

They don't have to let you call a lawyer: 25 misconceptions about the law

Legal Aid in Manitoba prepared a six page paper on mistakes people often make about Canada's Criminal Law. The following are some of the matters the paper deals with.

This article is intended to be used as general information or for discussion purposes and not as legal advice. Anyone with a particular legal problem should obtain legal advice from a lawyer.

Although these pages have been read and commented on by police, judges, prosecutors and others involved in the Criminal Justice System, the opinions expressed are those of only the writer. They are not necessarily the opinions of Legal Aid, the Attorney-General's Department or anyone else involved with the criminal law.

The comments are not as lengthy or detailed as they could be. For further information on any of these matters, call your lawyer or legal aid.

CRIMINAL LAW GENERALLY

1. MISTAKE: In Canada, criminal offences are classified as felonies (more serious) and misdemeanors.

THE LAW: Those are terms used in the United States. The words used in Canada are indictable (more serious) offences, and summary conviction (less serious) offences. Some offences can be indictable or summary conviction, at the choice of the Crown.

2. MISTAKE: People who choose to remain silent when questioned about a crime, must be guilty of something.

THE LAW: says that a person accused of a crime has the right to remain silent. This rule was developed not to protect the guilty, but partly to stop abusive questioning procedures which have taken place from time to time to force people to confess to things they may or may not have done.

The rule also recognizes that words can be given different meanings and that a person asking questions - with the object of proving what that person thinks must be the truth - can twist facts and completely confuse the person being questioned.

People who are questioned long enough or who are put under enough pressure, may break down and confess to most anything - including (maybe) the truth.

The right to remain silent includes, of course, people who are not charged with an offence. In most situations, a person need not talk to the police if the person does not care to.

3. MISTAKE: Criminal law is fifty per cent of all the law.

THE LAW: The law is often divided for convenience into Criminal Law and Civil (non-criminal) Law, but they are not equal in size! Civil Law involves dozens of different kinds of law like Tax Law, Prison Law, Real Property Law, Welfare Law, Transportation Law, Juvenile Law and so on.

Criminal law gets more publicity than the rest of the Law, but it is only one small part of the Law.

4. MISTAKE: If a person is robbed or assaulted or is a victim of any crime, he or she can drop the charges at any time.

THE LAW: considers crimes to be against all of society and not just against the individual victims. It is usually not a victim's choice as to whether a charge should be laid or whether a trial should take place.

A victim can influence a particular case: the person may not report the crime or may not fully co-operate with the police, etc. But once a crime is under police investigation, it isn't often that the victim is given the chance to make decisions about what should be done about it.

5. MISTAKE: All people released on bail must deposit hundreds or even thousands of dollars as court.

THE LAW: It is true that some people are required to deposit money before they are released. But most people are released from jail simply by signing a promise (the legal word is "recognizance") to go back to court when



their cases come up. The recognizance may include a promise to pay a certain amount of money if the person does not go to court when he or she is supposed to.

For example, you will often hear a judge in court say that a person can be released "on his own recognizance of \$1,000". The \$1,000 is not paid to court and never will have to be if the person returns to court and lives by any other conditions set by the judge - such as staying away from a certain place or abstaining from drinking alcohol.

Bail is not usually necessary. Accused persons can be released from custody on a simple promise to be in court when required.

6. MISTAKE: Everyone is exactly and entirely equal before the criminal law.

Many comments have been made by various people that while everyone is subject to the criminal law, it tends to be lower income people who are involved with it, and that they are less likely than upper income people to know their legal rights and to be able to exercise them. For example, a high income person is more likely than a low income person to know the name of a lawyer, to insist on calling a lawyer, to remain silent or to be able to explain a situation to the police, to make a good appearance in court, to testify articulately and to be believed and to receive a moderate sentence. One person expressed it briefly: "When an upper income person is involved with the criminal law, his advantages begin to multiply. When a low income person is involved with the criminal law, his disadvantages begin to multiply".

7. MISTAKE: All persons charged with an offence have a trial and most trials are jury trials.

THE LAW: Television programs and movies create this impression, but it is not an accurate picture of what really happens. Most people charged with criminal offences plead guilty, so that no trial is necessary. (The purpose of a trial is to decide guilt or innocence. If the accused person admits guilt, there is no need for a trial.) No more than ten per cent of all

accused people plead "not guilty" and only a few of them elect (choose) trial by jury. In Winnipeg there are only about 30 jury trials each year.

Jury trials can be elected (chosen) only in some indictable (more serious) matters. Jury trials are not available on all offences.

8. MISTAKE: All criminal cases must receive publicity in newspaper.

THE LAW: There is very little law on the subject of publicity. However, it is clear that newspapers and other media are able to print at least the names of accused persons at any stage of a criminal matter.

