

# Barron's Fifth Canadian Law Dictionary

that he or she has failed to comply with the Act's residency requirements, or when a removal order made against him or her comes into force.

**PERMISSIVE WASTE** See waste.

**PER MY ET PER TOUT** (*pēr mē à pēr tū*) Law Fr.: by half and by whole. In **joint tenancy**, each tenant's share is the whole, for purposes of **tenure** and **survivorship [tout]**, and each share is an **aliquot** portion for purposes of **alienation [my]**.

**PERPETUITIES, RULE AGAINST** See rule against perpetuities.

**PERPETUITY** See in perpetuity.

**PER QUOD** (*pēr kwōd*) Lat.: through which; by which; whereby. False imputations may be **actionable per se**—in themselves—or *per quod*—on allegation and proof of special **damage**. In a **libel** or **slander** action, words used that are not on their face, in their usual and natural usage, injurious, but that become so as a consequence of extrinsic facts and that require an **innuendo**, are actionable *per quod*.

**PER SE** (*pēr sâ*) Lat.: through itself, by means of itself. Not requiring extraneous evidence or support to establish its existence. For example, **negligence per se** refers to acts that are inherently negligent, i.e., that implicitly involve a **breach** of duty, obviating the need to expressly allege the existence of the duty.

**PERSON** In law, an individual or incorporated group having certain legal rights and responsibilities. This has been held to include foreign and domestic **corporations**. Compare **artificial person**; **natural person**.

**PERSON IN NEED OF PROTECTION** A person in need of protection is a person in Canada whose removal to his or her country or countries of nationality or, if he or she does not have a country of nationality, his or her country of former habitual residence, would subject him or her personally

(a) to a danger, believed on substan-

**NATURAL PERSON** "A natural person is a human being that has the capacity for rights or duties." *Hague v. Cancer Relief & Research Institute*, [1939] 4 D.L.R. 191 at 194 (Man.K.B.). Compare **artificial person**; **corporation**.

**NECESSARIES OF LIFE** A relative term that varies according to the social status and circumstances of the parties involved. It is not restricted to the basic things generally required to preserve life, such as food, shelter, clothing, and medical attention (necessaries of life) but covers those things "necessary to maintain the person in the station of life in which he finds himself." *Consumer Gas Co. v. Stewart* (1980), 31 O.R. (2d) 559 at 561 (H.C.J.(Div.Ct.)).

Section 215 of the Criminal Code, R.S.C. 1985, c. C-46, imposes a legal duty on persons to provide the necessities of life in certain situations: a parent, foster parent, guardian, or head of a family has a duty to provide for a child under sixteen years of age; a married person has a duty to provide necessities of life for his or her spouse; a person has a duty to provide necessities of life to a person under his or her charge who is unable to remove himself or herself from that person's charge or provide these necessities of life on his or her own.

**NECESSARY INFERENCE** The only inevitable inference that can be deduced from a proposition. It is not a "necessary inference" if one can deduce another reasonable inference. Compare **presumption**.

**NECESSARY PARTY** A person whose **joinder** to an action is necessary in order that complete relief may be obtained by the **party** (either plaintiff or defendant) who is joining them. "[T]hen the court in its discretion may allow him to be added as a party... It enables all matters in dispute 'to be effectually and completely determined and adjudicated upon' between all those directly concerned in the outcome." *Gurtner v. Circuit*, [1968] 1 All E.R. 328 at 332 (C.A.). See also *Harron v. Crown Trust Co.*, [1955] O.W.N. 48 (H.C.).

implies craftiness or deceitfulness. See *R. v. Leger* (1975), 28 C.C.C. (2d) 480 (Ont.Co.Ct.).

**ARTIFICIAL PERSON** A legal entity, not a human being, recognized as a person in law to whom legal rights and duties may attach—e.g., a body corporate. *The Interpretation Act*, R.S.O. 1990, c. I. 11, s. 29(1), states that "person" includes a corporation and the heirs, executors, administrators, or other legal representatives of a person to whom the context can apply according to law. See **corporation**.

**ASSAULT** In criminal law, the intentional application of force to the person of another without his consent, or the attempt or threat by act or gesture to apply force to another, if the other believes one has the apparent, present ability to do so. See *Criminal Code*, R.S.C. 1985, c. C-46, ss. 265-278. "There must be a threatening act or gesture and no mere words can amount to an assault." *R. v. Byrne* (1968), 63 W.W.R. 385 at 387 (B.C.C.A.).

As one of the intentional **torts**, assault "is the intentional creation of the apprehension of imminent harmful or offensive contact." A. Linden, *Canadian Tort Law*, 45 (7th ed. 2001).

Because an assault need not result in a touching so as to constitute a **battery**, no physical injury need be proved to establish an assault. An assault being both a personal tort and a criminal offence, it may be the basis for a **civil action** and/or a **criminal prosecution**.

**AGGRAVATED ASSAULT** Any of a variety of serious assaults or particularly reprehensible behaviour calling for a more severe punishment. The *Criminal Code*, R.S.C. 1985, c. C-46, ss. 266, 267, makes a distinction between common assault and assault causing bodily harm, with the latter being one example of aggravated assault. Common assault is an offence punishable on summary **conviction**, whereas assault causing bodily harm is an **indictable** offence carrying a maximum five-year imprisonment. See **sexual assault**.