two distinct divisions.

First, there are the **solicitors**. In England, a person who needs a lawyer first goes to the solicitor. The solicitor looks after the regular day to day

legal activities such as the buying and selling of land or property, the design of wills, the pleading of cases in lower courts. However, if the case is more intense and is destined for a higher court, then the solicitor goes to a **barrister**, who alone has the right to audience in the superior courts. Thus, it is similar to what exists in Canada today in medicine. If we are sick, we go to a general practitioner or GP, otherwise known as the family doctor. If our condition requires surgery, the GP seeks out the surgeon, who performs the operation.

However, in Canada, all lawyers are sworn as both a solicitor and as a barrister and are also eligible to become a notary public.

But in Quebec, this is not the case. There, lawyers are divided into two categories: “notaires publics” and “avocats”. The **notaries** are responsible for the drafting of contracts and authentication of the same, as required by the Quebec Civil Code, while at the same time they are permitted to act in legal non-contesting matters where no legal question or facts are in dispute. The **avocat** is like the English barrister, in that he or she represents the client in court and is involved in all legal activities including that which is done by the notaries. So the **avocat** can do the work of a notary but a notary cannot do the work of an **avocat**.



**A Canadian lawyer has two clearly defined responsibilities:**

1. To be responsible to his or her client by ensuring that the case is properly considered, prepared and presented.
2. To be responsible to the court and to society generally by complying with principles of honesty, morality and justice in the performance of his duties.

### What happens if the lawyer fails to fulfill these responsibilities?

Just like doctors and teachers, lawyers are governed by ethics and law. Each province in Canada, for instance, has regulated the practice of law by statute. These statutes determine the standards of professional conduct.

In addition, the Law Society in each province has set its own rules and regulations regarding ethics. A breach of ethics or a violation of any statute could, and in most cases does, result in the lawyer being disciplined and often disbarred. Disbarring means that the lawyer is no longer permitted to practice law.

Any client may initiate procedures against a lawyer whom they feel has been unfair or unprofessional. In Nova Scotia, like most provinces in Canada, the Nova Scotia Barristers' Society recommends that the client try to work out their differences with the lawyer on a one-to-one basis. A frank and open discussion often settles the dispute.

If it does not, a client is urged to settle the account and then contact another lawyer. Often, it is necessary to settle the account in order to get the records and files of the case transferred to another lawyer. If the account is the problem, then the client is entitled for an itemized accounting from the lawyer. This account can then be turned over to a "Taxing Master" — a judge or senior lawyer appointed by the government. The Taxing Master will review the billings in dispute and will recommend a settlement.

If the dispute involves the lawyer's handling of the case, a complaint to the Barristers' Society may be in order. The Discipline Committee examines these complaints. A lawyer's failure to get his the desired verdict for his client is not grounds for action. However, misuse of funds, fraud or incompetence are seen as serious professional violations and may result in disciplinary action. The Discipline Committee looks after professional conduct; it does not act as a court, it cannot give legal advice, nor can it award damages. All it can do is punish lawyers who have violated rules of professional conduct.

Disbarring and discipline are not uncommon in Canada and especially in Nova Scotia. Some Nova Scotian cases have received a fair amount of media attention. The mere allegation of irregularities is often enough to warrant an investigation by the Barristers' Society and may lead to disbarment.

Another area which is carefully monitored by most provincial Law Society are **fees**. However, no lawyer is required to charge a specific amount and any lawyer may charge more or less than those fees suggested.

In Nova Scotia as well as the rest o Canada,

the Barristers' Society suggests to lawyers that the complexity of the case, the amount of money involved, the result, the experience of the lawyer and the time involved should also be considered for setting a fair and reasonable fee. Lawyers keep meticulous records and in many cases bill for "time" rather than a set fee. The following are some suggested fees are used by some lawyers in Nova Scotia. It should be noted that these are not concrete fees.

Many lawyers charge less, many charge more, these are just a suggested list:

01. Attendance in Court on summary offence, i.e. drinking while driving including preparation, etc. (usually 1/2 day)..... \$ 250.00 - \$ 600.00
02. Criminal Trial (more serious) based on per day..... \$ 790.00 - \$2,340.00
03. Attendance at a civil action (based on 2 days)..... \$3,370.00 - \$10,880.00
04. Appealing a civil decision..... \$2,350.00 - \$7,280.00
05. Separation Agreement..... \$ 370.00 - \$1,380.00
06. Uncontested Divorce- Acting for Petitioner no negotiation..... \$ 450.00 - \$ 820.00
07. Contested Divorce - Negotiation with court appearance.....\$1,490.00 - \$6,460.00
08. Child Custody and settlement of support.....\$ 700.00 - \$4,780.00
09. Obtaining a Court order appointing Guardian\$ 800.00
10. Incorporation of the Commercial Company..... \$ 610.00 - \$ 890.00
11. Writing a Letter.....(short) \$ 50.00
12. Drawing of Renewal of Lease \$ 340.00 - \$1,200.00
13. Sale of a residential property. \$ 460.00 - \$1,300.00
14. Draft of a Power of Attorney. \$ 100.00 - \$ 170.00
15. Preparation of a simple will. \$ 110.00 - \$ 210.00
16. Preparation of a complex will. \$ 220.00 - \$ 830.00
17. Probating of a will or estate. \$ 800.00 - \$3,320.00

As you can see, lawyers are generally fairly well paid. But law is a very fickle business. The good lawyer does well, while the poor lawyer struggles. A starting lawyer, fresh out of law school, has several "lean" years as he or she struggles to get a practice started and a reputation established. If a new lawyer starts with an established practice, a starting wage of \$20,000 to \$25,000 a year is considered average. And, bear in mind that lawyers bill their clients for their services. Let's face it, most serious criminals involved in murders, property crime - robberies, etc. have limited resources. After all, why did they commit the crime in the first place? So, sometimes clients cannot afford to pay all of the fees. This could pose problems. As a result, many lawyers chose to avoid the risks in defaulted payments which often comes with criminal matters and prefer to get involved in corporate law and civil litigation.

On the surface, many see lawyers as being extremely wealthy. But statistics regarding income are deceiving. In some litigations, lawyers have to

pay a great deal of money in fees to witnesses, court reporters, secretarial and research staff and expenses. In the case of one firm, for example, the disbursements related to the firm's \$536,601.00 on government contracts amounted to between \$150,000. and \$200,000. This does not include lawyers salaries, travel and office expenses. In the words of one very senior partner, "I have known a lot of lawyers in the past forty years, but I can honestly say that none of them were rich."

As we have seen, lawyers may take on the role of a barrister or a solicitor. In small practices, there is an overlapping of the two, in that the lawyer does some court work and some work that requires little or no court time.

Barristers also generally follow one of two directions, namely defence or prosecution. The most common of these two is **defence**. Here, the lawyer is charged with the responsibility of trying to defend his or her client against charges levied by the state. Legal precedent, technicality and/or innocence of charges are all used by the skillful defence attorney in an effort to free his or her client.

On the opposing side is the prosecution, or the "**Crown**". In the United States, the prosecuting lawyer is referred to as the "District Attorney". In Nova Scotia, prosecutors must be practicing members of the Nova Scotia Barristers Society and are expected to have a thorough understanding of the prosecution process, as well as competence in the areas of procedural and substantive criminal law. (Salary range: \$35,000 to \$64,000.)

The Prosecutions Section is responsible for prosecutions of violations of criminal and penal laws and undertakes inquiries related to the Fatality Inquiries Act. Prosecutors are responsible for the enforcement of the Criminal Code, the Young Offenders Act and other federal and provincial statutes. Prosecutors conduct, on behalf of the Crown, the prosecution of charges resulting from police investigations and appear in Family & Youth Courts, Provincial Court, and the Supreme Court of Nova Scotia. Prosecutors provide advice to the police as to whether sufficient evidence exists to warrant a prosecution and as to the nature of particular charges laid.

A final note pertains to the selection of a lawyer. Such a selection is not easy. Generally, it is suggested that you select a lawyer you trust and feel comfortable talking with. The lawyer should be frank and honest with you, and should keep you clearly informed as to where you stand and how the work is proceeding on the legal matter in question.

