MEDIA GUIDE

@BCProvCourt

THE B.C. PROVINCIAL COURT & THE RULE OF LAW

A resource for journalists covering legal issues and proceedings in British Columbia courts, particularly cases in the B.C. Provincial Court – and for anyone interested in the justice system in B.C.

MEDIA GUIDE

THE B.C. PROVINCIAL COURT & THE RULE OF LAW

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Updated June 2021

1. INTRODUCTION

This guide is offered as a resource for journalists but the information it includes about the Provincial Court of B.C. and the Canadian justice system may interest a wider audience. The Guide is provided for information only and cannot be used as legal advice or authority in court or other legal proceedings.

Find more information on the Court and related topics:

- **on the Court's website www.provincialcourt.bc.ca (see the Media page)**
- **in the Court's Annual Reports & those of the B.C. Judicial Council**
- **by subscribing to the Court's eNews**
- **on Twitter @BCProvCourt**
- **on the Court's podcasts and videos**

For media enquiries, please use our online form at https://www.provincialcourt.bc.ca/media/media-inquiry-form

Did you know?

As of 2020:

- **42%** of practicing B.C. lawyers were women
- **46%** of full-time B.C. Provincial Court judges were women?

Law Society of B.C. Annual Reports
Provincial Court of B.C. Annual Reports

2. WHAT BRITISH COLUMBIA PROVINCIAL COURT JUDGES DO

The Court's **mission statement:**

> As an independent judiciary, the mission of the Provincial Court of British Columbia is to impartially and consistently provide a forum for justice that assumes equal access for all, enhances respect for the rule of law, and builds confidence in the administration of justice.

The Court's **vision**:

> To provide an accessible, fair, efficient and innovative system of justice for the benefit of the public.

Its **core values**:

- Independence
- Fairness
- Integrity
- Excellence

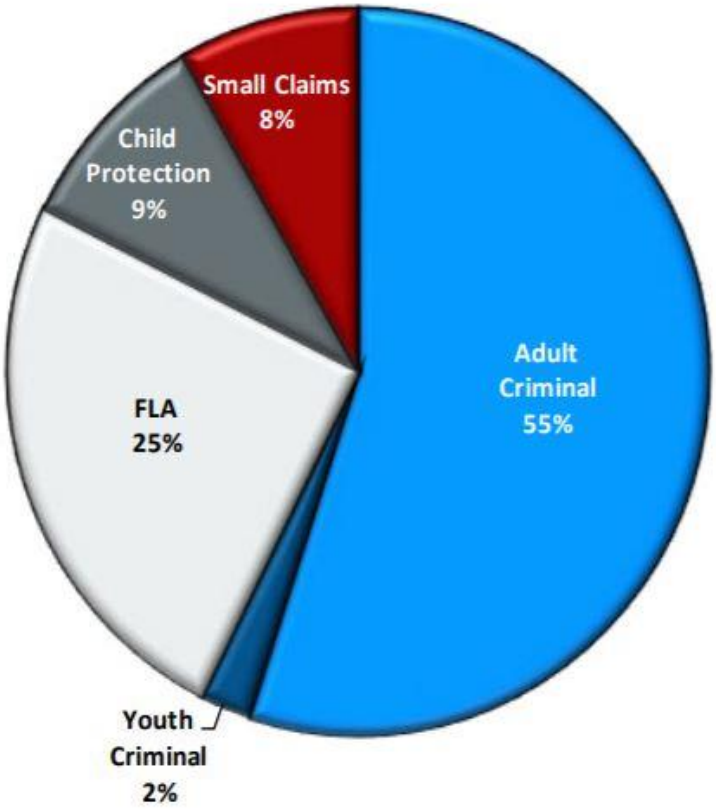
And its **goals**:

- Excel in the delivery of justice
- Enhance meaningful public access to the Court, its facilities and processes
- Anticipate and meet the needs of society through continuing judicial innovations and reform
- Ensure that administration and management of the Court is transparent, fair, effective and efficient, consistent with the principles of judicial independence

Jurisdiction

The Provincial Court is one of two trial courts in the province; the other is the Supreme Court of British Columbia. The Provincial Court's caseload consists primarily of **criminal, youth, child protection, family, civil (small claims), traffic, and bylaw matters.**

Percentage Breakdown of New (non-Traffic) Cases by Division 2019/20



The Provincial Court has jurisdiction (legal authority) under laws enacted by both our federal parliament and by our provincial legislature, including those listed on the next page.

Laws applied by Provincial Court judicial officers include:

Federal statutes:

Criminal Code
Youth Criminal Justice Act
Controlled Drugs and Substances Act
Firearms Act
Income Tax Act
Fisheries Act
Contraventions Act

Provincial statutes:

Adult Guardianship Act
Child, Family and Community Service Act
Civil Resolution Tribunal Act
Commercial Transport Act
Community Charter and Local Government Act
Court Order Enforcement Act
Environmental Management Act
Family Law Act
Family Maintenance Enforcement Act
Health Act
Interjurisdictional Support Orders Act
Liquor Control and Licensing Act
Mental Health Act
Motor Vehicle Act
Offence Act
Passenger Transportation Act
Small Claims Act
Waste Management Act
Wildlife Act
Workers Compensation Act
Youth Justice Act

The Provincial Court's jurisdiction extends to all criminal offences except a few in which the Supreme Court has exclusive jurisdiction, as set out in section 469 of the *Criminal Code* (e.g. murder, treason, piracy).

For many of the more serious offences (called indictable offences) an accused person may elect (choose) whether to be tried by a Supreme Court judge with or without a jury, or by a Provincial Court judge. If an accused person elects to be tried in the Supreme Court, either the prosecutor (called "Crown Counsel" or "Crown") or the defence may request a preliminary hearing (also called a preliminary inquiry) in Provincial Court.

What happens at a preliminary hearing?

The *Criminal Code* requires that a preliminary hearing be focused to assist the parties to identify issues and necessary witnesses in order to avoid wasting court time. **At the conclusion of a preliminary hearing a Provincial Court judge does not decide on guilt, but only on whether there is sufficient evidence to commit the accused person to stand trial in the Supreme Court.**

The test is whether a reasonable jury, properly instructed on the law, could find the accused guilty on the evidence presented in the preliminary hearing. Often the parties consent to committal but a preliminary hearing is requested because the defence wishes to explore some of the evidence or the Crown wishes to get some evidence on record before trial.

See Criminal Cases on the Court's website for more information.

In family matters, the Provincial Court has jurisdiction in child protection cases (where a social worker has removed a child from the parents' care

because of concerns about neglect or abuse), guardianship and parenting arrangements when parents have separated, child and spousal support, and protection orders.

It shares jurisdiction over these areas with the federally-appointed Supreme Court of British Columbia. However, because of the way in which the 1867 *British North America Act* divided powers between the federal and provincial governments, only the Supreme Court of B.C. can deal with divorce, adoption, and the division of family assets.

In both family and civil matters, Provincial Court judges not only hear trials in which they decide the issues between the parties, but conduct conferences in which they meet with the parties and any lawyers involved to discuss settling the issues by consent and/or trial preparation.

See Family Cases for more.

Provincial ticket offences, primarily traffic, are heard by judicial justices who also hear bail and search warrant applications from around the province by video link or telephone through the Justice Centre in Burnaby. Judicial justices may also conduct payment hearings under the *Small Claims Act* and *Rules* and trials of municipal bylaw offences. See Traffic, Ticket & Bylaw Cases.

Although judicial justices are now required to have practiced law for at least five years, the *Provincial Court Act* does not permit them to deal with applications under the *Canadian Charter of Rights and Freedoms* or offences that may result in imprisonment. These matters are heard by judges.

