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| **1. The classification of Offences and Trial Jurisdiction (Ch. 35 – 291)** |
| ***Jurisdiction***(291-c) | *Trial court* | *# of judges* |
| - adults (18+)-young people | 2 trial courts: Ont. C.J & Sup. C.J. | Ont. C.J. (1) Sup. C.J. (1) (+jury)  |
| Youth court (judges of Ont. C.J.) | Ont. C.J. (1) |
| ***Charging Docs*** | *Definition* | *Usage and Procedure* |
| - information 291-d | Sworn doc with charges against accused4 substantive req’s (296-a) | Used in Ont.C.J. (for adult and youth)Creation: informant swears before justice that Accused committed a crim. offence; information is marked every time Accused is in court to record the progress  |
| - indictment 291-d292-a2 types of indictments | A written accusation signed by an AG agent (ex. Crown counsel)4 substantive req’s (296-a) | Used in Sup. C. J. (sup. court of crim jurisd’n) when crim charges proceed to Sup. C.J.Creation: drafted and signed by the AG agentPreferring: filing indictment in Sup. C.J. (292-a) |
| 1. Indictment prepared after the Accused has been committed to stand trial – most cases(292-a) | Indictment preferred after the Accused has been committed to trial after a preliminary inquiry in Ont. C.J. or having waived right to prelim inquiry |
| 2. Direct indictments (292-a) – in exceptional circumstances | AG prefers indictment where the A hasn’t had prelim inquiry yet or hasn’t been committed for trial after a prelim inquiry |
| ***3 Types of offences*** | *Description* | *Penalty* |
| - pure summary conviction 292-b | The least serious offences with the lowest penalties (no prelim inq. available) | No specific penalty in the *Code*, see s. 787(1) general penalty for these offences (fine of <5K or imprisonment for 6m, or both) |
| -pure indictable offences 292-b | The most serious offences with the most severe penalties | Always accompanied by a specific penalty (ex. max. penalty) |
| - hybrid offences/ Crown elect292-b293-a | Crown has choice to proceed summarily or by indictment;Until election, proceeding is deemed to be indictable for any interim procedure;If Crown fails to choose, proceeding is deemed summary convic’n if it proceeded in sum. convic’n ct | Accompanied by a specific penalty provision that sets out the max. penalty should the Crown proceed by indictment; If no specific penalty – see general penalties s. 787(1) |
| ***Proceeding by indictment***(293-d) | *Type of Offence* | *Specifics of procedure* |
| - absolute jurisd’n or s.553 offences 293-d | less serious indictable offences (theft under $5K); no indictment drafted (matter proceeds by information) | Absolute jurisd’n of prov’l court;Accused has no election re mode of trial – trial in Ont.C.J.  |
| - exclusive juris’n or s.469 offences 293-d294-a | Some of the most serious offences (murder) | Exclusive jurisd’n of Sup.C.J.; tried by a judge and jury after prelim inq.. AG consent req’d to try to judge alone (294-a) |
| - s. 554 offences 294-a | Offences not listed in s.469 or s. 553 | Accused can elect to be tried in Ont.C.J. or after a prelim inq. in Sup.C.J. with or w/o jury (see below) |
| ***Proceeding summarily*** (294-a) | *Type of offence* | *Procedure* |
| See pure summary conviction | A charged with a pure summary offence or Crown elects to proceed summarily in a hybrid offence | Matter goes directly to trial in the prov. Court w/o preliminary inquiry |
| **Initiating the Criminal process by Information** (294-a) *Details* |
| 1a. Public swearing of information 294-a/b | *Ex parte* and w/o notice before JOP and describe the crim conduct OR policeman can serve an appearance notice on accused. CT determines whether to compel accused to CT. |
| 1b. Private swearing of information 294-b295-c | Private Informant under oath swears information to JOP. AG entitled to receive notice. Referred to provincial CT judge for *in camera* “pre-enquete” hearing. AG allowed to cross-examine evidence. CT decides whether to issue process to compel accused to CT |
| **Initiating the Criminal Proceeding by Indictment**  |