The services offered by a lawyer are very intangible and it is often difficult to determine whether you are getting full value for the dollar. So a

lawyer's honesty and confidence are often key factors in determining whether or not the legal representative you have selected is the best for you. As a client, you have every right to question your lawyer about each and every step in the process.

In turn, the lawyer is expected to be forthright and clear with you. The lawyer is your representative in an action. He or she represents you and no one else. Therefore, you, and only you, must be happy with the representation. Remember—if things go wrong, you are the one who pays the damages or goes to jail. Not the lawyer.



## The Mediator

**Mediation** is something that has only recently been introduced to Canada. The concept originated in China, where lawyers were abolished after the revolution and were replaced with laymen who mediated disputes between parties. In China, the mediator serves as a "middleman" or a "disinterested third party". Such a concept, although radical and often met with negative reaction from lawyers, has now spread to North America and Europe and is being seen as an alternative to the courts.

In many cases, mediation has proven successful and has spared parties the considerable time and money involved in a legal action. Mediation is a voluntary system in which both parties come together with an impartial third party in an effort to resolve the dispute. In most cases, the parties are anxious to negotiate a settlement. The role of the mediator is merely to guarantee that fair negotiation takes place. The actual settlement of the dispute is made by the parties in the action. Once both sides have reached an agreement, the mediator will often put this in writing, either as a simple statement of understanding or as a binding legal contract.

Currently, this system of mediation is being used primarily in civil cases between groups or individuals. However, a trend seems to be shifting this process into the arena of settling petty criminal disputes or large individual or community disputes. Either way, mediation has proven very beneficial, in that it has removed from the courts many simple

cases which can be easily resolved without taking up valuable court time.

Such a concept was first suggested in North America in 1939 by a Yale professor who believed mediators should replace lawyers. Mediators, it is argued, cost less money, save a lot of work, resolve disputes more quickly without stressing overburdened courts and, at the same time, result in many cases being resolved in a manner satisfactory to all concerned.

In Nova Scotia, there are more than 30 mediators scattered across the province who handle cases that are mainly of a civil nature. Mediators might be lawyers, psychologists, social workers or teachers who offer their services in order to settle disputes without involving the courts.



Illustration by Erin Morton '99

## The Judge

As far as the Canadian justice system is concerned, the expression “the buck stops here!” accurately describes the role of the judge. Our society sees the judge as a leader in both the community and our society as a whole. Judges are generally seen as impartial and neutral in all disputes brought before them. They are to not be involved politically nor express any political opinion, even on a case brought before them.

The decision of a judge is to reflect the decision of society in a particular matter. Bad decisions can reflect very poorly on a judge’s reputation and the reputation of the legal system.

The Canadian justice system is that of an **adversarial** nature. This means that our courts have two opponents, or “parties”, struggling against each other. The goal of this system is to expose the entire truth of all the elements of the

case in question. Each lawyer presents all of the evidence which supports his or her side of the case. The judge is then expected to make a decision or “ruling” based on the evidence presented to the court. The judge determines what is truth concerning the matter under debate. The judge can best be seen as a referee in the game of justice. The lawyers or their clients initiate the action, fight the game of law and the judge referees the fight and declares the winner.

Generally speaking, our courts are very busy. The most common offence heard before the courts is impaired driving. Next, 26% of the cases are property-related crimes; 21% of the cases were offences involving violent acts (12% were assault). It should be noted that of the violent crimes such as homicide, attempted murder, robbery, sexual assault/abuse, etc. accounted for less than 1% of all criminal acts committed in Canada.

As for the youth courts, the situation is about the same. About 50% of cases heard by the youth courts are property-related such as theft under \$5000.00 (18%), break and enter (12%), possession of stolen goods (6%). According to Statistics Canada, the only youth offences which represented more than 5% of cases reported are: common assault (10%), failure to appear or to comply with a court order (10%) and mischief (5%).

In Canada, judges at all levels are appointed, not elected. However, there are several levels of judges.

### **LEVEL ONE:**

**1. Family Court:** Family Court judges hear cases involving family matters such as child custody and child abuse, in addition to some charges under the Young Offenders Act as it relates to young people under the age of sixteen. They sit alone on the bench and are required to have at least five years’ standing as a barrister of the Supreme Court before being appointed a Family Court judge. In this court, the judge may wear a plain black silk robe or a black robe with green bands.

**2. Small Claims Court:** Here, the **adjudicator** serves as a judge, although he or she does not carry that title. An adjudicator is a practising lawyer in the community and is appointed by the provincial government for a specific term of office. Adjudicators hear cases of a civil nature which involve settlement of \$5000 or less. They do not wear special robes in court. However, the adjudicator often sits in his full lawyers robes.

**3. Provincial Court:** As is the case with the other two courts at this level, only **one judge** presides. The Provincial Court is the busiest court, hearing cases of a relatively minor nature such as traffic offences, some assault and petty theft, in addition to some charges under the Young

Offenders Act, usually young people between the ages of 16 and 18. Judges of the Provincial Court in Nova Scotia under the direction of a Chief Judge. All of them must have at least five years' experience as a lawyer in Nova Scotia, before they receive an appointment from the provincial government. The judges usually wear black robes with red trim. They are addressed as "**Your Honour**".

## **LEVEL TWO**

**4. Probate Court:** This is a very specialized court, in that it deals only with the law and administration of the estates of deceased individuals. The processing of last wills and testaments as well as probate law as it applies to the settlement of estates is the central focus of this court. This court has a **Registrar**, who is responsible for the day to day administration of the court, and has duties similar to those of a judge.

**5. The Supreme Court of Nova Scotia:** Justices of the Supreme Court of Nova Scotia, hear the more serious cases such as murder, sexual assault with violence, armed robbery, narcotics, serious assaults, serious property offences, etc.

Every trial in this court is heard by one justice who is appointed by the federal government. A Nova Scotia Supreme Court judge must have been a practicing lawyer who has lived in Nova Scotia for at least 10 years and during that time must have been a practicing lawyer or a Provincial Court judge for five years. Judges are addressed as "My Lord" or "My Lady" and appear in court wearing gowns of black. One of these justices is designated as the Chief Justice of the Supreme Court of Nova Scotia. All lawyers must be gowned in this court and sit facing the judges.

The Supreme Court also now serves as an appellate court in Nova Scotia. It hears appeals from the Small Claims Court, Provincial Court and Family Court.

## **LEVEL THREE**

**6. The Nova Scotia Court of Appeal:** The highest level of courts in Nova Scotia is the Nova Scotia Court of Appeal. Appeals of decisions rendered in the lower courts are heard at this level. Three justices are expected to sit at each case heard by the court. Justices are addressed as "My Lord" or "My Lady" and appear in court wearing gowns of black. One of these judges is designated as Chief Justice of the Nova Scotia Court of Appeal. All lawyers must be gowned in this court and sit facing the judges.

**7. The Federal Court of Canada:** Prior to 1970, this court was known as the Exchequer Court. It has two divisions: the Trial Division and the Appeal Division. It commonly hears cases

which involve civil claims by, or against, the federal government, one or more of its agencies or Crown Corporations.

In addition, this court has jurisdiction over conflicts relating to copyrights, patents, trade marks, maritime law and aeronautics. Cases involving appeals of decisions made under the Income Tax Act and the Canadian Citizenship Act are also heard by the Trial Division of the Federal Court of Canada.

The Appeal Division hears appeals from decisions made both the Trial Division and federal administrative tribunals.

In some cases, especially those concerning Admiralty Law, the trial might have to adjourn in order for the court to determine a strictly factual question. In this instance, the court will appoint an **assessor** to determine and report on certain defined facts, such as the damage inflicted on one ship by another.

Judges are appointed by the federal government and must have a minimum of 10 years' experience as either a lawyer or a judge in any province in Canada. Each case brought before the Trial Division is heard by one judge. However, in the Appeal Division, three justices must sit in judgment of each case involved in the appeal process.

One of the Trial Division judges is designated as the head of the Trial Division and is referred to as the **Associate Chief Justice of the Federal Court**. One of the Appeal Division judges is designated as the head of the Appeal Division and named **Chief Justice of the Federal Court**. In some cases, the Associate Chief Justice of the Federal Court may also hear appeals. One of these justices is designated as the head of the Appeal Division and named **Chief Justice of the Federal Court**. In some cases, the Associate Chief Justice of the Federal Court may also hear appeals.

