




Type of law:
CRIMINAL LAW

MISCHIEF, GRAFFITI & VANDALISM



A 2021 Alberta Guide to the Law

 **Student Legal
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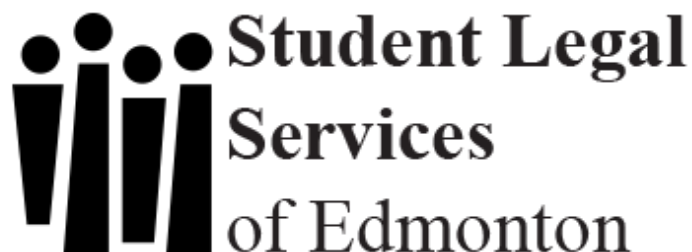
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MISCHIEF OVERVIEW

CRIMINAL CODE s. 430

Everyone commits mischief who willfully:

- a) destroys or damages property;
- b) renders property dangerous or useless;
- c) interferes with the lawful use or enjoyment of property;
- d) interferes with any person lawfully using or enjoying property.

S. 430

SPECIFIC MISCHIEF CHARGES

Mischief related to a hate crime

Mischief related to war memorials

Mischief involving computer data

Mischief related to cultural property

GRAFFITI

Community Standards Bylaw 14600

Private property owners are not allowed to leave graffiti on their property that can be viewed from surrounding property owners who fail to remove graffiti can receive a minimum fine of \$250, up to a maximum of \$10,000.



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MISCHIEF



There are several offences which fall under the category of mischief in the Criminal Code of Canada.

Mischief includes acts such as vandalism and graffiti. There is also a series of mischief offences which include more serious punishments, such as mischief constituting a hate crime.

The basic charge of mischief is described as anyone who willfully:

1. Destroys or damages property;
2. Renders property dangerous, useless, inoperative or ineffective;
3. Obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
4. Obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

What does 'willfully' mean?

"Willfully causing an event to occur" means that the person who caused the event to occur they that their act (or failure to act) would probably cause the event to occur.

Being "reckless" as to whether the mischief occurs or not also counts as willfully causing the event. **Being reckless means that the person knew there was danger that the action could lead to the event but continued anyway.**

What does 'colour of right' mean?

If you have a legal justification ("colour of right") for your actions or an honest belief that you had a right to possess the property in question, you will not be convicted of mischief.

You will have to show that there is an "air of reality" to this claim, or in other words, that there is some evidence which would support this claim. The Crown then needs to prove that you are wrong and that you had no legal justification for your actions.

What if I have an interest in the property?

If you have a partial right to something and damage or destroy it, you can still be guilty of mischief.

Further, even if you have total interest in what is destroyed or damaged, you can be guilty if you caused the damage with the intent to defraud.

Penalties

The maximum penalty for mischief which causes over five thousand dollars of property damage is ten years in prison.

For mischief causing under five thousand dollars in damage, the maximum penalty is two years in prison.

Anyone who commits mischief which endangers someone's life can be sentenced to life imprisonment.

HATE CRIMES

If anyone commits mischief in relation to **any building used primarily for religious worship**, or buildings used by an identifiable group for, it could be considered different from other mischief charges.

If anyone commits mischief in relation to these properties and their **primary motivation involved bias, prejudice or hate**, then that person can either be found guilty of an indictable offence with imprisonment for up to 10 years or can be found guilty by summary conviction.

The bias, prejudice, or hate must be based on one of the following:

- Colour;
- Race;
- Religion;
- National or ethnic origin;
- Age;
- Sex;
- Sexual orientation;
- Gender identity or expression; or
- Mental or physical disability.

WAR MEMORIALS

Anyone who commits mischief in relation to property used to honour those who were killed or died as a consequence of a war, can be prosecuted by either indictment or with a summary conviction offence.

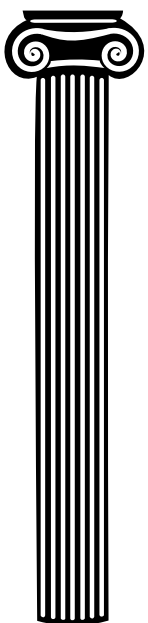
A war memorial includes a structure which serves as a monument to people who were killed or died as a consequence of war and any object associated with honouring or remembering those people located in or on the grounds of that structure.



The minimum punishment varies depending on how many times the offence has been committed.

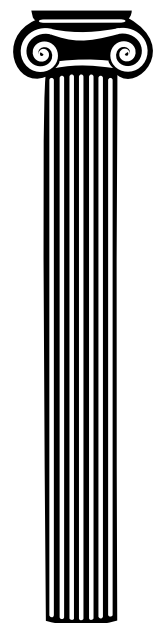
- A first offence has a minimum fine of \$1,000.00.
- A second offence has minimum imprisonment of 14 days.
- For each subsequent offence there is a minimum imprisonment of 30 days.

The maximum punishment if the offence is prosecuted by indictment is 10 years imprisonment. If the offence is punishable on a summary conviction, then the maximum punishment is two years less a day.



CULTURAL PROPERTY

Anyone who commits mischief in relation to property deemed cultural property, such as museums, large libraries or buildings of great cultural importance, is guilty of either an indictable offence with a maximum punishment of 10 years imprisonment, or an offence punishable on a summary conviction.