The Provincial Court's civil jurisdiction generally covers cases with a monetary value from $5,001 to $35,000. Claims for up to $5,000, as well as many claims for up to $50,000 arising from motor vehicle accidents, must be taken to B.C.'s online Civil Resolution Tribunal (CRT). The CRT takes the parties through a process of negotiation, facilitation, and adjudication.

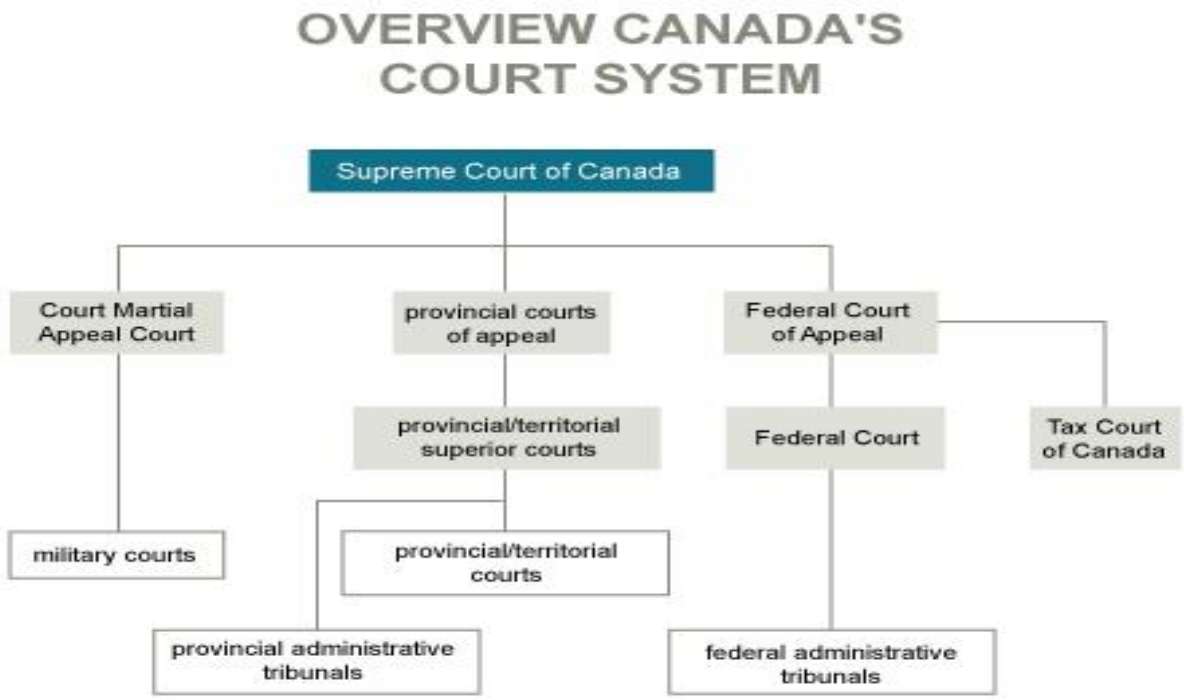
Disputes within CRT jurisdiction may only be brought to court in circumstances set out in the *Civil Resolution Tribunal Act*.

See Small Claims Cases for more information.

Provincial Court judges are bound by (they must follow) the decisions of the Supreme Court of Canada, the British Columbia Court of Appeal, and the British Columbia Supreme Court. Decisions of higher courts elsewhere in Canada are considered persuasive but not binding on B.C. trial judges.

Appeals and Judicial Review

Appeals from the Provincial Court and judicial review of its decisions go to the Supreme Court of British Columbia or the British Columbia Court of Appeal, depending on the type of case. If a matter is the subject of a judicial review or appeal to the B.C. Supreme Court, a further appeal may be taken to the B.C. Court of Appeal. Some Court of Appeal decisions may be appealed to the Supreme Court of Canada.



Understanding the hierarchy of courts and the appeal process is important for journalists and the public. For example, if a party is unhappy with the result of a trial or sentencing, the remedy is to appeal or seek judicial review of the decision.

If the public is unhappy with a criminal decision, then they must look to the prosecutor (either provincial Crown Counsel or federal Prosecution Service depending on the type of offence) to decide whether there is any basis in law or on the facts of the case to launch an appeal.

The judge who dealt with the matter is not permitted to discuss it with the media because they are expected to have fully explained their decision in oral or written reasons. The appeal court will decide whether the judge made an error. They will make their decision based upon the evidence and the law; they will not be swayed by comments from the first judge or the public or the media. The appeal process is a major component of judicial accountability.

Caseload

Over 95% of all criminal cases in British Columbia are dealt with in the Provincial Court. As the diagram on page 4 shows, criminal cases comprise over half of the Court's non-traffic and bylaw caseload. Family law cases constitute about a quarter of the total, followed by small claims and child protection cases at less than 10% of the total caseload each.

The Provincial Court is B.C.'s Youth Court, dealing with criminal charges for young people aged 12 through 17. Since the *Youth Criminal Justice Act* was introduced in 2003, the number of youth criminal cases has declined significantly. The *Act* emphasizes alternate measures and using diversion or extrajudicial measures through police to keep young people out of court. Youth criminal matters now comprise a very small percentage of the Court's total caseload.

There are generally more than 100,000 **new** criminal, youth, child protection, family, and small claims cases filed in the Provincial Court, as

well as about 80,000 traffic, ticket and bylaw cases. Detailed caseload statistics, including the number of appearances made by self-represented litigants, are reported in the Court's Annual Reports.

Complement

Judges 55 years or older with at least 10 years' service may choose to sit part-time as "senior judges".

Judicial complement (the number of judges) statistics are reported in monthly Judicial Complement reports on the court's website. (The Court's Annual Reports and those of Judicial Council also provide information on the demographics of applicants for judicial appointment and those appointed.)

Timelines

The Court has established standards for court performance throughout the province. These standards represent objective goals and performance targets that the Court strives to meet with the judicial resources it has available. Where standards are not met the Office of the Chief Judge examines underlying causes, monitors trends, and takes appropriate steps including reallocating available resources where possible.

As part of its commitment to transparency, the Court reports up to date figures in semi-annual Time to Trial Reports on the Court's website and provides detailed reports on how it is meeting its performance targets in its Annual Reports.

In 2016 the Supreme Court of Canada released its decision in *R v Jordan*, 2016 SCC 27. The Supreme Court responded to widespread delay in criminal matters in Canadian courts by establishing a presumptive deadline of 18 months between laying charges and the end of trial for criminal matters tried in provincial courts, and 30 months for matters in federally appointed trial courts (including the B.C. Supreme Court).

When a trial exceeds those deadlines and the defence objects, judges are required to apply an analysis outlined in the *Jordan* decision, and where

circumstances warrant enter a stay of proceedings against the accused, even in very serious cases.

In *R. v. Cody,* 2017 SCC 31, the Court confirmed *Jordan*, emphasizing that every actor in the justice system, including the defence, has a responsibility to ensure criminal matters proceed without unreasonable delay. The Court also called on trial judges to "suggest ways to improve efficiency, use their case management powers and not hesitate to summarily dismiss applications and requests the moment it becomes apparent they are frivolous."

The *Jordan* decision maintains pressure on our courts to ensure we provide timely trials. The Court monitors case backlogs and addresses them as resources permit. For example, in 2013/14 a joint effort by the provincial Ministry of Justice and the Office of the Chief Judge dedicated 170 days of judicial resources to reduce backlogs in child protection and criminal matters in selected court locations. In 2015/16 the Court adopted new trial scheduling procedures designed to make more effective and efficient use of judicial resources.