## **LEVEL FOUR**

**8. The Supreme Court of Canada:** The last and final level in Canada's court hierarchy is the Supreme Court of Canada.

It has nine judges—three of whom must come from the Quebec Bar. Supreme Court judges may hold office until they reach age 75. One of the judges is designated as Chief Justice. This court hears appeals of decisions rendered by the provincial appeal courts throughout Canada. All appeals brought to this court must be heard by a minimum of five judges, although all nine judges may sit in judgment on one case. This court sits in Ottawa during three sessions each year. Physically, the judges sit in a row at the front of the courtroom. They traditionally wear red woolen robes trimmed with white fur. However, today, they wear plain black silk gowns. All lawyers must be gowned in

this court and sit facing the judges. Members of the public sit at the rear of the courtroom.

As we have seen, to ensure that the laws of Canada are fairly and equitably enforced, we have entrusted our courts with the task of dispensing justice in the name of Canada. The power that we have given judges in the various courts is wide-ranging. The role of the judge is one not taken lightly by Canadians. Often judges make unpopular decisions which may go “against the grain” of many Canadians. Even so, judges are not like politicians, who can be removed from office at the



whim of a dissatisfied electorate.

Judges at the Provincial Supreme Court and higher levels are appointed by the federal government. Once the appointment has been made, it is almost impossible to reverse. For example, Supreme Court of Canada or provincial Supreme Court Justices can only be removed from office if both Houses of Parliament and the Governor-General agree with the decision. This means that judges in Canada are relatively safe in their positions and are free to make legal decisions without fear that the government might be unhappy with these decisions and subsequently subject them to disciplinary measures.

Judges can only be removed from their positions if one or more judges of the Supreme Court of Canada, Federal Court or any provincial Supreme Court make a proper inquiry into their actions, and report to the appointing authority that they are guilty of misbehavior or have displayed an inability or incapacity to properly discharge their duties.

Even though we have what appears to be a complex court system, at times it is argued that it is far from efficient. It has been said that the wheels of the Canadian justice system move slowly. For example, the average case takes 77 days

from start to finish. This includes the judicial interim release hearing, resolution of problems involving court jurisdiction, preliminary hearing, entry of plea, trial, rendering of a decision and the sentencing disposition. In a typical case, the accused makes at least four court appearance. As for the youth court, case resolution is somewhat faster. The average time was 68 days.

Some cases tend to drag out. For example, sexual assault cases average around 188 days. Homicides are normally resolved in 161 days. Lesser offences take less time, such as theft (43 days) and impaired driving (97 days).

## The Jury

The jury—a group of citizens selected at random from the population—offer an impartial decision on the guilt or innocence of a peer, based purely on the evidence presented at trial. Over the past centuries, the jury concept has slowly evolved.

In Canada, the classic trial of Joseph Howe in 1835 stands as a foundation of the power juries possess in settling a legal issue. Howe was charged for criminal libel after publishing a letter which libeled local magistrates. He was charged for “seditiously contriving, devising and intending to stir up and incite discontent and sedition among His Majesty’s subjects.”

The trial, by all appearances was rigged. Howe’s lawyers advised him the case was hopeless. Nevertheless, Howe defended himself despite the lawyer’s charge that “He who defends himself has a fool for a client!” Howe admitted to the jury that he had published the letter but, during his six hour address, compounded the insults with: “had these jobbing justices crawled in through this legal lubber-hole of indictment I would have sent them out of court in a worse condition than Falstaff’s ragged regiment...” Howe concluded by saying: “I conjure you to leave an unshackled press as a legacy to your children.”

In spite of Howe’s efforts, Judge Haliburton directed the jury to find Howe guilty. The jury left and returned 10 minutes later to face a smirking judge and content magistrates. However, the jury did not do as they were told and found Howe not guilty. The magistrates were replaced and the impartiality and power of juries in Nova Scotia was established in Nova Scotia.

In Nova Scotia, some of the cases in the Supreme Court of Nova Scotia are still heard before a jury. Juries sit in both criminal and civil cases. However, while the presence of a jury in a civil case is permissible, it is rare. A criminal jury has 12 members, while a civil jury has seven members. In civil cases, a mere majority of the jury members is sufficient for a decision. However, in criminal cases there must be unanimous agree-

ment in order for the jury to reach a verdict. If such an agreement is not possible, then a new trial of the evidence will have to be ordered and a new jury chosen.

Jurors are selected from a list of local citizens prepared by the **jury committee**. This committee is made up of local municipal representatives and the local prothonotary. When a jury is required, a judge will select at random names from the committee's list. The prothonotary notifies the people selected and from this group, a proper number will be called. However, as we shall see, each juror may be challenged by either of the two parties in a case. Jury members are paid a stipend of \$25, which is taxable income and may affect unemployment insurance benefits and other government



pensions.

Regarding jury duty, the Juries Act, 1969, c.12, amended 1985, outlines the qualifications and exemptions quite clearly:

**The following persons are qualified to serve as jurors:**

3(1) Subject to Section 4, every person shall be qualified and liable to serve as a juror for a jury district who: (a) is a Canadian Citizen; (b) is over the age of eighteen years; (c) has resided for twelve months within the jury district.

**The following persons are exempt from serving as jurors:**

4(1)(a) The Lieutenant-Governor of the Province;  
(b) members of the Senate and the House of Commons of Canada;  
(c) members of the House of Assembly, and while the House is in session, the officers thereof;  
(d) judges of the Supreme Courts;  
(e) Members of the Canadian Armed Forces on active service;  
(f) barristers and solicitors of the Supreme Court;  
(g) officers of the Supreme other than commissioners appointed under the Notaries and Commissioners Act;  
(h) full-time salaried members of any police force in the Province;

(i) medical practitioners;  
(j) clergymen and ministers of the gospel;  
(k) provincial magistrates and judges of the Youth Court and Family Court;  
(l) members of a jury committee.

4(2). The judge presiding at a session or the Chief Justice may grant to any person exemption from service as a juror at the whole or part of that session upon application by or on behalf of the person.

4(3). No person shall be liable to serve as a juror for more than one session in any three year period.

4(4). No person shall serve as a juror who has been convicted of any criminal offense.

4(5). No more than one member of a family unit or member or employee of a firm shall be liable to serve as a juror at a session.

4(6). For the purposes of subsection (5), "family unit" includes a husband, wife and any relative of the husband or wife residing in one dwelling, and "firm" means a person or association of persons carrying on a business or activity employing more than one and less than fifteen persons.

If a person has been summoned to appear for jury duty and is qualified, the first thing they must do is go through the **jury selection process**. Prospective jurors are called to the witness stand, placed under oath, and may be asked a number of questions by the prosecution and defense attorneys in an effort to determine the reliability and impartiality of each juror. Some typical questions may include:

- **Do you personally know the accused in such a way that it could influence your decision in this case?**
- **Do you personally know the victim or victims in such a way that it could influence your decision in this case?**
- **Do you have any prejudices towards the accused?**
- **Do you have any knowledge of this case which could prejudice your decision in any way?**

In other words, has the juror discussed the case with any person who was a witness, who investigated the case or who may be entering testimony during the case?

If a prospective juror answers "yes" to any of the above questions, the defense or prosecution attorney may ask the court to excuse the individual from jury duty. Each juror must be impartial and neutral in hearing and deciding a case. Once the jury has been selected, the **clerk of the court** swears all jurors in just before the case commences. In Canada, the following oath is used:

*"I shall well and truly try this cause between the Sovereign Lady the Queen and the Accused at the Bar whom the people have laid this charge and a true verdict give according to the evidence so help me God."*

The role of the jury is to determine the guilt or innocence of the accused. Its decision is based on the evidence (gathered through material evidence

or through testimony). Prior to leaving the courtroom, the jury may be “charged” by the judge. In this case, the judge interprets the law for the jury and explains their duties.