| 1. Written Accusation by agent of the AG295-d296-a | Contains charge etc. |
| 2. Preliminary Inquiry 295-d | Optional, only necessary when requested (s. 536) |
| 3. Order to stand trial 295-c | Made by a judge of the Ont. CJ pursuant to s. 548 of CC. No express time limitations on how soon after the order to stand trial the indictment must be preferred. |
| **Quashing the Information or Indictment** |
| Motion to quash 296-b297-a | If info/indictment is deficient, A can bring motion to quash before the Accused has entered a plea. Thereafter, only w/ leave of CT (s. 601 of CC) |
| Motion for particulars 297-b | If there is insufficient detail in the info/indictment, the accused can make a motion for particulars to supplement the info/indictment |
| **Trial Jurisdiction, Election and re-election** |
| **Time limits** (298-a) |
| Indictable Offence | No time limit |
| Summary conviction | Information must be laid w/in 6mo after the time when the subject matter of the proceeding arose |
| **Territorial Jurisdiction** (297-d/298-a) |
| General Rule | w/in the Territorial Division (ie where offence was committed) |
| Special Jurisdiction | s. 476 (offence committed on the boundary) and special circumstances (airplane, forging a passport, treason) |
| **Elections** (298-b)  |
| Indictable Offences other than ss. 469 and 553 (ie hybrid offences) | Accused is able to elect the particular mode of trial |
| Deemed Election | Accused will be deemed to have elected to be tried by Judge and Jury if (i) prov CT declined to record accused’s election; (ii) Accused didn’t make an election; or (iii) accused was order to stand trial by a prov CT continued proceedings before Accused as a preliminary inquiry |
| Offence punishable by more than 5 yrs | AG can require a jury trial in this case |
| **Re-Election** (298-b – 300-a) |
| Elected Court | Re-elected Court  | Re-election |
| Ont.C.J.  | Ont SJ w/ or w/o jury | w/o consent = not later than 14 days before the day first appointed for trialw/ consent = w/in 14 days of trial |
| Ont SJ w/ or w/o jury | Ont CJ | w/ consent of prosecutor = any time before or after the completion of the preliminary inquiry |
| Ont SJ w/ jury | Ont SJ w/o jury | 1) Before completion of preliminary inquiry= w/ written notice to prelim CT, no consent of prosecutor required2) w/in 14 days of completion of PI = w/ written notice to originally elected CT, no consent of prosecutor required3) 15 days or later after completion of PI = w/ written notice to originally elected CT and consent of prosecutor |
| Ont SJ w/o jury | Ont SJ w/ jury | 1) Before completion of preliminary inquiry= w/ written notice to prelim CT, no consent of prosecutor required2) w/in 14 days of completion of PI = w/ written notice to originally elected CT, no consent of prosecutor required3) 15 days or later after completion of PI = w/ written notice to originally elected CT and consent of prosecutor |
| Ont SJ w/ Jury (deemed election of a direct indictment) | Ont SJ w/o jury | w/ prosecutors consent and notice to CT |
| 1. **Investigative Powers (Ch. 36 – 301)**
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| Power | Type of search | Requirements | Execution |
| Search and seizure 301-c | Search warrant301-c  | “prior judicial authorization” Issuance: By JOP or Judge of Ont CT when satisfied on sworn evidence that the statutory prerequisites for issuing the warrant are met. Prerequisites: sufficient facts on (i) offence; (ii) evidence to be seized; and (iii) location to be searched. | (i) By Peace Officer (cop) or Public Officer (ii) SW must be executed within time limit(iii) only items described in SW w/in the location may be seized(iv) May also seize items that on reasonable grounds were obtained by commission of offence or evidence of offence  |
| Wiretaps 304-b305-c | AG signs appl’n for authorization to intercept private communicationsIssuance: must be an “investigative necessity” (except to investigate terrorism or criminal organizations) |  |