Administration

The Court's administration is organized with five judicial regions - the Fraser, Interior, Northern, Vancouver Island, and Vancouver Regions – each overseen by a Regional Administrative Judge (RAJ). The Regional Administrative Judges meet regularly by telephone or video conference with the Chief Judge and the Court's two Associate Chief Judges to discuss administrative matters. In addition to their administrative responsibilities, the Chief Judge, Associate Chief Judges, and Regional Administrative Judges hear cases in court.

Many judges volunteer their time to serve on various committees and working groups that assist the administration of the Court.

Judges are assigned to a region and may 'sit' (preside in court) in any courthouse in the region. Judicial Case Managers working with the Regional Administrative Judge set a rota (work schedule) for the judges. Judges go where the rota requires them to be and have little control over where they sit and which matters they hear.

Travel

The B.C. Provincial Court sits in more than 80 locations around the province. Many judges travel extensively in the course of their work. Judges who travel are not paid overtime. They receive a daily meal allowance and travel expenses in accordance with the provincial government's expense rates. In many instances, Judges must travel on evenings or weekends, or on their judgment days, which are non-sitting days set aside each month for office work such as legal research and writing reserved judgments.

Some Judges travel regularly between:

- Burns Lake, Dease Lake, Houston, Kitimat, Masset, New Aiyansh, New Hazelton, Prince Rupert, Queen Charlotte City, Smithers, Stewart & Terrace

or

- Campbell River, Courtenay, Gold River, Nanaimo, Port Alberni, Port Hardy, Tofino & Ucluelet

These are just two examples of areas within which judges travel on a regular basis. For example, about 20 full-time and senior judges cover the court locations in the Court's Northern Region, an area over 770,000 square kilometres, roughly the size of the province of Alberta.

The Court also operates eight circuit courts, where judges, court staff, lawyers, probation officers and others travel to remote areas of B.C. to hold court every few months.

Find eNews articles on various circuit courts on the Court's website (search "circuit").

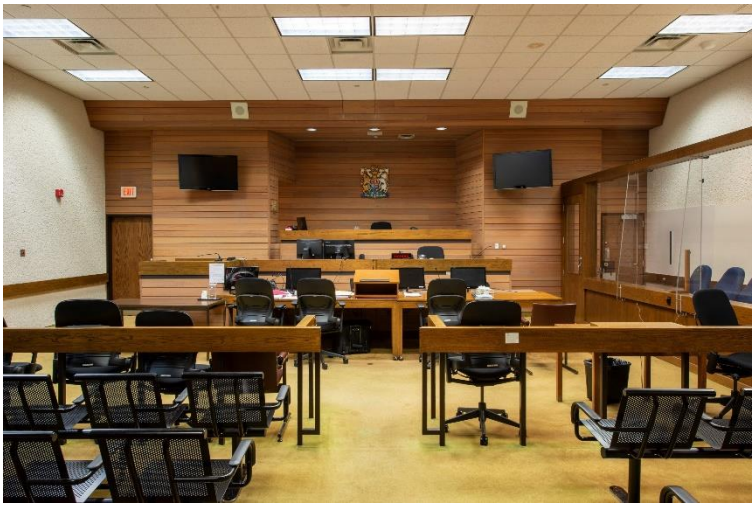

Courthouse at Anahim Lake

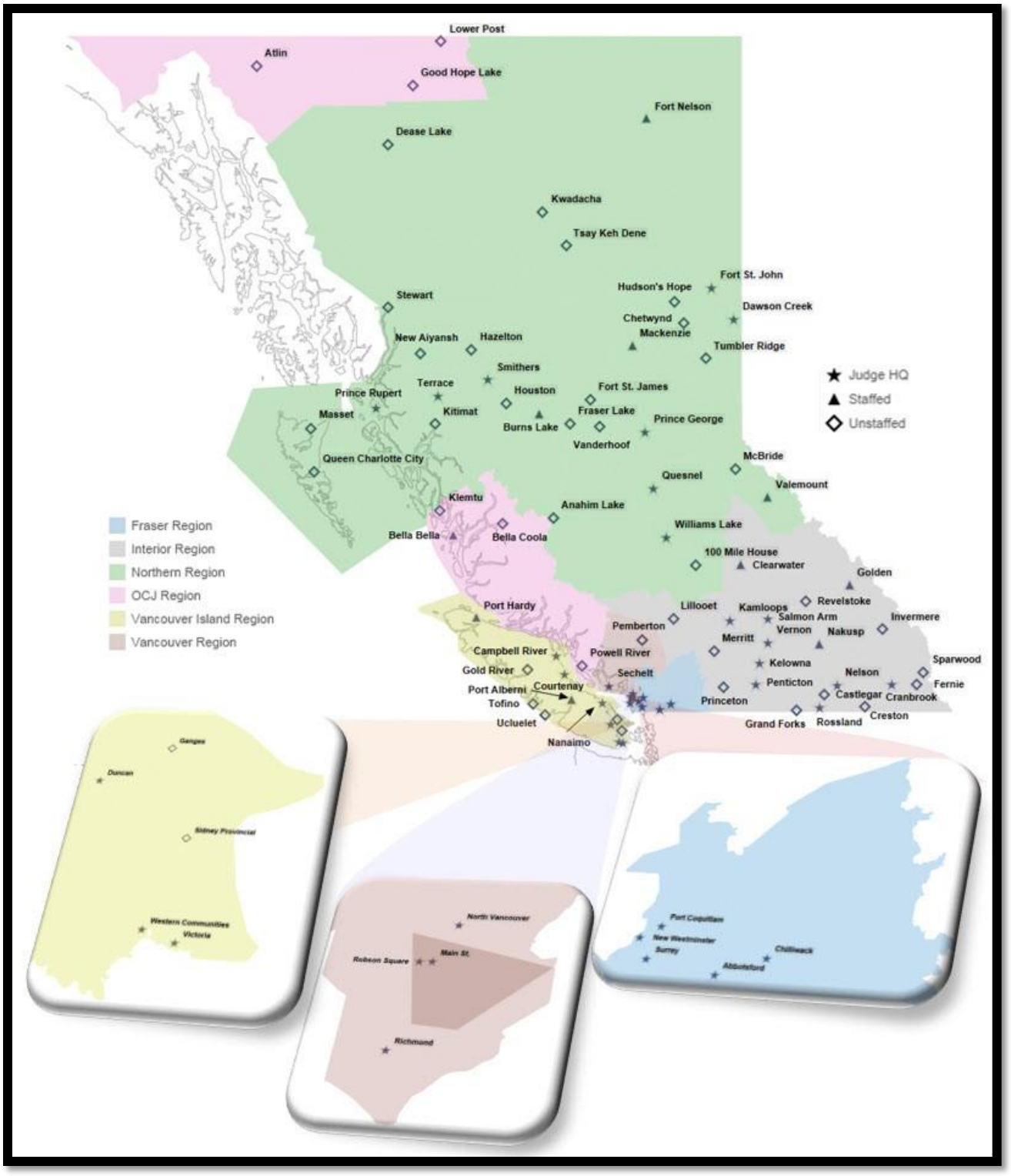

Circuit office


Travel to Haida Gwaii

Did you know the B.C. Provincial Court provides stock photos for use by media?

See our website's Stock Photos page!





Provincial Court's Five Regions

Continuing Education

Newly appointed judges spend several weeks of orientation, observing and learning from judges in different regions. During their first year they attend two national programs for new judges, covering substantive law and practice, and judicial skills.

Judicial Council, an independent statutory body, has oversight of judicial conduct and education. All B.C. Provincial Court judges are required to attend five compulsory education days per year.