Once the jury has been charged, its members leave the courtroom and enter a nearby meeting room. The sheriff usually escorts the jury. The sheriff, or his or her deputy, is responsible for the jury’s security, and for making sure that no one enters or leaves the jury room so as to influence the jury in some way. When the verdict has been reached, the **jury foreman** notifies the sheriff. When signaled by the sheriff and/or his deputy, the jury members return to their seats, the judge enters and the case resumes. The verdict is announced by the jury foreman, and the judge either passes sentence or releases the accused.

One cannot take the job of juror lightly. A man or woman’s future rests in the jurors’ hands. Thus, jurors entering the jury room with their minds already made up and reaching unanimous agreement without even discussing the case, are jurors who could be making a very poor decision.

By discussing the testimony as a group, jurors are able to “paint a picture” of the crime. They are able to draw everything together and see whether or not there is guilt. During the trial, jurors are expected to listen very attentively and absorb everything that is being said by the witnesses, the lawyers and the judge. But if jurors are unsure about some aspect of the case, they may ask the judge to have the **court reporter** replay a section of testimony or have the sheriff bring them various bits of material evidence for closer scrutiny. All of this is needed in order to render a decision.



## **The Secondary Players**

### **The Officers of the Court**

Just for clarification, the judge and lawyers are also considered as “officers” of the court. However, since these were dealt with earlier in this chapter, there is no need to repeat them here. However, besides the judge and lawyers there are several other individuals who are also considered as “officers” of the court.

## **THE CLERK OF THE COURT**

The principal duty of the court clerk or court orderly is to assist the judge in the performance of his duties in the courtroom. Sometimes, in smaller courts, the duties of the court clerk and court reporter are combined.

Other duties of a court clerk involve the scheduling of court time and the location of a judge to hear the cases. In the courtroom, they call the court to order; make sure that the judge has all the materials before him or her that are relevant to the case; call and swear in witnesses and parties involved in the case; and take into the custody of the court any evidence brought forth and introduced at the hearing. In addition, the court clerk reads indictments at arraignment hearings, records the attendance of jury members and verifies the attendance of prospective jurors prior to jury selection.

In most cases, court clerks are appointed by the provincial government upon the advice of local officials involved with the Justice Department. Some training is undertaken after the person is hired, but no particular skills, other than a decent standard of education, are required for people holding this position.

## **THE PROTHONOTARY**

The prothonotary is responsible for accepting the various documents and legal forms which are given to the court in order to commence, carry through and conclude any legal action. The prothonotary, in essence, is usually well versed in the various court documents as well as the various rules and procedures of the court. They, on occasion, will assist the various parties involved in a legal action in the proper completion of the necessary documentation. Once the documents are checked and received, they are placed in a file that builds up as the case makes its way through the courts.

The title of prothonotary varies from court to court. In addition, the duties of the prothonotary may “double up” with those of the clerk of the court, especially at the lower level of courts in Nova Scotia. The following titles, in Nova Scotia, apply:

- Family Court: **Intake Officer**
- Small Claims Court:  
**Clerk of the Small Claims Court**
- Probate Court: **Registrar**
- Provincial Court:  
**Clerk of the Provincial Court**
- Nova Scotia Supreme Court:  
**Prothonotary of the Supreme Court of Nova Scotia.**
- Nova Scotia Court of Appeal:  
**Registrar of the Nova Scotia Supreme Court**

- Federal Court of Canada:  
**Registrar of the Federal Court**

Usually, a prothonotary requires some background suitable to the particular court they are working in. For example, the intake officer requires some expertise in family counseling in order to handle various situations which might arise during proceedings at that level.

In Nova Scotia, the prothonotary or registrar of the Supreme Court are required to have some legal background or training. This is necessary in the event they are called upon to act as “**chambers judges**” in the settlement of minor legal problems that might arise during a litigation. As well, the prothonotary of the Supreme Court is responsible for the issuance of subpoenas in all Crown cases. At this level, the prothonotary or the registrar of the Supreme Court for the province acts together with the justice or chief justice to schedule court sittings in various counties as well as assigns the various justices to hear these cases.

At the level of the Supreme Court of Canada, the registrar has all the responsibilities possessed by the prothonotaries at the various provincial levels but in addition, the registrar is responsible for the management of the extensive court library in Ottawa.

As is the case with clerks of the court, a prothonotaries have very little specialized training before they take over their duties. Some have training in secretarial skills, computer/data management, or office procedures. In short, as is the case with the clerk of the court, the job requires individuals who possess good communication and organizational skills, since they deal daily with people from all walks of life and must keep track of dozens of cases, each with a myriad of paperwork.

## THE COURT REPORTER

The principal duty of the court reporter is to maintain an accurate and careful record of the court proceedings. This is usually accomplished by a sophisticated tape-recording system which records all testimony and conversations in the courtroom during the trial. After the trial has concluded, the court reporter transcribes the tapes into printed form known as the **trial transcript**. These documents are available to the general public as well as lawyers and judges. Copies of transcripts usually run 50 cents per page. Trial transcripts may run from 200 to 400 pages. Some trials have been known to have transcripts spanning thousands of pages.

As is the case with the court clerk and prothonotary, court reporters acquire their specific skills applicable to their jobs after their appoint-

ments. Most court reporters have above-average secretarial skills and possess high organizational skills. In this position there is considerable pressure to have the job done both accurately and fairly quickly. Trial evidence is critical, so proper recording levels and accurate transcribing are both very important. In the case of appeals, transcripts are needed almost immediately so that the judge(s) involved can start poring over the evidence.

## THE SHERIFF & DEPUTIES

The main duty of the sheriff in our legal system is that of enforcing the various orders and requests made by the court. To this end, the sheriff and his deputy sheriff (who is also sometimes referred to as bailiff), is responsible for serving various court documents such as summons, warrants, injunctions and court orders, as required. This role is often referred to as “serving processes”. Most of these documents come from the prothonotary.

In addition, the sheriff may be called upon to seize goods which must be taken as evidence or are somehow involved in a legal dispute brought before the court. This role is referred to as “execution of judgments”.

Besides serving processes and executing judgments, the sheriff serves a key role in the courtroom during the trial process. These duties include:

- (1) opening the courtroom- preparing the courtroom for sittings.
- (2) maintaining order and decorum in the court and in the gallery.
- (3) taking into custody anyone who was in court under arrest and who has been found guilty. In addition, he also has custody of non-criminal prisoners such as debtors who have failed to live up to their legal obligations and individuals who have been sentenced for contempt of court.
- (4) Summoning the jurors and supervising the jury.
- (5) Providing security for the judge and the jury.

During the proceedings, the sheriff is not required to wear gown or a uniform. However, a high standard of dress is usually maintained in order to command the respect this position deserves. Recently, the Sheriff and his Deputies have adopted gray trousers and blue blazers with appropriate cresting as an informal uniform in Nova Scotia.

## THE WITNESS

*“To tell the truth, the whole truth and nothing but the truth.”*

That is what is expected of all parties involved in a case before our courts, especially the witnesses. A witness is an individual who is required to come before the court and answer specific questions concerning a case being tried. All of the infor-

mation given by the witness is referred to as **testimony** or **evidence**. Evidence is given to provide the court with as much information as possible concerning the case so that the court can correctly establish the guilt or innocence of the accused.

Witnesses are usually notified that they are being called to court by the issuance of a **subpoena**, a document that sets out the time, date and place for the appearance and the case involved. During a trial, the role of witness is often considered to be the most vital element needed for a lawyer to prove a case, or disprove the case of his or her adversary in court.

Witnesses must physically appear in court. Written statements are not acceptable in lieu of a court appearance unless the witness is seriously ill or out of the country. In circumstances like this, special arrangements may be made. A witness' appearance in court is important because it gives both the prosecution and the defense a chance to question him or her about the case. If a witness fails to appear, the judge of the court involved may issue a warrant for his or her arrest and the witness may be charged for "**contempt of court**". This means that the witness has disobeyed a legal order without lawful excuse and that he or she could face punishment, including a fine and/or a jail sentence.

When the witness appears in court, he or she is called by the clerk of the court right after the lawyer requesting the testimony asks him or her to be brought to the stand. The witness comes forward and takes an oath or an affirmation. Once the oath has been administered by the court clerk, the witness is seated, and responds to the questions of the lawyer.