There is no law that newspapers must publish any names. The numbers which actually appear in a newspaper depends on such things as the space available in the paper and the number of reporters at the courts. A survey of two Winnipeg newspapers a few years ago showed that about one out of every five criminal cases were being reported.

9. MISTAKE: No one thinks of the victim. The accused person has all the rights.

THE LAW: It is true that victims of crime often are not fully compensated for their injuries or loss: perhaps the injury just cannot be fully corrected or the criminal is not worth suing because he or she has nothing or restitution of damaged property isn't possible.

But victims do have rights. In Manitoba, there is a Crime Compensation Board to which victims of crime may apply for compensations as a result of crime.

Victims of crime may sue the persons who causes them injury or loss. All victims should obtain legal advice about this and other possible actions they might take. There is lots of discussion going on now about how criminals might be able to help their victims or somehow correct what has been done, rather than the law simply putting the criminal in jail or making him or her pay a fine.

10. MISTAKE: A witness can refuse to give evidence in court. A witness can

decide which questions he or she will answer. A witness can plead the Fifth Amendment. A witness can refuse to name people who may have committed a crime.

THE LAW: The Fifth Amendment is American law, not Canadian. That law allows a person to refuse to give evidence which might incriminate himself or herself.

In Canada, a witness must answer all questions asked in court. If he or she refuses to do so, the judge may find the person in "contempt of court" and order the person put in jail - perhaps until the person decides to answer the question.

If the person's evidence may incriminate him or her, the person may ask for the protection of the Canada Evidence Act. That law says that any person given the protection of the Act cannot have the evidence used against him or her in a later criminal case (except on a charge of perjury).

LAWYERS AND LEGAL ADVICE

11. MISTAKE: You tell how good a criminal lawyer is solely by the number of cases he or she wins and loses.

THE LAW: If you think along the lines of most television programs and you define a "win" only by a "not guilty" decision, then you won't find any criminal lawyers who are any good! Over ninety percent of people accused of a crime end up being convicted, either because they are found guilty or because they are found guilty after a trial.

A criminal lawyer's job is to represent clients to the best of his or her ability, given the facts of each case. More often than not, the lawyer is trying to make the best of a bad situation. And so, a conviction for manslaughter may be a "win", because the original charge was murder. Or a client sentenced to one year in prison may be thankful that it wasn't two years, and the lawyer may regard this as the best that could have been done for the client.

In judging the skill of a criminal lawyer, there is more involved than just adding up convictions and acquittals.

12. MISTAKE: A lawyer is not necessary if a person knows he or she is guilty and wants to plead guilty.

THE LAW: Everyone is entitled to consult a lawyer - and everyone should consult a lawyer to be sure of what the law is, and to find out what can happen if he or she pleads guilty or is found guilty after a trial. Lawyers can advise accused persons of whether they have a defense, and of what facts about the person should be mentioned in court.

13. MISTAKE: People who feel guilty often are not allowed by their lawyers to plead guilty.

THE LAW: A lawyer's job is to take instructions, not to give them. If a person wants to plead guilty, it is his or her privilege to do so - and to instruct the lawyer that way. If the lawyer is unable to accept the instructions or if the client is not able to accept the advice of the lawyer, either one of them may decide to end their relationship: the lawyer may refuse to act or the client may seek another lawyer.

People sometimes confuse moral guilt with legal guilt. An accused person may feel guilty about the event which resulted in a criminal charge, but the person may not be guilty in law. For example: a person may feel guilty about having been with someone who robbed another person. But the law says a person is not necessarily guilty just because he or she is present when a crime is committed.

One of a lawyer's duties to a client is to explain the law - and sometimes that includes explaining the difference between moral and legal guilt.

14. MISTAKE: Judges, police and lawyers are "above the law". They can do things that other people can't do and get away with it.

THE LAW: Everyone is subject to the law. A person cannot commit a criminal offence like assault or fraud and get away with it just because of his or her occupation.

All judges, police and lawyers are accountable to other people (like other judges, police and lawyers!) just like everyone else in our society.

15. MISTAKE: Being arrested and questioned by the police is such an unpleasant experience that it is always best to go to court and plead guilty as soon as possible - in order to avoid more unpleasantness.

THE LAW: For most people it is an embarrassing and fearful thing to be arrested by the police (especially if it is at one's own home) and it is often the desire of people who have been charged with breaking the law to "want to get it over with" as soon as possible. This feeling is understandable, but it is not wise to make final decisions in such a state of mind.