Twice each year the Court holds educational conferences (typically, one in Vancouver and the other in another location within the province), planned by judges who volunteer to serve on the Education Committee of the Provincial Court Judges Association. Judges can choose to attend an additional five days each year of individually-selected education programming.

Judges are expected to keep abreast of all changes in the law, including recent case law that binds them, and legislation. Provincial Court judges do not have research staff and often have to do their own research, usually through online judgment databases. During the spring and fall they may have access to research assistance from judicial interns, law students from UBC's Allard Law School, who spend a term with the Court.

Many judges participate on their own time in online education courses through the National Judicial Institute. All Provincial Court judges have some access to a judicial administrative assistant, but many have limited access to such support and do their own typing and clerical work. Where judicial assistants are available, their time will commonly be shared among seven or more judges.

Most judges also devote their time to public outreach activities ranging from education-oriented presentations to participating in community projects

such as a food bank. Many judges also serve on committees for the Court and with judicial and other justice-related associations.

3. THE RULE OF LAW AND SEPARATION OF POWERS

Rule of Law

A vitally important principle, often not fully understood, is that Canada is governed by the Rule of Law. According to the Anglo-American interpretation, this involves:

- separation of state powers;
- legal certainty;
- the principle of legitimate expectation; and
- equality of all before the law.

The concept has a long history. The Greek philosopher Aristotle (384 to 322 BCE) was the first to enunciate it when he distinguished the rule of law, which he considered to be a pure and external authority, from the rule of men.

In the 13th century Thomas Aquinas described a valid law as one that is in keeping with Reason, is established by a proper authority (such as a democratically elected government), is intended to achieve public good, and is properly communicated to all citizens.

In 1644 Scottish theologian Samuel Rutherford introduced theoretical foundations to the principle of the Rule of Law in *Lex Rex: The Law of the Prince*, and in 1748 the French philosopher Montesquieu articulated the theory of separation of powers in *The Spirit of the Laws*.

The best-known description of the Rule of Law in the Commonwealth of Nations was set out by British jurist Albert Venn Dicey in his 1959

book, *Law of the Constitution*. He identified three main pillars underpinning the Rule of Law:

1. the absolute supremacy of the regular law and not arbitrary governance;

2. equality before the law and equal subjection of all citizens to the ordinary law administered by ordinary courts; and

3. the law of the constitution is the result of the rights of citizens as defined and enforced by the courts.

One example of arbitrary government is found in the Report "Justice versus corruption: Challenges to the independence of the judiciary in Cambodia". It concludes that the Cambodian Minister of Justice was granted – both in law and in practice – an excessively powerful role, with the ability to influence almost every element of a judge's career. Because of the danger of judges deciding cases in favour of the government in order to keep their jobs or get some other advantage, this is inconsistent with international justice system standards and with the Rule of Law.

Listen to our 5-minute Rule of Law podcast

Did you know Canadian judges don't use gavels?

See "Do Canadian Judges use gavels?"

*and subscribe to our **eNews** while you're there!*

Judicial Independence

An important thread running through the principle of the Rule of Law is that to uphold the Rule of Law, **the judiciary, which protects the citizenry from arbitrary rule by government, has to be independent from the other two branches of government – executive and legislative.**

All Canadians have the constitutional right to have their legal issues decided by fair and impartial judges. The function of the judicial branch is to interpret the law, resolve disputes, and defend the Constitution including the Canadian Charter of Rights and Freedoms. This role requires that the judiciary be distinct from, and operate independently of, all other justice system participants, including the other two branches of government.

Ultimately, judicial independence means that judicial officers of the Court have the freedom to decide each case on its own merits, without interference or influence **of any kind from any source**. While judicial decisions rarely result in everyone being happy, our justice system is founded on a public confidence that decisions, whether popular or not, are fully heard and fairly made. It is crucial that Judges both **be** independent and **appear to be** independent so that there is public confidence that judicial decisions are made without bias.

To guarantee the right to an independent and impartial judiciary, the law in Canada has constitutional protections or "essential conditions" that ensure judicial independence. These are security of tenure, financial security, and administrative independence.

To achieve judicial independence, Provincial Court judges and judicial justices in British Columbia are appointed based on merit rather than political affiliation. The process of applying and being vetted is comprehensive and thorough. Find more information on appointment of judges and judicial justices on the Appointment of Judges, Appointment of Judicial Justices, and Judicial Council pages of the Court's website.

Judicial Independence (and what everyone should know about it) is an important statement from the Courts of British Columbia.

Accountability

Judges are held accountable in various ways:

- **Through the open courts principle** – generally, everything that occurs in courts is open to the public and subject to public scrutiny and criticism. Given that relatively few citizens attend courts personally, the public policy objective of the open courts principle is largely achieved through media reporting (one of the reasons why it is so important that media reporting of courts be informed and accurate).

- **Appeals to a higher court** when a decision is considered incorrect ensure that every judge conforms to the law.

- The **Chief Judge and the Judicial Council** have the authority under the *Provincial Court Act* to examine and investigate public complaints against judges. If it is determined that a judge has engaged in misconduct, or their fitness for office is questioned for other reasons, this process can lead to "corrective action" being taken against the judge or, in an extreme case, could result in the judge being removed from office. The Court's Annual Reports contain a summary of the complaints examined each year and their outcomes.

Judges' responsibility to decide constitutionality of laws

In Canada, laws are made by democratically elected members of the legislature – federally by the Parliament of Canada, and provincially by the members of the Legislature. Courts interpret and apply the laws. If a court concludes that a law is unconstitutional (typically, that the law is contrary to the *Charter of Rights* in a way that cannot be justified), then the Court has the power to strike down the law.

In that event, the Parliament or the Legislature can choose to enact new legislation to accomplish the purpose of the unconstitutional legislation, but will do so in a manner that takes into account the Court's reasoning and attempts to avoid the constitutional shortcoming in the earlier version. Section 33 of the *Constitution Act, 1982* also gives legislatures the power to pass laws "notwithstanding" the *Charter*, but this has rarely been done.

Other concepts flowing from the Rule of Law

The Rule of Law is associated with other concepts such as:

- **Presumption of innocence** – all accused persons are presumed innocent until proven guilty beyond a reasonable doubt.

- **Double jeopardy** – individuals may only be punished once for every crime committed and retrials are not permitted on the basis of new evidence (*res judicata*).

- **Legal equality** – all individuals are equal before the law without distinction based on gender, race, nationality or ethnic origin, language, colour, religion, age, mental or physical disability, sexual orientation, social stature, political views etc.

- ***Habeas corpus*** – "to have the body to be subjected to examination" – an arrested person is entitled to know what crimes they are accused of and to have their custodial status reviewed by a judicial authority. Those who are unlawfully imprisoned must be freed.

- **No punishment without law** - there must be no crime or punishment except in accordance with fixed, predetermined law (*Nullum crimen*, *nulla poena sine praevia lege poenali* in Latín).

Separation of Powers

Another concept flowing from the Rule of Law is that the arms of state, namely the executive, the

legislative, and the judicial branches of government, must be kept separate in order to function fully.

