



Canada's Criminal Code: What is Theft?

How the *Criminal Code* defines theft:

Section 322

- (1) Every one commits theft who fraudulently and without colour of right takes ... anything, whether animate or inanimate, with intent
- (a) to deprive, temporarily or absolutely, the owner of ... his property or interest in it;

The punishment for theft over \$5000:

Section 334

Except where otherwise provided by law, every one who commits theft

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the value of the property stolen ... exceeds five thousand dollars

Explaining the Law

What does “fraudulently or without colour of right” mean?

“Colour of right” is a legal concept in many Commonwealth countries. To act without colour of right means that a person who took the object knew that they had no right to remove it.

What must be proven?

To convict someone of theft over \$5000, the Crown must prove beyond a reasonable doubt four things:

- an object has been taken
- the value of the object is greater than \$5000
- the person who took it knew they did not own it
- they intended to take the object and keep it from the owner, even if just for a short time

What is the possible punishment?

The phrase “liable to imprisonment for a term not exceeding ten years” indicates that ten years in prison is the maximum sentence that the Accused can receive if the verdict is guilty. Because there is no minimum sentence, the Judge is free to choose any sentence that they decide is appropriate for the Accused up to ten years in prison. Generally speaking, maximum sentences are reserved for the worst offenders and the worse-case scenarios.

What about Case Law?

Case law is the collection of previous court decisions. Together, these decisions form a body of law that Judges can consult to decide a case. Case law is often consulted because written statutes such as the *Criminal Code* cannot account for every possible situation surrounding a crime. It is these previous court judgements that help Judges interpret the law and create precedents to help guide future court judgements.

With theft, some Accused have argued that their actions were merely a prank and that there was no intention to commit theft. If the Accused lacks intent, they cannot be convicted. However, if the Accused intended to steal the item, even as a prank, they may be convicted. However, the fact that it was part of a prank may be relevant at the time of sentencing.