

**CRIMINAL DEFENCE**

# **CRIMINAL MISCHIEF**



**CORDAIE**

PARALEGAL SERVICES

[WWW.CORDAIE.COM](http://WWW.CORDAIE.COM) | 844-4-WIN-4-ME

# INTRODUCTION

Being charged with a criminal offence is a serious matter. You could be facing jail time, fines, or other forms of punishment. Hiring the Cordaie Paralegal team will give you the best chance of getting the outcome that you want.

# WHAT IS CRIMINAL MISCHIEF?

## DEFINITION OF CRIMINAL MISCHIEF

Criminal mischief is a serious charge in Canada, and it's important to know what it means.

Criminal mischief charges in Canada refer to intentional damage, destruction, or interference with the property of others without their consent. Examples of criminal mischief include vandalizing public or private property, graffiti, and defacing buildings. These charges can result in serious legal consequences, including fines, probation, and imprisonment. It is important to seek legal advice if you are facing criminal mischief charges in Canada to ensure that your rights are protected and that you receive a fair trial.

If you are charged with criminal mischief, you could face jail time, fines, or both. You may also be ordered to pay restitution (money) for any damages caused by your actions.

# CRIMINAL MISCHIEF

## THE CRIMINAL CODE STATES...

Section 430(1) of the Criminal Code states:

*"Every one commits mischief who wilfully*

- (a) destroys or damages property;*
- (b) renders property dangerous, useless, inoperative or ineffective;*
- (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or*
- (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property."*





## **CRIMINAL MISCHIEF UNDER \$5,000: WHAT IT MEANS**

It is not the value of the damage that determines what type of property is affected by criminal mischief, but its value.

It is possible for the Crown Prosecution to punish you with ten years in jail if the value of the damaged item exceeds \$5,000. If the property is less than \$5,000 in value, the sentence is up to two years in prison.

The likelihood of going to jail for criminal mischief as a first offense is low if you have strong legal representation.

## CRIMINAL MISCHIEF DEFINED

Section 270(1) of the Criminal Code of Canada states,

*"Every one commits an offence who*

*(a) assaults a public officer or peace officer engaged in the execution of his duty or a person acting in aid of such an officer;*

*(b) assaults a person with intent to resist or prevent the lawful arrest or detention of himself or another person; or*

*(c) assaults a person*

*(i) who is engaged in the lawful execution of a process against lands or goods or in making a lawful distress or seizure, or*

*(ii) with intent to rescue anything taken under lawful process, distress or seizure."*

In the Criminal Code, assaulting a police officer is a very serious offence. In Canada, it is treated more seriously than other types of assault to maintain law and order. The Crown must prove that the police officer was acting in the course of their duties when the assault occurred. Also, to prove their guilt of assaulting a police officer. The goal is to deter offenders from acting violently against those who uphold the law.

# TYPES OF MISCHIEF

## RELATED TO COMPUTER DATA

In the context of computer data, mischief is defined as intentionally destroying, altering, or rendering meaningless, useless, or ineffective data. A person can also commit mischief by obstructing, interrupting, or denying access to computer data or obstructing its legal use.

Section 430(5) of the Criminal Code states:

"Everyone who commits mischief in relation to computer data

(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."

# TYPES OF MISCHIEF

## RELATED TO CULTURAL PROPERTY

Criminal mischief involving cultural property is also punishable under the Cultural Property Export and Import Act. These include archaeological objects, ethnographic objects, art, textual records, and military objects of historical, artistic, or scientific interest.

Section 430(4.2) of the Criminal Code states:

*"Every one who commits mischief in relation to cultural property as defined in Article 1 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on May 14, 1954, as set out in the schedule to the Cultural Property Export and Import Act,*

- (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."

# POSSIBLE DEFENCES

09



## COLOUR OF RIGHT

You cannot be convicted of an offence under section 430 of the Criminal Code if you acted with a colour of right. The term "colour of right" refers to having the legal authority to cause damage. This most commonly implies that you are the owner of the property, or that you have some other type of legal authority to damage/destroy it. You cannot be convicted of mischief if you can demonstrate a colour of right.



## VIOLATION OF CONSTITUTIONAL RIGHTS

You are entitled to certain rights and freedoms before and after you are arrested under the Charter. In the event, the police breach these rights, whether deliberately or inadvertently, it could aid your defence. Under section 24(2) of the Charter, you may be able to exclude some or all of the evidence the Crown is using to secure a conviction if you successfully raise a Charter defence.



## **MISTAKE OF FACT**

In a mistake of fact defence, the accused should not be found guilty because they were mistaken about a fact that is essential to proving mischief. You can use a mistake of fact as a defence to limit your criminal liability if you can demonstrate that your conduct resulted from an incorrect assumption of fact rather than from criminal intent. As an example, you may be able to raise this defence if you believed the property you damaged was your own. It is necessary, however, to satisfy the court that you had a reasonable, genuine belief in the mistake for this defence to work. You cannot be convicted of a mischief offence if you can do this.



## **IDENTITY**

Your identity must be proven beyond a reasonable doubt by the Crown. Thus, the Crown must prove that it was you who committed the crime. If there are no witnesses or if poor-quality surveillance footage captures the offence, this can be difficult. Based on the poor quality of the footage, the authorities could have misidentified you as the perpetrator. Your defence lawyer can argue that the Crown cannot prove that you committed the offence, resulting in an acquittal.