This was most famously stated by John Adams in the Constitution of the Commonwealth of Massachusetts in 1780:

> **In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men.**

4. CRIMINAL LAW OVERVIEW

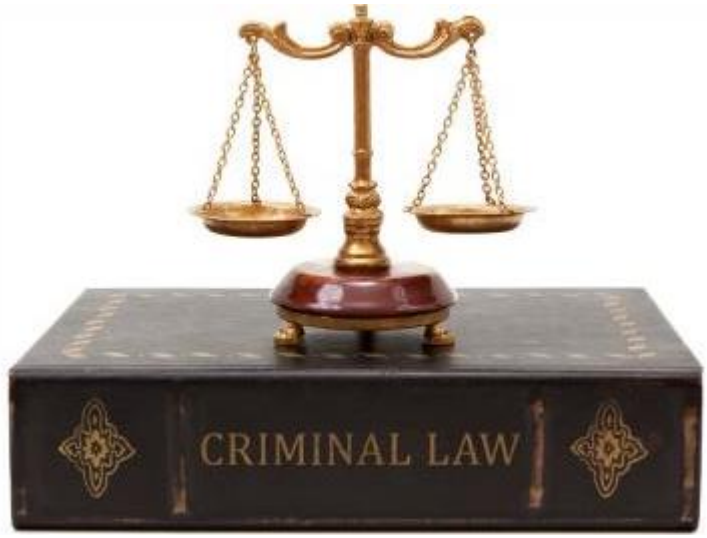
The Process

The police will investigate an alleged offence and send a report to Crown Counsel. An accused is charged by the Crown in a document called the 'Information' which may allege one or more offences, called 'counts' of the Information.

Once an Information is sworn, usually by a police liaison officer, if the accused is not in custody, a Court Services Branch justice of the peace holds a private hearing to decide whether to issue a summons or warrant to bring the accused to court.

In order to bring an accused person before the Court, the police may already have released an accused on a promise to appear in court on a certain date (with certain conditions), or the justice may issue a summons that has to be personally served on (delivered to) the accused, or the accused may be arrested pursuant to a warrant.

Anyone, however, who has reasonable grounds to believe that a person has committed an offence can lay an Information before a justice of the peace. There will then be a private hearing in which the justice of the peace or a judge may hear witnesses and if satisfied there is some admissible evidence of every essential element of the charge, may issue a summons or, in exceptional circumstances, issue a warrant for the arrest of the accused. This is called a private prosecution.



Bail Hearings

If an accused is arrested, he or she is entitled to a judicial interim release hearing (commonly called a bail hearing). Section 11 of the *Charter* provides that an accused person has the right not to be denied reasonable bail without just cause.

There are two criteria in section 11 namely: "reasonable bail" which governs the type and condition of bail; and "just cause" which governs the reasons for denying bail. Bail must be granted unless the prosecutor shows that pre-trial detention is justified (*R.* v. *Morales*, *[1992] S.C.J. 98* and *R. v. Antic*, *2017 SCC 27*).

The *Criminal Code* requires that an accused be released without conditions unless the Crown shows cause for release on conditions or detention, except in specific circumstances. Some bail provisions place the burden on the accused (the 'reverse onus' situation) so an accused must show why they should not be kept in custody - typically where an accused has been released and committed a further serious offence, or for drug trafficking.

Subsection 515(1) of the *Criminal Code* sets out three grounds for denying bail that the Crown may rely upon in seeking an accused person's detention.

The **primary ground** is to ensure the attendance of the accused at court. Typically, the Crown will refer to a record of previous convictions for failing to attend at court in support of the submission that the accused has shown a past predilection for not attending when required, or a previous breach of an order of release such as an undertaking or recognizance.

The **secondary ground** is where the Crown shows there is a "substantial likelihood" that the accused will commit further offences if released or interfere with the administration of justice (e.g. witness tampering). It is only if the "substantial likelihood" endangers the protection or safety of the public and is necessary for public safety, that detention is justified (*R*. v. *Morales*).

The **tertiary ground** is where detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the prosecution's case, the gravity of the nature of the offence, the circumstances surrounding its commission, and the potential for a lengthy period of imprisonment.

While bail is available for even serious crimes such as murder (*R.* v. *Nguyen, [1997] B.C.J. 2121*), if in the judgment of the Court a reasonable and informed member of the public would lose confidence in the administration of justice if the defendant were granted bail, this can in and of itself be a ground for detention pending trial (*R. v. St-Cloud*, *2015 SCC 27*).

When an accused is released, they may be placed on an undertaking with or without conditions such as reporting to a bail supervisor, residing at a specified address, and having no contact with the complainant; or on a recognizance, with cash bail or a surety (who deposits or pledges money that can be forfeit if the accused absconds or breaches bail) and conditions.

Bans on publication at bail hearings

If an accused person requests a publication ban under section 517 of the *Criminal Code* the judge or judicial justice must make an order prohibiting publication of the evidence taken, the information given or the representations made at the bail hearing and the reasons for decision given by the judicial officer. The purpose of this ban is to prevent potential jurors from hearing allegations that may not be admitted or proven at the trial – it is an attempt to ensure that people get a fair trial and are not convicted on unproven allegations.

The Preliminary Hearing

For many serious offences (called 'indictable offences' in the *Criminal Code*) an accused has the right to elect (choose) to be tried in the Supreme Court of B.C. either with or without a jury, or to be tried in Provincial Court where judges do not sit with juries.

If an accused person elects trial in the Supreme Court, either they or the Crown may request a preliminary hearing (also known as preliminary inquiry) to be held in Provincial Court.

Many offences in the *Criminal Code* are 'hybrid' offences, meaning that they can be prosecuted by way of indictment or by summary conviction. The Crown chooses which way to proceed early in the proceeding, based on factors including the apparent seriousness of the offence. Some offences, treated as less serious by the *Criminal Code*, can only be prosecuted by summary conviction. Summary conviction trials only take place in Provincial Court and do not have preliminary inquiries.

At a preliminary hearing, the Crown calls witnesses and the accused person seldom gives or calls evidence. The test a judge must apply is not guilt or innocence, but **whether there is sufficient evidence upon which a reasonable jury properly instructed could return a verdict of guilty.** If this standard is met, the accused is committed to stand trial in Supreme Court. If not, the accused is discharged and the matter is ended. The scope of the preliminary hearing may be limited to specific issues. The judge at a preliminary hearing does not weigh the evidence and cannot make *Charter* decisions.

Bans on publication at preliminary hearings

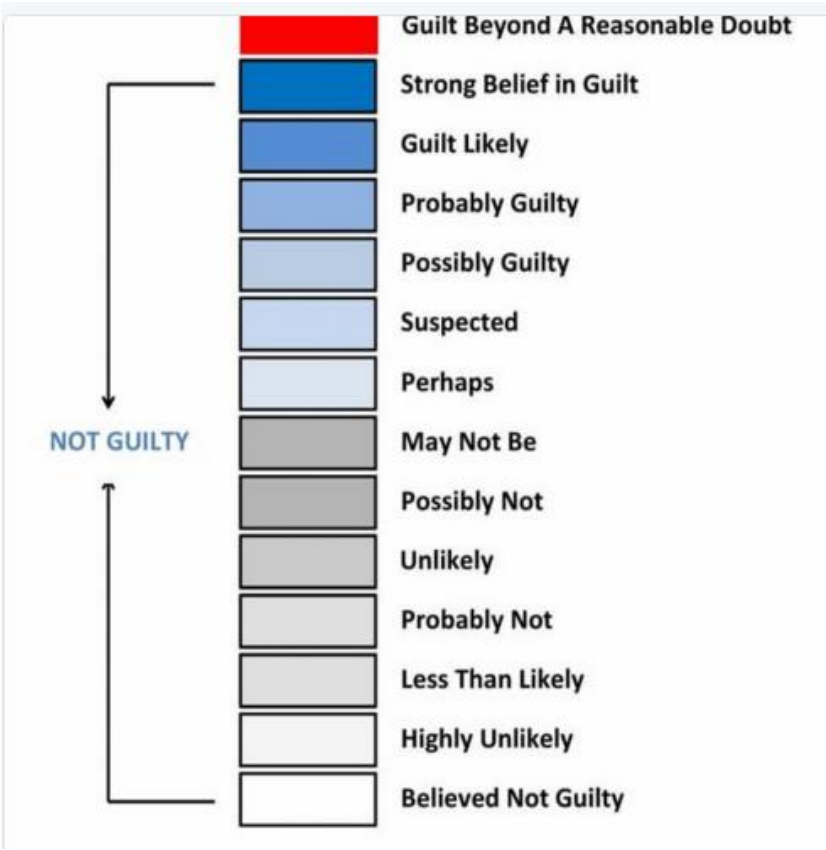
There may be a ban on publication of the evidence at the preliminary hearing, under *Criminal Code* section 539, if the Crown requests it. **The judge must order a ban if the accused person requests it.** This ban remains in place until the accused is discharged or the trial is ended. The purpose of the ban is to prevent potential jurors from hearing evidence that may not be admitted at trial.