| Blood samples 305-c | Issuance: reasonable ground to believe person committed impaired driving and person is unable to consent to search |  |
| DNA sample 305-c/d | Issuance: Only available for “designated offences” (ie sexual offences, murder, assault etc.) Requirements: see 305-c |  |
| Bodily impressions303-d | Warrant to take any handprint, footprint, etc.; not limited to “designated offences” | Warrant can contain terms and conditions |
| Tracking devices 306-a | Warrant to authorize the installation of tracking devices when there are reasonable grounds to suspect that an offence has been or will be committed  |  |
| General warrant 305-d306-a | Authorizes the use of a specified device/method |  |
| Warrantless search 307-c | Types: consent, search incident to arrest, incident to investigative detention, breath |  |
| Production orders308-b | Order | Order to compel the production of items is signed by justice or judge | May compel existing docs or preparation |
| Exemption 309-d | A person subject to order must apply before its expiration for an exemption + give notice w/n 30d of order. Argue that the order is unreasonable or that the docs are not within the possession.  | Summary offence for failure to comply |
| Proceeds of crime | Special warrants 309-d | Issued upon AG’s appl’n (could also apply for a restraint order) | Authorizes search of ppty that’s crime proceedings |
| Investigating and Q-ing suspects 310-a | Q-ing upon:- arrest (311-d); - detention (311-c/d) | Detainee has a right to consult counsel (unless he’s a motorist detained for a roadside test) (312-a); right to remain silent (313-c); questioning young persons (313-d) |  |
| Other tests | ID line-up (314-a/b)FingerprintsSobriety test (312-b)Polygraph (313-c/d) |  |  |
| **3. Pre-trial Release (Ch. 37 – 317) -** 2 scenarios |
| Scenario | When can be done | Other  |
| Release by police 317-c/d | A person arrested w/o warrant for a summary conviction  | Release req’d unless there are reas’ble grounds to believe the Accused won’t attend the trial or necessary in the public interest |
| Bail hearing | Non-s.469 offences317-d318-a | Presumption: Accused to be released on an undertaking (318-a); Reverse Onus: In certain situations (ex. accused charge while on bail, part of criminal organization etc.)Hearing: may be adjourned for no more than 3d unless there is Accused’s consent  |
| Review (non-s.469) To SupCT 321-d | Review at Accused’s request: Appl’n for review of bail hearing to be served on the prosecutor at least 2d before hearing + file aff’t, etc. (322-a)Review at prosecutor’s request: serve the Accused with written notice of appl’n and supporting materials at least 2d before hrng (322-b; 323-c) |
| s.469 offence323-c/d | No automatic bail hearing; Accused needs to bring an appl’n to a Sup.C.J. judge under s. 522(323-d) – serve notice of appl’n on prosecutor + aff’t, etc, + file docs (323-d)Only judge of SupCT has power to release person |
| Review (s. 469) To CA323-d324-a | A’s written appl’n to the chief justice of CofA; review by 3 judges; docs to be filed (323-d/324-a) |
| Bail revocation 324-a | For misconduct or infringement of the conditions of release |
| Detention review 324-b325-c | Where trial is delayed (s. 525 of CC)  |
| **4. Disclosure (Ch. 38– 327)** |
| Accused | Crown | Form and content of disclosure |
| Has constitutional right to Crown discl’re  | Responsible for making full discl’re to Accused327-c | Crown to disclose all relevant info in its possession (has ongoing obligation); obligation triggered by defence counsel’s written request for info (327-d)Defence must bring application to obtain 3rd Party records (test – (i) likely relevance; (ii) balancing) (330-b/331-c/d) |
| **5. Preliminary Inquiries (Ch. 39- 335)** |
| Availability | Procedural issues | Order to stand trial | Proceedings after O of trial |