# WHAT MUST BE PROVEN



## **THE GUILTY ACT (ACTUS REUS)**

For the Crown to obtain a conviction under section 430 of the Criminal Code, it must prove beyond a reasonable doubt that you engaged in the following conduct:



## **DAMAGED PROPERTY**

According to section 428 of the Criminal Code, property includes both real and corporeal property. Crown does not need to prove that the damaged property has a certain monetary value, as the offence applies equally to cases in which the property is rendered dangerous but has no monetary value. According to section 430(1)(d) of the Criminal Code, enjoyment of property refers to the pleasure obtained from its use.



## **WILFULLY OR RECKLESSLY INTENDED TO DO THE ACT**

There is no requirement that the Crown prove that you intended to bring about the specific consequences of your actions when you commit mischief. Instead, all that's required is an intention on your part to demonstrate that you intended to perform the action. In other words, even if you do not intend to damage property specifically, if the court finds that you were acting recklessly, and that the damage was foreseeable and/or reasonably likely to occur, this will satisfy the mens rea requirement.



## **CAUSTATION**

A mischief offence requires the Crown to prove both actus reus and mens rea elements in addition to causation, beyond a reasonable doubt, to secure a conviction. It is necessary for the Crown to prove you caused the damage directly through your actions.

# PENALTIES FOR MISCHIEF

13

Indictable offences and summary offences carry different punishments.

A summary offence can result in a two-year sentence less a day, while an indictable offence can result in a ten-year sentence. If you cause a life-threatening situation, you could be sentenced to life imprisonment.

In most cases, criminal mischief convictions do not result in prison time unless the defence is inadequate, the defendant has an extensive criminal history, or other aggravating factors are present. A criminal mischief conviction, however, has consequences. A probation period may be required as well as fines, fees, and restitution payments.

**These penalties may be imposed:**

- Indictment: Up to 10 years in prison if convicted.
- Summary: Up to 2 years less than a day in prison



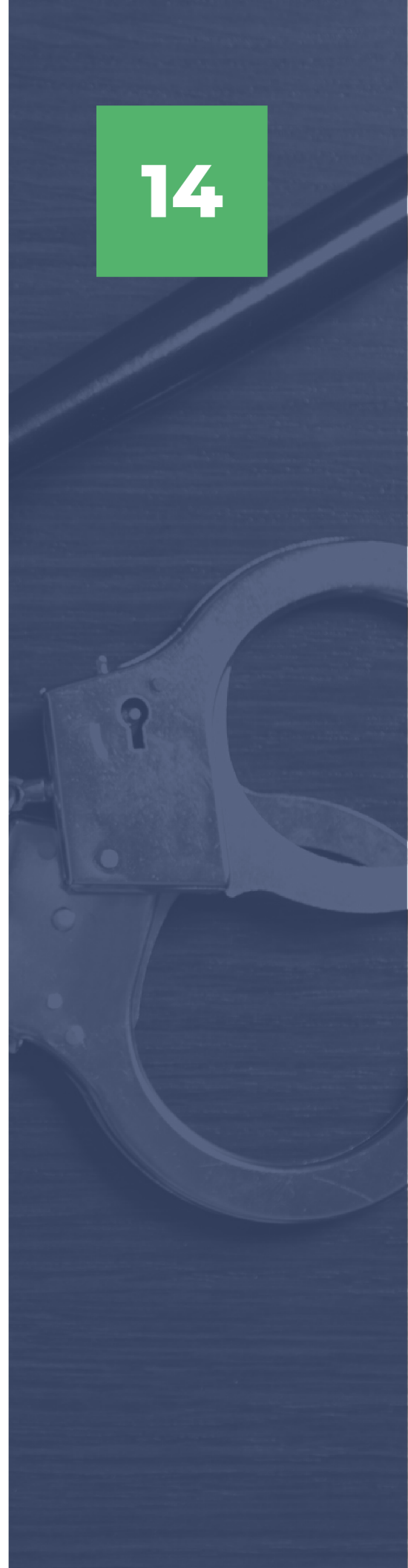
# DEFENDING THE CHARGES

14

The penalties for criminal mischief can be severe. In fact, if you're convicted of a crime in this category, you could spend up to 10 years in prison. But with the right legal help, you can avoid those charges and get your life back on track.

Cordaie Paralegal Services is here to help you defend yourself against criminal mischief charges so that you can put this situation behind you once and for all. Our team has nearly two decades of combined experience helping people just like you fight their way out of these kinds of charges, and we know how to win. Our paralegals have handled cases involving everything from simple vandalism to crimes like assault. We'll work with you every step of the way to build your defence strategy and prove your innocence in court.

If you've been charged with criminal mischief or any other criminal offence, don't wait—get in touch with Cordaie Paralegal Services today!



# THANK YOU

"In a continued effort to provide value to our clients like you, we offer various pricing models. We are confident that you will realize the value of our team as we get acquainted. It's not about how much we bill but how we see our clients' most important side - the human side."



Damian Cordaie,  
Founder, Cordaie Paralegal Services



Satellite offices across Ontario



844-4-WIN-4-ME



[www.cordaie.com](http://www.cordaie.com)