The Trial and Presumption of Innocence

At trial, the burden of proof faced by the Crown is "beyond a reasonable doubt".

Before a person can be subjected to the stigma and penalties of a criminal conviction, the prosecutor is required to prove through admissible evidence each and every 'element' or component of the offence with which the accused is charged in the Information.

As this diagram illustrates, it is essential to recognize that there can be a significant difference between suspecting or even believing that someone has committed a crime ("proving" the crime the way one might in a conversation over coffee), and being able to produce an adequate body of admissible evidence in a courtroom to discharge the Crown's burden of proof.



Our Canadian Constitution requires that courts presume the accused person to be innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal (as set out in subsection 11(d) of the *Charter*).

An accused person does not have to prove anything. If they testify as to their innocence and they are believed, there must be an acquittal. If they are not believed, but a reasonable doubt is introduced by the defence evidence, there must be an acquittal. If there is no doubt raised by the defence evidence but on the evidence which is accepted there remains a

doubt, there must also be an acquittal (*R*. v. *W.(D.)*, *[1991] 1 S.C.R. 742*). If a judge is left with doubt about who to believe, they must acquit.

The judge has the difficult task of analyzing the evidence in a trial. There is a requirement to be independent and impartial. The evidence is sometimes direct but often circumstantial. The judge assesses each witness on the basis of their credibility and the extent to which the evidence is reliable and probative and makes findings of fact on the basis of the evidence that is accepted.

Voir Dire

A *voir dire* is a 'mini-trial' conducted within a trial to determine whether evidence is admissible, or whether it should be excluded because of a violation of the *Charter of Rights*. In a Supreme Court jury trial, a *voir dire* is held in the absence of the jury and its evidence **must not be reported** until the jury begins its deliberations, under *Criminal Code* section 648.

Sentencing

Sentencing is said to be one of the most difficult tasks a judge faces.

The *Criminal Code* sets out many factors a judge must consider in sentencing. It establishes that the fundamental purpose of sentencing is to protect society and to contribute to a just, peaceful and safe society by imposing just sanctions with the objectives of denunciation, deterrence, rehabilitation and reparation, amongst others, as set out in section 718 of the *Code*.

Ultimately sentences must be proportionate to the seriousness of the offence and the culpability of the offender. The sentencing judge must consider the sentencing principles set out in section 718.2 and increase or reduce the sentence by taking into account any mitigating or aggravating circumstances.

The *Criminal Code* provides that aggravating circumstances include: breach of trust where the offender is in a position of authority or trust; extensive criminal record; and evidence that the offence was motivated by bias, prejudice or hate based on race, nationality or ethnic origin, language, colour, religion, sex, age, mental or physical disability or sexual orientation.

Other examples of aggravating circumstances are lack of remorse and violence or threats. Examples of mitigating factors are an early guilty plea, remorse, low risk to re-offend, no criminal record etc.

Sentences must be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. The cumulative effect of consecutive sentences must not be unduly harsh or long.

If less restrictive sanctions are appropriate (such as the contentious conditional sentence order), **they must be considered and imposed where appropriate**, and the remedial provision of subsection 718.2(e) should be given force and effect particularly when dealing with aboriginal offenders (*R*. v. *Gladue*, *[1991] 1 S.C.R. 688*; *R. v. Ipeelee 2012 SCC 13).*

Sentencing judges may consider written victim impact statements prepared according to section 722 and the victim may read the statement to the Court. They may also consider a community impact statement prepared in accordance with section 722.2.

A judge cannot impose any sentence they wish. The *Criminal Code* provides a maximum sentence for each offence, and a minimum sentence for some offences.

In addition to all the requirements imposed by the *Criminal Code,* Provincial Court judges must also follow decisions of the B.C. Court of Appeal and Supreme Court of Canada about sentences that are appropriate in specific circumstances. Judges impose sentences that may be criticized as too lenient, when the sentence is actually the maximum permitted by the *Criminal Code* or indicated by Court of Appeal decisions.

In crafting a sentence, a judge must reconcile the various requirements of the *Criminal Code*, the higher courts, and their own judgment as to the culpability of the actual offender before them. For more on sentencing see the FAQs and factsheet on the Court's website.

See Criminal Cases on the Court's website for more information.

Charter of Rights

In 1982 the *Canadian Charter of Rights and Freedoms* was enacted and proclaimed in force. The preamble is as follows:

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Section 1 guarantees freedoms and rights as set out in the *Charter* subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The preamble and section 1 set the stage for the interpretation of the *Charter* and tie in with the Rule of Law, upholding the rights of the individual to be free from arbitrary rule, and to equality before the law.

Public and media access

In order to protect the rights of individuals from arbitrary actions of agents of the state, such as the police, there must be safeguards around the granting of search warrants, for example, or the protection of certain records.

Access to judicial proceedings is an integral part of openness of the courts (subject to section 486 of the *Criminal Code*), and subsection 2(b) of the *Charter* provides for freedom of the press subject to the limitations of section 1. There must be a balance of the right of the accused to a fair trial and the right of the public to know through the media (*Attorney General for Manitoba* v. *Groupe Quebecor Inc*. *(1987), 37 C.C.C. (3d) 421, 59 C.R.(3d) 1, 45 D.L.R.(4th) 80 (Man. C.A.)*.

See the Provincial Court's public and media access policies on the Media and Policies pages of the Court's website.