| Any cases to be tried by SupCJ, when requested (s. 536(4))335-c/d | The party that requests the PI must ID the witnesses from and the issues on which he wants to hear evidence (335-d/336-d). Process: discovery; examination; cross-examination  | After evidence completion, judge presiding at prelim hearing must commit Accused to trial (334-b);Discharge at prelim inq. marks the end of proc-ng. However, prosecutor may lay new information and start process again (334-c) | After the committal order, the Accused is remanded to the Sup.C. and the prosecutor prepares the Indictment before Accused’s first appearance (338-a/b).Committal order can be challenged by *certiorari* 339-c |
| **6. Witnesses (Ch. 40 – 341)** |
| Who can be a W | Bringing W to the court |
| Any person with relevant and material evidence (341-c). Except: accused, co- A, spouse (341-c/d) | By subpoena (court order compelling attendance) (342-b) that is served (343-c)OR material witness warrant (if subpoena is ineffective) (343-d)-3 cases |
| **7. Pre-Trial Applications in Criminal Proceedings (Ch. 41 – 349)** |
| Type of Appl’n | Purpose | Procedure |
| Pre-trial motion 349-a | To determine a certain issue in advance of a trial | Counsel brings a motion and serves a notice of appl’n a.l. 30d before hearing in Sup.Ct. and 60d before hearing in Ont.CJ. |
| Preparatory motions 350-a | Applications for disclosure  |  |
| Appl’n for taking evidence by commission |
| Release of exhibits for testing (s. 605) | Motion before a judge on a.l.2d notice + affidavit of appl’t (350-a/b) – order granted if there is an “air of reality” |
| Non-constitutional pre-trial appl’n 350-b | Adjournment 350-b | File a notice of appl’n (w/ affidavit) a.l.15d before motion heard; motion – a.l.10d before proceeding  |
| Change of venue 351-c | Serve notice (w/ affidavit) on opp’ng party a.l.15d before date of motion, which is no less than 10d before proceeding  |
| Removal of counsel 351-d | Withdraw – C needs court’s permissionCrown seeks withdrawal of CouncilServe notice of appl’n (w/ affidavit) a.l 15d before hearing which is no less than 10d before pr’ng |
| Application for Recusal 352-d | Lawyer will bring application where there is a reasonable application of bias on the part of the trial judge |
| Evidence *voir dire* 352-b | Trial w/n trial |
| Constitutional appl’n353-c | To challenge a legislative enactment, procedural or evidentiary rule, or individuals’ conduct | Notice of appl’n + constitutional issue (content 353-d/354-a)Serve notice + appl’n record in Sup.C.J./OntCJ a.l.30d before hearing;File appl’n record and factum (content 353-d/354-a) |
| Motions at the start of trial 357-c | Exclusion of witnesses (357-c) | No formal written or advance notice for this motion |
| Non-publication order (357-d) | Total ban – request as early as possible (no forma ap’n)Ban on info for which jury wasn’t present – no formal appl’n: such order is mandatory and automatic |
| **8. Mental disorder (Ch. 42 – 359)** |
| Unfit to stand trial | def’n in s. 2 of CC (359-a); presumed to be fit, however, can be challenged in a fitness hearing on a BoP (361-c) |
| Not criminally responsible by reason of mental disorder | Def’n in s 16 of CC (359-d); burden to displace the presumption of criminal responsibility rests on the party who raises the issue (362-a)  |
| **9. The Trial (Ch. 43 - 365)** |
| Process | Accused | Documents |
| Pre-hearing conference365-d | Mandatory if to be tried by judge and jury – otherwise optional (unless by virtue of local practice) | OntSJ: Crown must give pre-trial judge copy of synopsis of allegation at least 3d before trial. Defence may addSupCJ: Crown and Defence required to fill out pre-trial conference reportJudge may make recommendations or take a number of different steps (366-c) |
| Arraignment | Formal reading of a charge | To the accused (367-d) –it’s a legal beginning of the trial |
| Plea367-d | Guilty plea (367-d) | (i) client must understand max consequences; (ii) CT not bound by Crown sentencing recommendation (iii) confession must be voluntary; (iv) confession must admit all essential elements of offence |
| Non guilty plea (368-b) | Puts the Crown to the proof of the alleged offence |