During a trial, the witness goes through three phases of questioning. First, there is the "**examination-in-chief**" or "**direct examination**", which is the primary examination of the witness by the lawyer who called the witness. During this phase, this lawyer asks direct questions concerning the case.

Once the initial questioning is complete, the lawyer from the other side can ask the witness another set of questions in a process called "**cross-examination**". Under the adversarial legal process, the opposing lawyer asks questions or tries to clarify points in an effort to help his or her client's case. One of the main purposes of the cross-examination is to establish the credibility of the witness and to ensure that the whole truth is brought before the court.

During the examination and cross-examination processes, the judge may interject and ask questions as well.

Finally, there is "**redirection**", which allows the lawyer who conducted the examination-in-chief an



opportunity to clarify any points brought up during the cross-examination. In addition, the judge may ask questions during all three of these phases.

In many instances, a witness' testimony will either convict or free the accused. The witness is expected to answer all questions truthfully and to the best of his or her ability. Sometimes, if placed in a difficult situation, witnesses may use several excuses as to why they cannot specifically answer a question. These

may include:

- (1) **self-incrimination** - by answering this question, the evidence may be used to implicate the witness in the crime and since there are charges pending, the witness requests permission to refuse (the judge must honour this request);
- (2) **lack of knowledge** - in other words, the witness knows nothing which could assist him or her in answering this question;
- (3) **lack of memory** - the witness honestly cannot recall the information sought by the lawyer.

Lawyers on both sides closely watch both questions and answers during all phases of witnesses' testimony.

Often they will object to questions asked by the opposing lawyer, on the grounds that the questions are "**leading**" - they are prejudicing the witness in some way; "**irrelevant**" - they have no relevance to the case; or "**misleading**" - the purpose of the question is try to trick the witness in admitting or saying something they don't want to. Lawyers may object at any time during the testimony. This is done by standing and saying, "Objection, Your Honour (or My Lord)" and stating the reason for the objection. The judge may **sustain** the objection, meaning he agrees, and the questioning lawyer must withdraw or rephrase the question. On the other hand, the judge may **overrule**, which means he disagrees with the objection and wishes the questioning to proceed.

There are several types of witnesses which may be called in a case. These include:

(a) **eye-witnesses**: Eye-witnesses are considered by many lawyers to be the most important, because they saw, with their own eyes, the event which led to the litigation. An eye-witness may have seen all or part of the circumstances which brought the accused or the defendant to court.

This witness, through the examination and cross-examination of the lawyers, should be able to recreate the events which led up the litigation. Witnesses in this category might have been in a bank when it was robbed; might have been on a

street corner when a pedestrian was hit by a car belonging to the defendant; or might have seen the accused pull the trigger of the gun which killed a victim.

**(b) witnesses “after-the-fact”:** Such witnesses did not actually see the events from which the litigation stemmed. However, they have knowledge of case which can add credibility to that of the eyewitness and/or can add detail to the lawyer’s case. Witnesses in this category may have been outside a bank and seen the accused run out and jump into the getaway car; they may have heard the squealing of tires and the scream of a hit-and-run victim; or they may have heard a gun shot and seen the accused running down the street with the gun in his hand. In all of these cases, the witnesses “after-the-fact” did not see the actual events which occurred during the alleged offense or incidence. Rather, they saw or heard something after the event occurred.

**(c) investigative witnesses:** These witnesses are normally police or peace officers who have investigated the incident and can enter into testimony evidence which serves to bring together evidence presented by the eyewitnesses and the witnesses “after-the-fact”. They can report to the court what evidence they have located; what they did during the investigative process; what arrests were made and why. They may also be able to enter into evidence material items such as the murder weapon or the weapon used in the hold-up, and tell the court the circumstances surrounding the location of this evidence during the investigative process.

**(d) character witnesses:** The character witness is someone who can provide the court with information as to a person’s background and how it relates to the events which led up to the litigation. For example, the defense may bring forth a character witness who tells the court that the accused was seriously abused by his alcoholic father and this resulted in the accused’s very violent nature. The prosecution may bring in a character witness who tells the court that the accused was constantly drunk and was a bully, regularly picking fights outside the local tavern. The prosecution could use this behaviour to show that the accused could have assaulted the victim as reported by the police. Character witnesses are used sparingly by lawyers. Most of the accused’s background is contained in the pre-sentence report which is prepared by the corrections officer.

**(e) expert witnesses:** Expert witnesses are used to add credibility to the testimony of other witnesses. For example, a ballistics expert might be called by the prosecution to establish that the bullet fired into the wall of a bank matched another bullet fired from the gun of the accused. An eye doctor might be called by the defense to establish

that the eyewitness who supposedly saw the accused fire the gun had very bad eyesight and could not accurately register detail beyond 20 meters, when, in testimony, it was established that this witness was 30 meters away. The defense might then call a social worker or doctor to establish that the beating of the accused and the alcoholism of the father were contributing factors to the accused’s drunken, violent state.

Such witnesses are regularly used in the courtroom and often have some special certificate, diploma or degree which establishes them as “experts” or of having significant knowledge in their fields.

In summary, witnesses provides the “paint” for the lawyer’s picture of the events surrounding a crime. Lying on the witness stand is a criminal offense referred to as **perjury**. In Canada, this offense carries a penalty of imprisonment of up to 14 years.

## THE VICTIM

Perhaps the most often ignored and most helpless person in the Canadian legal system is the victim. This is the person who has been on the receiving end of the criminal act: the person physically assaulted; the person whose house has been broken into; the store clerk who has been robbed. It has only been in the past decade that the rights of the victim have become an issue in Canada.



After the crime has been committed and the interviews conducted, the victim often feels that he or she is shunned by the police and the legal system as the investigative process continues. If the crime has been one of a personal nature (i.e. assault, rape, murder), the victim or the victim’s family want to be involved. Sometimes the victim feels the police are not taking the crime seriously enough or that the investigation is proceeding far too slowly. The victim and their family get frustrated in getting little or no information.

If an arrest is made, the victim faces the trauma of reliving the experience. In the case of rape or serious physical crime, hours of examination and cross-examination can prove mentally grueling and exhausting. Many victims succumb to the pressure and breakdown on the witness stand.

After the trial, the scars remain. This is especially true when young children are involved. For

example, a child who has been abused—physical, sexually, or both—never forgets. As he or she progresses into adulthood, the memories become fainter but the mental scars remain. Women who have been raped are often scared of relationships with men, even their husbands. People who have been maimed or injured and bear physical scars carry the memory of the incident for a lifetime. Every time they look at the scars, they remember. People who have had their homes broken into feel a loss of security and a violation of privacy. To them, their home—their security—has been shattered.

Often, break and enter or burglary victims are forced to sell their homes to erase the memories. Police officers shot or maimed in the line of duty sometimes see their careers ended. Innocent people in a car struck by a drunken driver may have their lives changed forever due to the seriousness of their injuries. And the list goes on.

Lately, many provinces have started a financial compensation program for victims of crime. For example, the Nova Scotia Criminal Injuries Compensation Board almost 1000 victims of crime varying amounts of compensation. These included a nine-year-old boy who received \$15,000 after he lost sight in one eye as a result of another child shooting him with a BB gun. A 15-year-old female high school student was awarded \$4,500 after she was sexually assaulted, suffering bruises and abrasions over much of her body, along with mental shock. A young male Nova Scotian who was sexually assaulted as a boy was awarded more than \$6000 for pain and suffering.

In addition, many victims are initiating civil suits against their assailants or the perpetrators and are being awarded compensation by the courts for their losses or injuries. (This topic will be discussed in greater detail in the Tort Law chapter.) The courts are also handing down alternative types of punishment to the offender, such as restitution and free labour for the victim. All of these methods help, but for many victims, the pain and suffering will never be fully erased.

***In our legal system, the real loser is the victim of the crime.***

## ***Support Staff in our Legal System***

### **CORRECTIONS OFFICERS**

Prior to 1979, Canada was served by two agencies which were responsible for the housing and rehabilitation of criminals. These were the



Canadian Penitentiary Service and the National Parole Service. In that year, these two agencies were combined into today's Correctional Service of Canada, which is under the direction of the federal Solicitor-General. This agency absorbs about 20 to 25 percent of the total annual spending on the federal justice system, amounting to almost one billion dollars.