Youth Criminal Justice Act

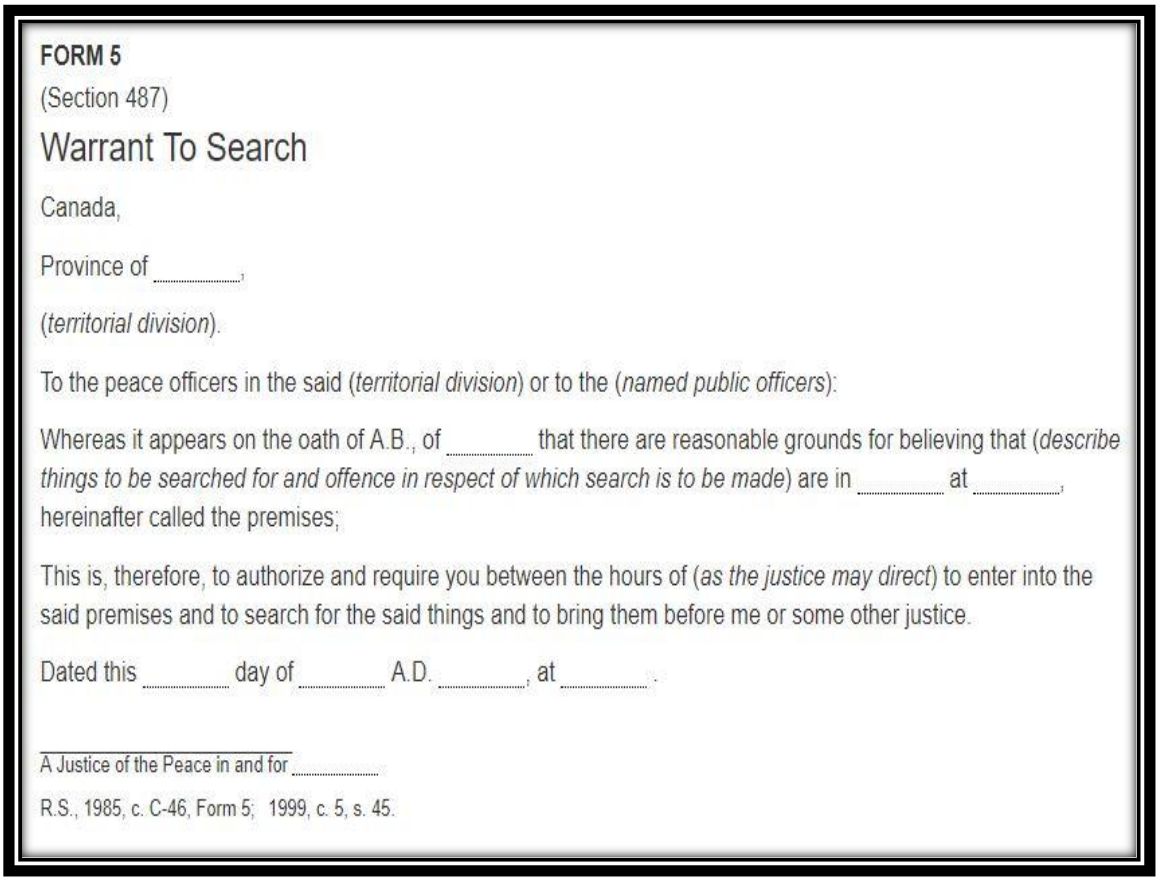
In 2003 the *Youth Criminal Justice Act* (*YCJA*) replaced the *Young Offenders Act*. The *YCJA* makes it clear that Parliament intended that youth are to be treated differently from adults and their identity cannot be published in most cases.

Part 6 of the *YCJA* (sections 110 to 129) sets out in detail how publication, records and information are dealt with in relation to young persons. Records and documents relating to young offenders are generally not released to the media or the public without court order, or not at all in some cases.

Section 110 of the *YCJA* provides that no one shall publish the name of, or information related to, a person if it would identify the person as being dealt with under the *Act.* There are some instances where the ban on publication may not apply. (see **Publication Bans** below.)

Search Warrants

Included in the *Criminal Code* is provision for law enforcement officers to obtain search warrants.



FORM 5

(Section 487)

Warrant To Search

Canada,

Province of _____,

(*territorial division*).

To the peace officers in the said (*territorial division*) or to the (*named public officers*):

Whereas it appears on the oath of A.B., of _____ that there are reasonable grounds for believing that (*describe things to be searched for and offence in respect of which search is to be made*) are in _____ at _____, hereinafter called the premises;

This is, therefore, to authorize and require you between the hours of (*as the justice may direct*) to enter into the said premises and to search for the said things and to bring them before me or some other justice.

Dated this _____ day of _____ A.D. _____, at _____.

_____

A Justice of the Peace in and for _____

R.S., 1985, c. C-46, Form 5; 1999, c. 5, s. 45.

- Sections 487 to 487.053 of the *Criminal Code* set out the procedure and powers relating to search warrants.

- Section 487 provides for the search of a building, receptacle or place and sets out the procedure that must be followed to obtain a search warrant.

- Section 487.01 deals with search and seizure and allows for obtaining a warrant in circumstances where a warrantless search or seizure would violate section 8 of the *Charter*.

- Sections 487.013 to 487.017 provide for preservation and production orders.

- Sections 487.04 to 487.092 provide, amongst other things, for forensic DNA analysis and the procedure to obtain a warrant for bodily substances for DNA analysis, as well as exceptions, collection procedure, reports, investigative procedures, transmission of results, destruction and the like.

- Sections 487.1 to 490 contain other provisions respecting search warrants. Of particular interest to journalists is the restriction on publication set out in section 487.2 (see below for more detail).

5. INNOVATION

The B.C. Provincial Court has been recognized across Canada and beyond as a leader in justice system innovation. Its openness to new ideas and use of technology have been demonstrated in initiatives including:

- Development of specialized courts

- Early introduction of mandatory mediation and simplified trials in Small Claims matters

- Development of new trial scheduling software; digital displays of real-time courtroom assignments

- Use of technology to enable participants to appear remotely by telephone or video-conference in some proceedings.

- Partnering with UBC's Allard School of Law in a judicial intern program in which UBC law students spend a term working with judges and provide research assistance

- Use of social media in an active and engaging Twitter account, @BCProvCourt. In 2016 the Court was the first in Canada to hold a Twitter Town Hall. *#AskChiefJudge* has since been copied elsewhere in Canada and in the U.S.

- Regular publication on the Court's website of short eNews articles on a variety of topics related to the justice system, the Court's work and its judicial officers. (You can subscribe to receive email notice of eNews articles.)

- Development of an online application system for candidates for judicial appointments.

- Adoption of Support Person Guidelines for self-represented litigants who want someone with them at a family law or civil trial to provide quiet support.

For more information, see Innovation or search for a particular topic on the Court's website.

Specialized Courts

The particular needs of First Nations communities and mentally disordered and substance addicted offenders have led the Court to several innovative responses in the form of specialized courts. Through consultation and collaboration with communities and social and health service agencies, the Provincial Court has attempted to focus its resources in more effective ways in various communities around the province.

Drug Treatment Court of Vancouver (DTCV)

Created in 2001, the DTCV offers an alternative to the regular criminal court process for individuals whose commission of drug or minor *Criminal Code* offences is related to drug addiction. The program aims to help offenders abstain from drugs; avoid reoffending; and improve well-being including housing, pro-social activities, employment and education.

DTCV participants undergo treatment in a staged program supervised by a Judge for a minimum of 14 months, receiving services from an addiction counsellor, case manager, psychologist, addiction specialist physician, nurse, and financial assistance worker. Drug use is monitored through random urine screening. To "graduate" and either receive a non-

custodial sentence or have their charge stayed by the Crown, participants must have done the following:

- abstained from all intoxicants for the preceding three months;
- secured stable housing, approved by the DTCV judge;
- not been charged with a new criminal offence in the preceding six months; and
- engaged in secure employment, training, or volunteering for the preceding three months.

A study by the Faculty of Health Sciences at Simon Fraser University concluded that DTCV participants exhibited significantly greater reductions in offending than others.

Indigenous Courts

Indigenous Courts sits in several communities, including:

- New Westminster (since 2006)
- North Vancouver (including Whistler and Squamish - since 2012)
- Kamloops (since 2013)
- Duncan (since 2013)
- Nicola Valley (Merritt - since 2017)
- Prince George (since April 2018)
- Williams Lake (since December 2020)
- Hazelton (as of August 2021)

Indigenous Courts (and the Aboriginal Family Healing Case Conferences in New Westminster) have been developed in consultation with local First Nations, the community at large, police, Community Corrections, Crown counsel, defense lawyers, and support service groups like the Native Courtworker and Counselling Association.

Their focus is holistic, recognizing the unique circumstances of indigenous offenders within the framework of existing laws. Local First Nations communities are encouraged to contribute to the proceedings. The Court provides support and healing to assist in rehabilitation and reduce recidivism. It also seeks to acknowledge and repair the harm done to victims and the community.