MISCHIEF AND COMPUTER DATA

Mischief is defined differently in relation to computer data. In these situations anyone commits mischief who willfully:

1. Destroys or alters computer data;
2. Renders computer data meaningless, useless or ineffective;
3. Obstructs, interrupts or interferes with the lawful use of computer data; or
4. Obstructs, interrupts or interferes with a person in the lawful use of computer data or denies access to computer data to a person who is entitled to access it.



Willfully means that the person knew their actions would probably cause mischief in relation to computer data to occur (see page 1).

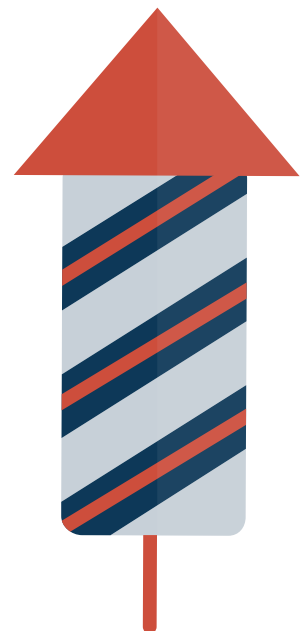
Mischief in relation to computer data can carry a maximum punishment of 10 years imprisonment.

DANGEROUS ACTS OR OMISSIONS

Anyone who willfully does an act, or omits to do an act that it is their duty to do, and the act or omission constitutes mischief, then they are guilty of either an indictable offence or summary conviction.

If prosecuted by indictment the maximum punishment is 5 years imprisonment. The offence can also be punishable on a summary conviction.

An individual will not be guilty however, if they stopped working due to a dispute with their employer regarding their employment, or because of a failure by their employer or bargaining agent acting on their behalf to agree on a matter regarding the employment. They will also not be guilty if they stopped working for their own reasonable protection.



POSSESSION OF A DEVICE DESIGNED TO COMMIT MISCHIEF

The final mischief related charge is making, possessing, or selling a device which was designed or adapted primarily to commit mischief, either regarding property or computer data.

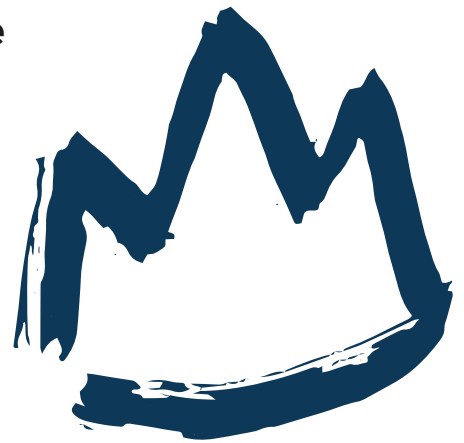
Anyone found guilty of the offence can either be charged with a summary conviction offence, or with an indictable offence carrying a maximum punishment of 2 years imprisonment.

GRAFFITI



In addition to the above mischief charges, there are also local bylaws against graffiti. The city acknowledges some graffiti is art, created with the property owner's consent, but there are rules against graffiti vandalism.

Graffiti vandalism can be an inscription, slogan, scratch, or drawing done on public or private property without permission.



Private property owners are not allowed to leave graffiti on their property that is visible from surrounding property and are required to remove it within a reasonable amount of time.

- Property owners who do not remove graffiti from their property can receive a minimum fine of \$250, up to a maximum of \$10,000
- Alternatively, a Municipal Enforcement Officer may issue an order for the city to remove the graffiti and bill the property owner for the expense.

Individuals with concerns about graffiti are urged to inform the property owner so they may contact the police. If this does not resolve the issue, contact the police by phoning 311.



If you have been victimized by graffiti vandalism, record it by taking photos of the area for evidence and insurance purposes. Property owners can contact the police at 780-423-4567 if they have been victimized by graffiti.

WHO CAN I CALL FOR MORE HELP OR INFORMATION



Student Legal Services- Criminal Project

Ph: 780-425-3356
Web: www.slsedmonton.com

#203, 9924-106 Street
Edmonton, AB T5K 1C4

Law students able to provide free legal information and who may be able to assist individuals in court depending on their income and the circumstance of the offence.

Legal Aid Society of Alberta

Ph: 1-866-845-3425
Web: <http://www.legalaid.ab.ca>

Edmonton Law Courts (2nd floor)
Sir Winston Churchill Square

The Legal Aid Society of Alberta functions to assist low-income Albertans with certain types of legal matters. Assistance is provided through information, referrals, advice, and/or representation, depending on what your matter is and which eligibility guidelines you meet. In-person assessments are currently closed due to COVID-19. Please apply over the phone.

Native Counselling Services of Alberta

Ph: 780-451-4002
Web: www.ncsa.ca

14904 121a Ave NW
Edmonton, Alberta T5V 1A3

Native Counselling Services can help guide individuals through the court process and also provide emotional and legal support.

Fine Options Program

Ph: 780-422-0730

14605 134 Avenue NW
Edmonton, AB T5L 4S9

This program is for adult offenders to work off fines instead of making payments or spending time incarcerated. Participants complete community work service for a specified number of hours, depending on how much of their fine they wish to pay off through this program. You must use your court papers and Time to Pay notice in order to register for the program.

NOTES