Every person is entitled in law to obtain the advice of a lawyer and it is wise to do so as soon as possible if a person is charged - or is liable to be charged. Advice should be obtained no matter how hopeless the situation may seem to be!

16. MISTAKE: A person should not plead guilty if there were good reasons why he or she broke the law.

THE LAW: Again we say that a person accused of a crime should obtain the advice of a lawyer. Lawyers often find that people confuse the question of guilt or innocence with the question of sentencing. A person may have excellent reasons for having done something, but those reasons are in most (not all) cases separate from the law's first concern: is the person guilty or innocent of what he or she is accused? If the thing was done, then the law considers the reasons.

For example: a drunk person drives his car in order to get someone to a hospital in an emergency situation. He may very well be found guilty of impaired driving (if he were charged in the first place) but his reason for doing it might result in a very moderate sentence.

The explanation for breaking a law is usually called a "mitigating circumstance".

CRIMINAL RECORDS

17. MISTAKE: Any person charged

with breaking the laws is fingerprinted and photographed.

THE LAW: The identification of Criminals Act of Canada says that a person accused (not convicted) of an indictable (more serious) criminal offence under the Criminal Code can be fingerprinted and photographed. Persons charged with summary convictions (less serious) offences under the Criminal Code or under other laws cannot be fingerprinted or photographed unless they agree to it.

18. MISTAKE: The law does not allow a person to be discriminated against because of a criminal record - especially if the record is made up of minor matters.

THE LAW: There are laws forbidding discrimination based on race, sex, religion and so on. But there is no law forbidding discrimination based on a criminal record. For example: a person might not get a job or be able to rent a house because of his or her criminal record.

A criminal record can be erased by the granting of a pardon. The pardon must be applied for by the person with a record.

POLICE POWERS AND PROCEDURES

19. MISTAKE: When the police say "You'll have to come with me" there is no choice about going.

THE LAW: says, in effect that the police cannot insist on a person going with them unless the person is under arrest. The person has the right to be told that he or she is under arrest and (where the

reasons isn't obvious) the reason why.

20. MISTAKE: Every person arrested by the police is entitled to one telephone call.

THE LAW: Whether or not a person in police custody is allowed a telephone call is pretty well up to the police. There is no law requiring it.

In breathalyzer cases, there are court decisions which have established that a person can call a lawyer for advice before blowing into the machine. But a request to make the call must be made to the police by the person. If the call is not then allowed, the person has a lawful excuse for refusing the test. But if the call is requested and refused and the test then taken, the results can be used in court.

21. MISTAKE: Statements made to the police cannot be used in court unless the statements are written down and signed.

THE LAW: Any statement made to the police whether spoken or written down - and whether signed or not - may be used in court at a later time, if the judge is satisfied the statement was made voluntarily.

22. MISTAKE: Every person from whom the police wish to take a statement must be given the "police warning" or "caution": "You do not have to make a statement, but anything you say may be taken down in writing and used at your trial".

THE LAW: There is no law in Canada requiring that the caution be given but courts have often said it is preferable that

the warning be given to help make sure any statement given to the police is voluntary.

23. MISTAKE: If people are accused by the police or charged with breaking the law, the people must be guilty. Innocent people are not charged.

THE LAW: Police, lawyers and judges each have a particular job to do. One of the jobs of the police is to investigate possible crimes and to lay charges. Though they are entitled to their own opinions, the job of the police is not to decide whether people are guilty (that's the judge's job) or to advise people whether to plead guilty (that's the lawyer's job).

In our criminal law, a person is presumed innocent until proven guilty. The laying of a charge by the police is not, by itself, proof of guilt. The question of guilt or innocence is for the courts to decide.

24. MISTAKE: All questioning done by the police must be done at police headquarters.

THE LAW: There is no law requiring the police to do all questioning at a place of their choosing, but that's often the way it happens. It is said to be more convenient for the police to take suspects and witnesses to a police station for questioning. Of course there is a psychological advantage in having a person in one's own territory.

25. MISTAKE: The police have the

right to refuse to allow a person to consult his lawyer until after they have finished questioning him.

THE LAW: A person has a legal right to the assistance and advice of counsel at the earliest possible opportunity. If the police refuse to allow the person to speak to his lawyer, that person is entitled to refuse to say anything at all until he has been afforded the opportunity of speaking with a lawyer.

Reprinted from the
MANITOBA HIGH



Battling ecologists

Greenpeace fight shifts from bombs to seals

By GREG PETNOLD

It has been just over five years since the original "Greenpeace" sailed out of Vancouver harbour with twelve volunteers aboard, bound for Amchitka Island in the Aleutians, to protest underground nuclear testing by the US government.