Cknucwentn First Nations Sentencing Court, Kamloops

Several Canadian justice system professionals and academics have shown interest in using B.C.'s First Nations Court as a model for courts in their own communities. See a video on First Nations Court on the Court's website.

Vancouver's Downtown Community Court (DCC)

Many offenders in downtown Vancouver have health and social issues, including alcoholism, drug addiction, mental illness, homelessness and poverty. The DCC, opened in 2008, is a partnership between the Court, the B.C. Ministry of the Attorney General, and social and health service agencies.

Its goal is to reduce crime, improve public safety, and provide integrated justice, health and social services to offenders in a timely way, while holding

them accountable for their actions. This Court includes a co-coordinator, Crown counsel, defence lawyers, Vancouver police officers, sheriffs, court

clerks, probation officers, native court workers, and other health and social service agencies located in or near the Court.

Domestic Violence Court

The Cowichan Valley Domestic Violence Court project, begun in 2009, is a blend of an "expedited case management" process and a "treatment or problem-solving" court. The goal is to deal with family violence cases as soon as possible in order to reduce victim recantation or other witness-related problems, to offer a less punitive approach for those willing to accept responsibility and seek treatment, and to ensure the safety of victims and the public. Partners in this project include specially trained and dedicated Crown counsel, RCMP, probation officers, community-based victim services, a native court worker, and a child protection social worker.

Begun in 2013, the Nanaimo Domestic Violence Court sits every two weeks. It has a dedicated Crown Counsel and professional support available for both offenders and victims. Its goals are to assist families to address violence and support their plans, whether they desire reintegration or separation.

Other Provincial Courts around the province have developed other initiatives to address family violence.

Victoria Integrated Court (VIC)

The VIC is a community-led initiative arising from Victoria's Street Crime Working Group and Mayor's Taskforce on Homelessness. Community Outreach and Treatment Teams were created to address the demands placed on emergency and health service providers by people who are homeless and substance addicted and/or mentally disordered. Since virtually all the individuals serviced by these teams were chronic offenders who placed high demands on the criminal justice system, the Court initiated a discussion that led to the creation of the VIC in 2010.

Serenity Farm, where VIC offenders perform community service

The VIC's integrated approach strives to improve access to health, social and economic services for offenders, to improve public safety, and to hold offenders accountable for their actions in a timely manner. Community service is frequently ordered as part of a VIC sentence. Participants have helped create a mural and a community garden where they learn gardening skills, grow their own produce, and earn a share in any profits from produce sold.

6. PUBLICATION BANS

Every journalist covering court matters must constantly be vigilant regarding the possibility that there is some form of publication ban in effect for the proceeding being covered. This is particularly important when a journalist is transmitting information electronically from a courtroom without much opportunity for review or editing before publication, for example via Twitter.

A breach of a publication ban may in some instances be an offence under legislation; other breaches can constitute a contempt of court, punishable by the Court. The penalty for breaching a publication ban could be a fine, a conditional discharge or probation order (which might involve community work service), and potentially even jail.

There are essentially three types of publication bans:

- First, there are **automatic** bans, in effect **by operation of statute**. They do not require any court order or application by a party to the case to be effective. Journalists need to know what these are.

- Second, there are **mandatory** bans a judicial officer must order if requested by a party (e.g. at a bail hearing a judge has no choice but must make a ban when it is requested by the accused, under *Criminal Code* section 517).

- Third, there are **discretionary** bans that may be ordered at the judge's discretion if a party requests them. These are the only types of bans where the judge or judicial justice has an opportunity to decide whether a ban should be made.

Journalists may subscribe to be notified of discretionary bans imposed in the Supreme Court of B.C., but the service doesn't cover Provincial Court bans.

The 'Information Regarding Bans on Publication' Policy on the Provincial Court website includes an overview and list of bans. While this list is not intended to be exhaustive, it and one found on the website of the Supreme Court of B.C. should be consulted regularly because statutes are amended from time to time.

Moreover, since those lists are only brief summaries of some of the relevant provisions, journalists should check the specific statutory provisions for their exact wording. Furthermore, journalists are strongly recommended to seek legal advice if there is any doubt as to whether publication is permitted.

See the 'Information Regarding Bans on Publication' Policy for information on:

1. Automatic Bans imposed by statutes

- *Criminal Code*
- *Youth Criminal Justice Act*
- *Sex Offender Information and Registration Act (S.O.I.R.A.)*
- *Provincial Court Act*

2. Court-ordered Publication Bans, mandatory and discretionary

- Common law authority of a Court
- *Criminal Code*
- *Youth Criminal Justice Act*
- *Extradition Act*

7. ACCESS TO COURT RECORDS

Consult the "Access to Court Records Policy" on the Court's website for information on accessing court records at Provincial Court registries in these matters:

- court records for adult criminal and traffic court proceedings
- court records for matters under the *Youth Criminal Justice Act*
- court records for family matters
- court records for civil small claims matters
- proceedings at the Justice Centre
- Digital Audio Recordings (DARS) of proceedings

The policy is premised on the general rule in Canada that court proceedings are open to the public, including the media, and may be reported in full. Since the average person learns about the legal system mainly through the images, audio and print resources that the media use to convey reports about court proceedings, both the justice system and the public are best served when media coverage is accurate and complete.

At the same time, the presiding judge has a duty to control court proceedings to ensure a fair trial and to protect the integrity of the process. As well, every court has a supervisory and protecting power over its own records and access can be denied when the ends of justice would be subverted by disclosure or the judicial documents might be used for an improper purpose.

Members of the public may have access to case information through Court Services Online or at a public enquiry terminal at the court registry where the case is being heard.

8. MEDIA-RELATED POLICIES

The Supreme Court of Canada has emphasized the importance of an open court. In *Canadian Broadcasting Corp. v. Canada (Attorney General)*, *2011 SCC 2 at para. 1*, the Court stated:

> The open court principle is of crucial importance in a democratic society. It ensures that citizens have access to the courts and can, as a result, comment on how the courts operate and on proceedings that take place in them. Public access to the courts also guarantees the integrity of judicial processes inasmuch as the transparency that flows from access ensures that justice is rendered in a manner that is not arbitrary, but is in accordance with the rule of law.
>
> *Canadian Broadcasting Corp. v. Canada (Attorney General)*

The Provincial Court has developed several policies to assist the media to perform its important role in our democratic society. They can be found on both the Media and Policies pages of the Court's website.

In the Access to Court Proceedings policy, find information on:

- Cameras in courthouses
- Televising court proceedings
- Computers in courtrooms
- Judges' reasons for judgment
- Interviews by media

Consult the B.C. Courts' Policy on Use of Electronic Devices in Courtrooms for information on the permitted and prohibited uses of electronic devices (any device capable of transmitting and/or recording data or audio) in courtrooms.

The electronic devices policy generally prohibits the use of electronic devices in courtrooms to transmit and receive text or to take photos or videos.

However, **accredited media representatives** and lawyers who are members of the Law Society of British Columbia may use electronic devices in courtrooms for certain purposes.

The Court's Media Accreditation Policy provides a link to information on how media personnel can obtain B.C. Courts' accreditation.

9. ACKNOWLEDGEMENTS

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It was updated in 2011 and 2013 by Judge Ann Rounthwaite, Judge Saunders, Judge Jamieson and Allard School of Law judicial interns Andy Chow (2011) and Rebecca Stanley (2013). In 2017, it was reformatted, revised and updated by Judge Ann Rounthwaite (retired), judicial intern Ryan Elias (2017), Senior Legal Officer Caroline Berkey, Judge Richard Hewson, and Judicial Administrative Assistant Jenny Chan. Updated in 2019 and 2021 by Judge Ann Rounthwaite (retired).

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