Within the Correctional Service of Canada are two agencies.

The **National Parole Board** decides which inmates of federal and provincial facilities are eligible to be released on **parole**.

Parole is similar to probation in that the inmate has to report to a parole officer or a probation officer during the process of his full release into society. Parole is granted after an inmate has served a certain percentage of his sentence and if the National Parole Board feels that he or she is no longer a menace to society, the parolee is considered to be mature and capable enough to return to society and cope with the responsibility of living up to the terms of the parole.

One violation, albeit slight, can result in the parole being terminated and the inmate taken back into custody. If the parole officer even suspects that the parolee has been involved in a criminal activity, he or she can recommend the termination of the parole. Some Canadian provinces have their own parole boards to make decisions regarding inmate at provincial jails.

The other branch is the **Corrections Service**. This agency is responsible for the incarceration of individuals convicted of criminal acts in Canada. The agency is also responsible for keeping the convicted individual in custody, maintaining the individual, supervising his or her actions, and trying to prepare the individual to become a good member of society upon release.

In Canada, a sentence of two years or more means that the person must serve time in a federal penitentiary. A sentence of less than two years requires that the time be served in a provincial institution. A sentence of less than six months means that the sentence can be served in a local county jail. Recent studies indicate that the federal penitentiary is far stricter and is more stressful for

the inmate. However, it also has better defined inmate rights, better training and recreational programs. Of all of the sentences passed in Canada each year, less than five percent of the convicted criminals serve time in a penitentiary.

Personnel from the Corrections Service supervise inmates or individuals who have been granted “**conditional releases**” and are allowed out of prison in order to properly adjust to society. These releases fit within several categories. These are:

1. **temporary absence:** These are granted to inmates who have served a minimum of six months or one-sixth of the sentence. The absences may be escorted (with a guard) or unescorted. Escorted temporary absences run up to five days in length and an unescorted temporary absence may be as long as 72 hours. About 50,000 temporary absences are granted each year, usually for sporting events, community service projects or family visits.

2. **day parole:** This is a new area of release. It, like temporary absence, may be granted after the inmate has served six months. Day parole can run up to four months in length and allows the inmate to work during the day and return to the institution at night. Night accommodations may be in a minimum security institution or a halfway house.

3. **full parole:** Since 1959, inmates at federal and provincial institutions have been eligible for parole after serving one-third of their sentences. The average sentence served before parole is granted has been 40 percent. Under the terms of a parole, the inmate may be required to remain in a certain area under the supervision of a parole officer; they cannot own or carry a gun; they cannot incur any debts; they cannot marry; they must seek work and start work. Parole officers supervise parolees in three phases: intensive, active and periodic. About 75 to 80 percent of all paroles have been deemed successful. The remainder have required the parolee to return to penitentiary and complete their terms.

4. **remission and mandatory supervision:** Today, good behaviour in a penitentiary earns 15 days a month towards the reduction of an inmate’s sentence, to a maximum of one-third of the total sentence. These reductions are served under the guidance of corrections officials. Ten days of the 15 are to be used for educational training and five days are granted for acceptable conduct.

In all, personnel in Corrections Services of Canada have a wide range of roles to play in the incarceration and rehabilitation of Canada’s criminals.

It should be noted that 86% of all people sentenced to custody are male who have an average age of 32.1 years.



Illustration by Erin Morton

## PROBATION OFFICERS

Probation is designed as an alternative punishment to imprisonment for the commitment an offense. Generally speaking, probation is given as a punishment by the court if the judge feels that a fine is too light a punishment yet imprisonment is too harsh. Under probation, a convicted individual is permitted to remain in their community under the supervision of a probation officer. Probation orders have different terms. For example, these terms may include:

- Abstinence from alcohol.
- Prohibition of any guns or weapons of any type.
- Regular reporting to the probation officer.
- Attendance in school (in the case of a young offender) or at a specified training facility.
- Participation in certain programs such as Alcoholics Anonymous, drug awareness or self-help groups.
- Restitution to the victim may be ordered.

The probation officer has a variety of roles. First, he or she serves as an Officer of the Court, investigating and preparing reports on offenders and advises the court on the suitability of the offender for probation. Such a report is requested by the judge hearing the case, prior to sentencing, and is called a **pre-sentence report or pre-disposition report**.

Secondly, the probation officer serves as a case supervisor, supervising each case of probation as well as those individuals serving community-based programs. Sometimes, the probation officer may refer offenders to other agencies for retraining or guidance.

Thirdly, the probation officer serves as a community resource person by working as an educator and development officer of programs designed to meet the needs of individuals under his or her guidance.

In addition, the probation officer handles the day to day bureaucratic pressures and demands, runs his or her office and works closely with other members of the criminal justice system.

Probation officers are deeply-involved people, working in other facets of correction services. They monitor the progress inmates are making while they are working in the community and advise penitentiary officials as to the continuation or termination of the inmate's individual program.

## ALTERNATIVE MEASURES

This program is aimed at young offenders between the ages of 12 and 15. Basically, it is a process in which the young offender confesses to the offense and is prepared to participate in a program designed to help him or her to adjust to society. Participation is voluntary on the part of the young offender, provided that he or she has not participated in an offense that involved person damage, use of weapons or major theft. By undertaking this participation, the offense is not heard by the courts, no formal prosecution is undertaken and no formal record exists after age 18.

The program is manned by volunteers who commit themselves for a minimum of three hours a month, for one year. Volunteers meet with both the young offender and the victim and work out a settlement agreeable to both. Alternative measures may include working for the victim for a number of hours, helping out community groups, and participating in a one-to-one volunteer match program that enables the young offender to learn new skills such as sports and hobbies.

Unlike the other roles we have examined in this chapter, this role is a voluntary one on the part of both the adult and the offender. However, the program is managed and co-ordinated by paid personnel under the direction of the provincial Social Services Department.



Illustration by Trevor Cook '99n



Illustration by Trevor Cook '99n

## Experts in the Legal System

### THE CRIMINOLOGIST

The role of the criminologist is a difficult one to narrowly define. The criminologist studies laws and our legal system. This study can be accomplished from several points of view, including the political, sociological or purely legal.

The political facet of criminology is a study of the effects that certain groups have in the law-making process. It has been seen, in recent times, that certain groups are able to dominate governments and thus are able to use their influence to get laws passed which are of special interest to them. This has become more and more common in recent times. Criminologists examine this and try to stop this process by alerting opposition groups and/or the government to the trend.

From a sociological perspective, the criminologist examines the impact of laws of society and the response of society to these laws. The criminologist also looks at laws that are outdated and no longer reflect the needs or the demands of society.

In essence, it can be said that the criminologist's primary task is the invention of new laws. Criminologists have two primary concerns in this inventive process: (1) Is the law being created merely to serve a particular group in society? (i.e. a special interest group that has lobbied for the law or a group that has taken control of the government and hence the law-making process); (2) Or is the law serving the needs and demands of society and reflecting the expectations of society?

The answers to these questions vary. From a Marxist perspective, government and laws are a way to guarantee the continuation of the capitalist society by preventing interference in the production process. Conflict Theorists argue that no

matter what type of society, special groups will struggle for control of the legal process and once achieved, they will use the process to pass laws which they see as essential. They feel that this process is critical to the evolution of our legal system, and should not be interfered with. Socialists believe that all groups should have input into the legal system on an equal basis. They recognize that conflict exists but they try to minimize it as much as possible.

In Canada, criminologists today still struggle to identify laws that best reflect the needs of Canadians as a whole and meet the needs of our changing times.

## MEDICAL EXPERTS

As science progresses, so too do medicine and law. The fictional accomplishments of Sherlock Holmes and Dr. Watson in solving mysteries by using the scientific method appear to have more factual background than fiction.

Today, medical personnel are heavily relied upon as expert witnesses in the courts.

Psychologists, for example, can give background information on victims or perpetrators (given the oath of patient-client confidentiality) as well as their opinions as to how the victim or perpetrator will adjust upon a return to society.

