

Possession Offences

POSSESSION OF WEAPON FOR DANGEROUS PURPOSE / Punishment.

88. (1) Every person commits an offence who carries or possesses a weapon, an imitation of a weapon, a prohibited device or any ammunition or prohibited ammunition for a purpose dangerous to the public peace or for the purpose of committing an offence.

- (2) Every person who commits an offence under subsection (1)
- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
 - (b) is guilty of an offence punishable on summary conviction. 1995, c. 39, s. 139.

CROSS-REFERENCES

"Weapon" is defined in s. 2. "Prohibited device", "ammunition" and "prohibited ammunition" are defined in s. 84(1). "Possession" is defined in s. 4(3). Section 117.13 allows for the admission into evidence of a certificate of an analyst who has examined the weapon, prohibited device, ammunition, prohibited ammunition, explosive substance, or any part or component of such a thing.

(AR)

- ① carries OR possesses
- ② a weapon
...
imitation
prohibited device
ammunition
prohibited ammunition
- ③ for a purpose dangerous to the public peace OR for the purpose of committing an offence

(MR)

crucial to offence is the purpose for having weapon
purpose DIFF then simply using
circ. surrounding possession consid. to determine purpose (self-defence only one factor in determining purpose)
intended purpose of possession is dangerous one?
must coincide, but purpose BEFORE possession
SUBJECTIVE SPECIFIC INTENT

CARRYING CONCEALED WEAPON / Punishment.

90. (1) Every person commits an offence who carries a weapon, a prohibited device or any prohibited ammunition concealed, unless the person is authorized under the *Firearms Act* to carry it concealed.

- (2) Every person who commits an offence under subsection (1)
- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or
 - (b) is guilty of an offence punishable on summary conviction. 1995, c. 39, s. 139.

CROSS-REFERENCES

"Weapon" is defined in s. 2. "Prohibited device" and "prohibited ammunition" are defined in s. 84(1). Under s. 117.11, the onus is on the accused to prove that he or she is the holder of a licence, authorization or registration certificate. Section 117.12 provides for admission into evidence of copies of such documents and the evidentiary value of the original and copies. Section 117.13 allows for the admission into evidence of a certificate of an analyst who has examined the weapon, prohibited device, ammunition, prohibited ammunition, explosive substance, or any part or component of such a thing.

An accused charged with this offence may elect the mode of trial pursuant to s. 536(2) where the Crown proceeds by way of indictment. Where the prosecution elects to proceed by way of summary conviction then the trial of this offence is conducted by a summary conviction court pursuant to Part XXVII. The punishment for the offence is then as set out in s. 787 and the limitation period is set out in s. 786(2).

(AR)

- ① carries
 - ② a weapon
...
prohibited device
any prohibited ammunition
 - ③ concealed
 - ④ authorization to carry concealed?
- NEGATE

(MR)

Knowledge ("knew to be a weapon")
"steps to conceal" intent assumed or implied if absence of evidence to contrary
prosecution must est. concealed for an unlawful purpose & intends to be used if object could be used for a peaceful purpose
SUBJECTIVE GENERAL INTENT
clear weapons like handguns, concealed, the unlawful purpose is assumed / implied...

ANNOTATIONS

Note: The following cases were decided under the predecessor to this section which while similarly worded applied only to weapons.

Meaning of "carries" – A person carries a weapon if it is in an automobile of which he has care and control and it was not necessary that the accused have the weapon on his person: *R. v. Hanabury* (1970), 1 C.C.C. (3d) 438, 13 C.R.N.S. 378 (P.E.I.S.C.).

Meaning of "concealed" – To prove concealment it must be established that the accused took steps to hide an object that he **knew** to be a weapon so that it would not be observed or come to the notice of others. On the other hand, a gun that is carried in a gun case will not be considered concealed. In most cases the gun carrying case will resemble the firearm itself so that it cannot be considered to be hidden. Wrapping a firearm in a blanket or canvass and securing it with a rope as required by some provincial regulations should also not be considered to be concealing the weapon. In most cases the wrapped weapon will still resemble a firearm and not be considered to be concealed. Finally placing of a firearm in a locked trunk in a locked and unattended vehicle in compliance with federal regulations must be considered an exception to the carrying a concealed weapon offence: *R. v. Felawka*, [1993] 4 S.C.R. 199, 85 C.C.C. (3d) 248, 25 C.R. (4th) 70.