The chartered 80-foot fishing boat retreated to Vancouver after 42 days at sea beset by deteriorating weather, delays in the nuclear test program and the vagaries of the US Coast Guard, who arrested the vessel for violation of a customs technicality. A replacement ship, the "Greenpeace Too", was still 700 miles from Amchitka when the bomb was detonated.

Yet the Greenpeace voyages had succeeded in raising public indignation across Canada. In the last days preceding the test, Toronto broadcasters Pierre Berton and Charles Templeton gathered an incredible 180,000 signatures for a half-mile-long telegram delivered to the White House in several cardboard cartons. Ontario students briefly closed three international bridges.

MEDIA SUPPORT
Press, radio and TV across Canada picked up the story while the Toronto Star even published a regular column written from aboard Greenpeace I.

The publicity generated in Canada and the US was sufficient for the US Supreme Court to be called into special session to consider cancellation of the Amchitka blast on environmental grounds. A margin of only one vote allowed the test to proceed. One such uproar was enough for the American government. In the following spring, the US Atomic Energy Commission closed down the Amchitka test site, turning the entire island into a bird sanctuary.

MURORA ATOLL
This was only the beginning. At the end of April 1972, Greenpeace III set sail for the Murora Atoll several hundred miles from Tahiti to protest French nuclear tests. This second voyage released a storm of criticism against France from around the world.

In the Spring of 1974, opposition to the tests in France became a major

issue. After a near-defeat at the polls, the ruling Gaullist party announced the 1974 test series would be France's final atmospheric tests.

After the success of Amchitka and Murora, the Greenpeace Foundation announced in January, 1975, that it was diverting its energies to the problem of the slaughter of the shrinking population of the world's great whales.

Five of eight species of the great whales were commercially extinct and the remainder were used for spurious, replaceable ingredients in industrial lubricants, margarine, cat food and cosmetics.

PROJECT JONAH

A new form of sea-going confrontation was employed to disrupt the whale hunt. Greenpeace members linked up with the whaling fleets at sea and placed their boats between the whalers and their victims as shields to prevent the firing of harpoons, without the risk of human lives.

The project was dubbed "Project Jonah". The Greenpeace V set out on April 27, 1975 and finally made contact with a Russian fleet consisting of one, 350-foot factory ship and nine 150-foot "killer" boats, each equipped with nine, 50mm

cannons. The Greenpeace crew were deployed in high-speed rubber inflatable between a Russian killer boat and a group of Sperm whales. The harpooner was blocked for some 45 minutes; then he fired - regardless of the risk of the people in their rubber dinghy.

To avoid the confrontation and cameras, the fleet chose to steam away. The clash had saved eight whales.

In London, the International Whaling Commission agreed to reduce its 1976 quotas approximately 23 per cent from 1975's 37,300, but the Greenpeace Foundation, was demanding a 10-year moratorium. Plans were laid to send out a larger, faster vessel in the next year.

Over the winter a fresh controversy erupted. The harp seal population on Canada's east coast was being decimated. At the turn of the century an estimated twenty million harp seals made a yearly trip to the icefields of the Gulf of St. Lawrence and the Front ice off the coast of Labrador and Newfoundland to give birth to the new generation. A 1975 study using ultra-violet photography from the air indicated there was only 700,000 to

800,000 seals left.

With the financial assistance of the International Fund for Animal Welfare, Greenpeace developed an innovative plan - volunteers armed with spray cans of a green organic dye would fly in by helicopter and mark all the seal pups possible, rendering their pelts commercially worthless.

GREEN DYE

The federal government reacted swiftly, declaring that the Greenpeace would kill the seals with the dye. What the government neglected to mention was that their own researchers had employed such dyes for twenty years and that federal fisheries scientists had advised Greenpeace that the dye would not harm the seals.

Just days before the hunt was to get under way, Federal Fisheries Minister, Romeo Le Blanc passed an order-in-council that prevented any aircraft from flying less than 2000 feet over or landing less than one half mile from any seal without government permission. It was aimed directly at the protest action.

The Greenpeaceers were forced to scrap their original plans and venture onto the ice with empty hands to talk with the sealers and to shield pups with their own bodies. Due to the harassment by fisheries officials, the protest was largely ineffectual in preventing the actual killing.

The US government has banned the import of harp seal products. In Canada the seal pelts appear as glove lining and fur trim on coats.

The purchase of a sperm whale tooth in the US warrants a \$10,000 fine - the US has banned the importation of whale products. A similar purchase in "the true north strong and free" receives no more than raised eyebrows.

"The Canadian government is just totally ecologically irresponsible!" said Greenpeace President Bob Hunter in 1975 interview.

Reprinted from the
QUEEN'S JOURNAL