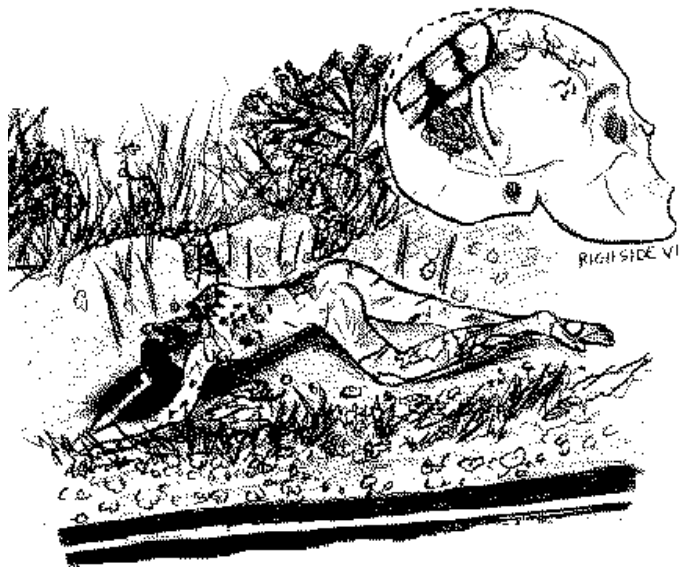
General Practitioners can tell the courts the exact nature of the injuries sustained by the victim and provide the court with a close assessment of damage.

Surgeons or specialist doctors can provide even more detailed descriptions of the injuries, often particularly pertinent in the case of death.

In many cases, medical personnel work very closely with the criminalist. In some parts of the world, medical personnel are included under the criminalist umbrella.

## THE FORENSIC SCIENTIST

Forensic science through pathology has been brought to the public's attention through such television programs as "Quincy", which portrayed a medical examiner assisting the police in solving homicides. Medical examiners (coroners), like the fictional Quincy, can tell the courts how the victim died, the time of death and the presence of other injuries. But there are many facets or disciplines of forensic science which a person may enter into. Besides pathology, these include toxicology (study of toxic substances); odontology (study of teeth—often very helpful in studying skeletal remains of victims); document analysis (dealing with forged documents and counterfeiting); and criminalistics.



## THE CRIMINALIST

More than any other player in the legal system, the modern criminalist is most like Sir Arthur Conan Doyle's Sherlock Holmes. The criminalist thrives on one notion: "No matter who the criminal, he or she is bound to make at least one mistake." Often, that mistake is enough to terminate their criminal careers. The detection, examination and conclusion of that mistake is left up to the criminalists who are working for police, such as ballistics experts, fingerprint experts, pathologists and toxicologists.

The whole area of criminalistics is new and very general. Throughout North America, criminalists are involved in what has been defined, according to the California Association of Criminalists, as "that profession and scientific discipline directed to the recognition, identification, individualization, and evaluation of physical evidence by the application of natural sciences to law-science matters." In essence, the criminalist takes scientific method and technology, and applies them to law. This application process is most commonly undertaken through chemistry. The result is the detection of criminals through scientific rather than physical investigation.

As we watch television programs which feature police solving crimes with the aid of criminalists, we get an inaccurate picture of the state of science in solving crimes. Although the criminalist can take a strand of thread found on the scene of the crime and can analyze it, all that can be concluded is the type of fiber, colour and perhaps the year of manufacture (if the dye used in the colouring process had a unique quality to it). Things like cloth, plastics and glass are not individually unique, so it is often very difficult to connect the article with the criminal. The courts demand evidence which is unique and which does, beyond a

shadow of a doubt, connect the criminal with the crime. This whole notion of “uniqueness” is critical in the investigative and legal processes. The evidence must be unique to the accused. Certain bits of physical evidence at the scene of the crime have elements that make it unique or almost unique to certain elements.

Today, a match between criminal and evidence is accomplished by examining:

1. fingerprints (This is the most common and widely known bit of evidence introduced by the criminalist in court. Everyone has a unique fingerprint and should it be compared to fingerprints found on the scene of the crime, certain comparisons can be drawn. Usually more than a dozen common features are required before a clear link is established.)

2. footwear (Everyone walks differently, so the wearing of the shoes are unique. Some people walk more on their toes while others walk more on their heels. Some have arthritis or land more on the right than left side. Some people limp.)

3. tire tread prints (The tires of each car, like the soles of shoes, wear at different rates and in different ways as a result of factors such as improper balancing, distribution of load and tire alignment on the vehicle.)

4. ballistics (There are many features which assist in the detection of criminals who have used weapons in violent crimes. Each bullet is unique in that it has different residue from the explosive charge, the content of the explosive and the level of charge determined by the firing pin hitting the primer. The barrel of each gun has its own unique fingerprint caused by bullets scraping and rotating as they travel down the barrel. These markings replicate themselves on each bullet fired. Further, each bullet contains different metals, such as copper and tin, allowing a bullet to be traced to a particular manufacturer.)

5. tool marks (As a tool such as a chisel or axe is used, it is scraped, or chipped in a unique way.)

6. hair (Although not entirely unique, hair analysis has been accepted by courts as evidence establishing the presence of the perpetrator on the scene, and thus serves as substantiating evidence, backing up by other evidence.)

7. semen (In rape cases, semen found in the victim’s body has been linked to rapist suspects. Semen contains elements that make it unique to each individual, a discovery that has been responsible for the solving of several hitherto unsolved crimes. On the average, this sort of analysis has been successful in confirming 70 percent of rape suspects.)

8. blood ( Besides determining whether or not a blood stain is that of a human and the determination of the blood group, scientists can link a blood sample to a group of individuals. Each blood sample contains certain phenotypes and genetic markers which make it unique to a small percentage of the population. A **genetic marker** is a trait which has been inherited and can be detected in the blood through enzymes and serum proteins. A **phenotype** is a physical characteristic which can be determined from the genetic marker in the blood sample. This helps narrow the blood sample to a particular group in the community, perhaps of a certain race.)

9. trace analysis (This includes shreds of evidence found by investigators on the scene, such as broken eye glasses, a button, piece of fabric, residue from a gun, chemical remains of an explosive charge or an accelerant like gasoline. Where such evidence exists, criminalists can carry out some linking, but in uniqueness does not usually occur in all cases.)

Naturally, all of these things serve as evidence in addition to the physical evidence obtained by investigative teams. The mere presence of semen is usually not enough to convict a rapist. Other bits of evidence such as a weak alibi, possible motive, presence in the area, familiarity to the victim and positive identification all add pieces to the crime puzzle. However, in one widely-publicized case in rural England, a rapist/murderer of two women was found through DNA comparison analysis. The girls had been raped and murdered. Semen from the victims’ bodies was examined and then, since it was a small area, semen samples from every male in the district was analyzed. Eventually, positive correlation identified the murderer. Once this was accomplished, other bits of evidence were collected, corroborating the identification of the guilty party.

As was pointed out, the criminalist works closely with the police and, in many cases, works in the same building. His or her job is to link science and law. As scientific knowledge increases, so too does the knowledge of the criminalist and the likelihood of the criminal element in society being detected.

## Politics and the Legal System

### The Minister of Justice



In Canada and almost all provinces, justice related matters are now handled by the Minister of Justice and his or her department. This is a relatively modern concept, occurring within the past six years. Prior to that, justice-related matters were handled by two individuals within government, namely the Attorney-General and the Solicitor-General. Today, these roles are combined. To get an indication of what the Minister of Justice does, it may be best to review these two positions from which the Justice Department has evolved:

### The Attorney-General

This political position originated in old England, where the Kings used to appoint a number of legal experts to represent the Crown in the various courts of the realm. After a time, as the number of courts grew, this system became confusing. So the King appointed one legal expert, the **attorney-general**, to serve as his principal legal advisor. The attorney-general, in turn, appointed other legal experts, such as deputy attorneys-general, to represent the King.

Times have changed. Today in Canada, each

provincial attorney-general is appointed by the Queen on the advice of the premier. In almost all cases, the attorney-general is a practicing lawyer. This background is not mandatory, but is considered helpful to the person in the role of interpreting laws and advising the government.