| Not guilty but guilty (368-b) | The court can accept it only with Crown’s consent. CT not bound to accept plea even where Crown consents |
| Special pleas (368-b) | Autrefois, pardon and justification |
| Jury selection | 12, 13 or 14 jurors (369-c/d) | Peremptory challenge (369-d) & challenge for cause (270-a) |
| The Case for the Crown 371-c | Crown opens; calls witnesses; can rebut | After conclusion of the Crown’s case, defence can make an appl’n for a directed verdict of acquittal (373-d) |
| The case for the defence 373-d | Defence opens; calls witnesses; can rebut | In closing, if the defence presented a case, then the defence counsel for Accused must address the jury before Crown counsel (374-b) |
| Charge to the jury | Content of the charge (375-c) | Judge may hold a pre-charge conference with counsel (374-b) |
| Jury deliberation | results in verdict (375-d) | If unable to agree on a verdict, the judge may declare a mistrial (375-d)  |
| **10. Sentencing (Ch. 44 – 377)** |
| Purpose of sentencing | Deterrence; denunciation of conduct (377-a) |
| Fundamental principle of sentencing | Proportionality (377-b) |
| Factors pertaining to the degree of responsibility | Criminal record; motive; behaviour post-offence; age; guilty plea; cooperation with authorities; mental illness; aboriginal status (378) |
| Factors pertaining to the gravity of the offence | Range of appropriate sentences; abuse of trust; domestic offences; planning and deliberation; duration; magnitude or profitability; prevalence; violence or use of weapons; terrorism or organized crime; vulnerability of the victim (379) |
| Sentencing Hearing 380-b | Strict rules of evidence do not apply (s. 723 of CC); sentencing based on the established facts of the offence from the trial (381-c) |
| Alternative Measures | Peace Bond  | allegations very minor (383-c); |
| Discharge | guilty, but no punishment (383-c/d); |
| Suspended sentence | up to 3yrs (383-d); |
| Probation | not a free-standing sentence, max 3yrs (383-d); |
| Fine | summ ind 5K, corp 100K (384-a); |
| Victim surcharge | comp to victim (383-b);  |
| Conditional sentence of imprisonment | permitted to serve sentence in community (385-c) |
| Imprisonment 386-a | Max Custodial Sentence (386-a) | Summary = 6moSuper Summary = 18moIndictable = 5yr |
| Where served (386-a/b) | <2ys = prov>2yrs = feds |
| Parole eligibility (387-c/d) | General = after 1/3 services (judge may delay to ½ or 10yrs, whichever is 1st)Life (non-murder) = after 7yrs Life (murder = see 387-c) |
| **11. Appeals and bail pending appeals (Ch. 45 – 389)** |
| ***Procedure*(indictable)** | ***Details*** |
| Perfecting the appeal | Procedure to ready an appeal for hearing (391-c) |
| Notice of appeal | File and serve a notice of appeal/notice of appl’n for leave with CofA w/n 30d after the day of the sentence (390-a/b) |
| Transcripts | Appellant has to file a reporter’s certificate saying that 5 copies of transcript have been ordered when the notice of appeal was served or w/in 15d of the filing (390-b) |
| Appeal book | File a requisition with TJ, requiring the CT to forward all docs to the CofA (390-b) |
| Factums | A’s factum; R’s factum (390-b/391-c) |
| Perfection of appeal | It’s perfected and can be listed for hearing when copies of transcript, appeal book, A’s factum and certificate of perfection have been served on the R and filed with the CofA (387-a) w/n 90d after the delivery of transcript to the CofA (391-c) |
| ***Procedure* (summary)** | ***Details***  |
| Notice of appeal | File and serve notice of appeal within 30ds of sentence (393-c/d) |
| Transcripts | Along w/ notice of appeal, CA requires court reporter certificate that the transcripts have been filed. Transcripts not required where agreed statement of facts is filed as evidence is not in dispute (393-d) |
| Appeal Book | Filed w/in 15d after the completion of the transcript or w/in 30d where transcript are not required (393-d) |
| Factum | Appellants w/in 90d of receiving court reporter certificate, respondent w/in 10d before wk appeal to be heard (394-a) |