Meaning of "weapon" – In the absence of evidence to the contrary, the **concealment** of certain objects such as a handgun, switch-blade knife or brass knuckles fall within this provision because the unlawful purpose of the object may be **assumed or implied**. Where the object could be used for a peaceful purpose, such as a hunting knife or steak knife, the prosecution must establish that the object is being **concealed** for an unlawful purpose in that the object was **intended to be used** as a weapon: *R. v. Constantine* (1996), 46 C.R. (4th) 105, 137 Nfld. & P.E.I.R. 85 (Nfld. C.A.).

SYNOPSIS

The crucial element in this offence is the purpose for which the accused has the weapon. Merely using the weapon in a way which is in fact dangerous will not make out the charge unless it is proven that this was the accused's purpose for possessing the weapon or other specified thing. All circumstances surrounding the possession of the weapon, or specified thing including its use, if any, will be considered to determine the accused's purpose.

ANNOTATIONS

Note: The following cases were decided under the predecessor to this section which while similarly worded applied only to weapons and imitations of weapons.

Elements of offence – The offence contrary to this section requires proof of possession and proof that the purpose of that possession was one dangerous to the public peace. There must, at some time, be a meeting of these two elements and generally the purpose will have been formed prior to the taking of possession and will continue as possession is taken. However, the elements of the offence must be distinguished from the evidentiary problems which can arise as demonstrated by cases such as *R. v. Proverbs, infra*, where the proof of the unlawful purpose is only through the actual use of the weapon. In this case, *R. v. Cassidy*, [1989] 2 S.C.R. 345, 50 C.C.C. (3d) 193, 71 C.R. (3d) 350 (7:0), the court held that it did not have to determine whether the accused could never be convicted if the actual use was the only evidence of the purpose since there was evidence adduced of formation of the unlawful purpose prior to use of the weapon.

The purpose for which the accused had possession of the weapon must be determined at an instant of time that precedes its use. The use of the weapon in a manner dangerous to the public peace does not constitute the offence although the formation of the unlawful purpose may be inferred from the circumstances in which the weapon was used. Thus, if the accused, in fear of harm to himself in his own home loaded, on the sudden, a weapon that he had not had for a purpose dangerous to the public peace and only intended to use it to defend himself in the event that his premises were broken into, unaware that it was the police seeking entry to execute a warrant, the offence was not made out: *R. v. Proverbs* (1983), 9 C.C.C. (3d) 249, 2 O.A.C. 98 (C.A.).

Relevance of self-defence – The subjective purpose, i.e., self-defence, of a person carrying an offensive weapon is only a factor that should be considered in determining whether an offence has been committed. Therefore, notwithstanding the explanation given by the possessor of the weapon, the trial judge may still convict if the other circumstances in the evidence prove a purpose dangerous to the public peace: *R. v. Nelson* (1972), 8 C.C.C. (2d) 29, [1972] 3 O.R. 174 (C.A.) (4:1).

This section does not prohibit persons arming themselves for self-protection and, in the absence of other circumstances, the offence under this section is not committed if the accused carries for self-defence a weapon that is an appropriate instrument with which to repel, in a lawful manner, the type of attack reasonably apprehended and if the accused is competent to handle the weapon and likely to use it responsibly: *R. v. Sulland* (1982), 2 C.C.C. (3d) 68, 41 B.C.L.R. 167 (C.A.).

Meaning of "weapon" – A broken beer bottle was held to be a weapon so as to support a conviction under this section: *R. v. Allan* (1971), 4 C.C.C. (2d) 521, 4 N.B.R. (2d) 6 (Q.B.). As also was sulphuric acid where the accused intended to inflict injury, albeit to himself in a suicide attempt. The further element of the purpose dangerous to the public peace was established where the accused exposed others to danger, namely those whom he knew would attempt to frustrate his suicide: *R. v. Dugan* (1974), 21 C.C.C. (2d) 45 (Ont. Prov. Ct.). Similarly, *R. v. Pelly*, [1980] 1 W.W.R. 120 (Sask. Prov. Ct.).

Proof of offence – The possession by the accused of weapons in his own home does not preclude a finding of a purpose dangerous to the public peace: *R. v. Stavroff*, [1980] 1 S.C.R. 411, 101 D.L.R. (3d) 193, 48 C.C.C. (2d) 353 (7:0).