The attorney-general no longer appears in court to plead cases for the Crown. Instead, he or she serves as the legal advisor to the government. The attorney-general's job is to protect the rights of all citizens; to hold various public-appointed bodies, such as boards, tribunals, commissions and agencies, accountable for their actions—to both the government and the people; to enforce the law and to make sure that the law is enforced fairly for all; to participate in the formulation of government policy; and to provide guidance for the government in dealing with issues that have legal implications.

At times, the attorney-general finds himself or herself “between a rock and a hard place”—having to serve both the public good and the government. For instance, what if a prominent citizen and friend of the government is arrested and the government does not want the man prosecuted? It is up to the attorney-general to decide whether to proceed with the prosecution or to stop the action by entering a **nolle prosequi**. In cases such as this, it has been the tradition for the attorney-general to act completely independently of the government, without regard to political affiliation. In Canada, the law is the law, and provincial, the attorney-general is seen as the principal enforcer of the law.

At the federal level, the appointment process is the same but the title is different. The Minister of Justice is the ex-officio attorney-general of Canada.

## The Solicitor-General

Just as the attorney-general's role goes back to old England, so too does the role of the solicitor-general. The earliest records indicate that this position came into existence in the late 1400s. At that time, the solicitor-general was considered a deputy of the attorney-general and as such, his role was lower than that of the attorney-general. Originally, the solicitor-general worked in close connection with the attorney-general, sharing the workload.

However, as time progressed, the roles changed. Today, the solicitor-general in Canada is responsible for the Royal Canadian Mounted Police, the operation of Correctional Services and the Secret Service. In 1987, the government of Nova Scotia appointed its first solicitor-general. Like its federal counterpart, the provincial solicitor-general is responsible for local correctional services such as jails, reformatories and probation officers. In addition, programs such as Alternative Measures and Community Services fall under the jurisdiction of this political appointee.



## THE JUSTICE OF THE PEACE

This position could appear in the “judge” category, but in many respects, the role this individual plays is more like that of a court official. Justices of the peace are appointed by the lieutenant-governor of the province upon the advice of the attorney-general. Decades ago, these appointments were ones of political patronage, in which prominent local citizens were given the positions in exchange for their loyalty to the party in power. Today, the appointments are made to those people in the local community who have some legal training.

In the past, the justice of the peace had almost exactly the same powers as the judge of the Provincial Court. But, that has changed. Today, the justice of the peace has very little authority, with the exception of taking informations, issuing summonses, issuing arrest warrants or search warrants, and hearing and granting bail. In addition, they may, under the supervision of the judge of the Provincial Court, try a number of minor summary offences such as Customs and Excise violations, tax violations, some Liquor Act offences and the occasional violation of local by-laws or ordinances.

Still, the political element remains. Mayors of towns and cities, and wardens of municipalities automatically receive the position of justice of the peace upon being elected to office.

## OTHER POSITIONS

### THE MEDIA

**M**edia simply refers to communication. All of Canada's courts are open to public scrutiny. The media devote a considerable portion of their time to reporting the events in the courts of the nation. Anyone who is involved with the reporting of a

case to the public is considered media. This includes reporters, news gathering crews and even the courtroom artist.

However, upon request from the defense or prosecution, the judge may order that a “**ban on publication**” be placed on all testimony and evidence until the trial concludes. This is sometimes done to ensure that the jury is not exposed to inaccuracies which may inadvertently creep into the stories, or it may be done simply to protect the innocent. Many Youth Court cases have a ban on publication, as do Family Court cases. Further restrictions, such as a ban on releasing the name of the victim, may be placed upon the media by the court. Failure to obey these restrictions could result in the judge finding the reporter and/or his employer guilty of **contempt of court**, which is a summary conviction.

### There are three categories of media:

**(a) electronic media:** This includes any reporter and/or crew who record the events of the case on film, videotape, or tape recording for broadcast on radio or television. Today, most of the major news networks use videotape and their camera crews are known as ENG (Electronic News Gathering) units. Radio reporters use their “trusty” tape recorders, which are getting smaller and smaller as technology advances.

A person reporting the events of a court case for radio and television is severely limited by our legal system. The law prohibits anyone from bringing any form of electronic recording device into a courtroom. Thus, radio and television reporters must collect their video images and sound recordings from outside the confines of the courtroom.

They are permitted to sit in the courtroom and take notes, but they are not permitted to use their equipment inside the courtroom. If you watch a news item on television concerning a trial, you will note that it often shows the scene of the crime, a scene of the courthouse, a scene of people entering and/or leaving the courtroom and perhaps a rushed interview with one of the lawyers or the accused or victim in a hallway outside the courtroom. But the actual proceedings inside of the courtroom can only be described or summarized by reporters.

Radio reporters face even more restrictions, simply because they have less time and no visuals to help them tell the story. These reporters often simply give the particulars of the case in a 200 word (or one minute) news item as part of the regular newscast. They sometimes supplement this report with a short 15 to 20 second interview with a lawyer or victim and, at times, the accused. Yet such interviews are few and far between: most lawyers, victims and accused prefer to avoid the press and would rather the events surrounding the

case be kept private.

**(b) print media:** Actual in-depth reporting of court cases is still handled by the print media. This category includes newspaper and magazine reporters who sit in the courtroom throughout the trial, taking notes as the case progresses. Often, they may supplement their article with pictures showing the scene of the crime or the accused or victim in a hallway outside the courtroom or a photograph of the accused.

**(c) courtroom artist:** Since electronic items such as tape recorders and cameras are banned from the courtroom, reporters sometimes pay artists to sketch various people involved in the litigation. It is common to see courtroom sketches on the television screen. These sketches sometimes show the judge on the bench looking at a witness who is under examination. Or, it could be a lawyer, standing and examining a witness. As well, you often see sketches of jury members, the victim and the accused.

## The Citizen

Perhaps the most important person in the legal system is you, the citizen. The laws of Canada are designed to protect you and your property from harm. The whole reason for laws is to protect the interests of the people they are designed to serve. The drafting of laws by criminologists and politicians are the result of a perceived need within the society. For example, abortion legislation has been drafted in Canada to answer a need for a “tightening-up” and “clarification” of previous vague, awkward laws concerning abortion.



Citizens, as we have seen, occupy a variety of roles in our legal system. Besides filling all of the roles previously discussed in this chapter, it is assumed that it is every citizen's duty to look out for and to protect one other, through programs such as Neighbourhood Watch, Block Parents, or through individual effort. In punishments which include community service, some citizens voluntarily supervise the offender, making sure the required duties as stipulated by the courts are completed.

But being responsible and sensible in our society is one of the most important roles of the citizen. Deciding not to drive under the influence of alcohol or drugs; refusing to abuse alcohol or drugs through overuse; being security conscious, and locking our homes and automobiles; looking out for our neighbour's property while they are away for the night, the week or the month; driving responsibly, be the vehicle a car, truck, motorcycle or bicycle; acting towards others without discrimi-

nation. Common sense and a conscious awareness of the rights of others will make our country a far better place in which to live.

Just as important a role for each citizen is that of voter in the democratic election process. The selection of our representatives at the various levels of government is critical to our legal system, since these people are the law-makers.

#### **24. THE POLITICIAN:**

It is impossible for everyone to get involved in drafting laws and changing laws. In order to accommodate this, we elect people at three levels of government (federal, provincial and municipal) to represent us and to make our views known on a variety of issues. We live in a democratic country which allows us to select representatives whom we feel will serve us the best, and who have philosophies similar to our own.

Each level of government has the power to make laws which deal exclusively with certain specific areas. For example, municipal laws (otherwise

referred to as by-laws or ordinances) deal with local issues such as building codes, development plans, animal regulations, traffic and parking laws, hours of operation, street maintenance and snow removal. Provincial laws deal with matters that affect the province as a whole, such as compulsory attendance in school until age 16, a minimum drinking age, a minimum driving age, speed limits on provincial highways and various provincial statutes that regulate business. Federal laws affect the nation as a whole. These include criminal code offences, international treaties (such as free trade), drug acts, pollution and chemical control laws and the licensing of weapons.

At each of these levels, the politician represents the wishes of the people. As we have already seen, some politicians may undertake a leadership role in the legal system as attorney-general or solicitor-general. In any case, the politician is accountable to the people who elected him or her, and is either re-elected or turfed out of office in the next election based on his or her performance as the representative of the most important person in

