

## **What is considered a crime in Canada?**

Most criminal acts in Canada are listed and defined in the *Criminal Code of Canada*. However, some are also listed in other laws, such as the *Controlled Drugs and Substances Act* and the *Excise Tax Act*.

## **What is the Criminal Code of Canada?**

The Criminal Code is a law made by the federal government. It lists acts related to a variety of situations that are criminal offences, ranging from homicide to sexual exploitation, and corruption to unauthorized firearm possession.

## **If I am arrested, what are my rights, and what do they mean?**

The *Canadian Charter of Rights and Freedoms* lists the basic rights of Canadians, especially in terms of interaction with the government or government representatives and agencies. This is especially relevant when a person is interacting with the police, and particularly when a person is placed under arrest.

If a person is being arrested, the officer must tell the person they are arresting what their rights are under the *Charter*. There are three basic rights for anyone being arrested:

- To be told immediately why s/he is being arrested, and to understand why s/he is being arrested
- To be told that s/he has the right to a lawyer, and if s/he cannot afford a lawyer, one will be appointed for him/her
- To only be held under arrest if there are legal grounds to do so, and to be released immediately in the case that there are no legal grounds for arrest

## **If I am arrested, does this mean that I am considered guilty of a criminal offence?**

No. In Canada, an individual, even if s/he has been arrested, is considered innocent until proven guilty. Arrested individuals must be given a full and fair trial before it is decided by a judge or jury whether the accused is guilty.

## **Who is the Crown Attorney and what is his/her job?**

Crown Attorneys are lawyers who work for the Department of Justice or private practice lawyers who work on behalf of the Attorney General of Newfoundland and Labrador. While Crown Attorneys sometimes give advice to police forces or government departments and agencies, Crown Attorneys are not lawyers for the police. Crown Attorneys also do not represent victims of crime or witnesses to crime. They are independent, impartial officers of the court with a responsibility to prosecute criminal charges if it is in the public interest to do so and if there is a reasonable prospect of conviction, based on the available evidence.

## **Who can help me if I am accused of a crime?**

Being accused of a crime is a serious matter. An accused person should speak with a lawyer to get legal advice about their situation, even if they cannot afford a lawyer for actual court proceedings. For criminal cases, accused persons can seek help through:

- Newfoundland and Labrador Legal Aid Commission ([www.legalaid.nl.ca](http://www.legalaid.nl.ca))
- Public Legal Information ([www.publiclegalinfo.com](http://www.publiclegalinfo.com))

These organizations can answer legal questions, provide lawyer-referral services, or help those who cannot afford a lawyer to find representation for a criminal case.

### **What is Legal Aid?**

Legal Aid is a program available to help people with serious legal problems that are in financial need, and cannot afford a lawyer on their own.

### **How can I get help from Legal Aid, and is it free?**

Legal Aid can sometimes be provided without charge, but not always. The Newfoundland and Labrador Legal Aid Commission will take a close look at your financial situation to determine what or if you will be charged for Legal Aid services.

To get Legal Aid, a person must meet the financial requirements, and his/her legal matter must be the kind of legal matter that is covered by the organization. Applications for aid are available on Legal Aid's website. The application can be processed by dropping it off or mailing it to a Legal Aid office, or by making an appointment.

To learn more about Legal Aid, their website can be visited at [www.legalaid.nl.ca](http://www.legalaid.nl.ca), or they can be reached by phone at 753-7860, or toll-free at 1-800-563-9911.

### **What happens at my first appearance in court?**

A person accused in a criminal case will be notified in writing of what s/he has been charged with, and with the first court date where s/he will have to appear. The first appearance in court is usually very short. The charges laid against the accused will be read, and the accused will be asked if they understand the charges. When matters are clear and understood, the accused will be asked if s/he is prepared to plead. This means that a person can plead guilty or not guilty, or can ask for a delay if s/he needs to speak to a lawyer. This delay would be called an adjournment.

If a person pleads guilty, the judge may decide on a sentence, or set a date for sentencing.

If a person pleads not guilty, the next court hearing will be a trial or preliminary hearing that can be many months after the first appearance. If a second court date is required, the judge will choose a date that is acceptable to both the accused and the Crown Attorney.

### **What is bail and how is it decided?**

Bail is not always just a sum of money that is paid to release a person from jail. It is actually the right of an accused person to be released from police custody. Money may be involved, but that is only one type of bail arrangement. If the accused person obeys the conditions of his/her release, bail money is refunded.

Sometimes a person accused of a criminal offence is simply released until they must next appear in court. However, depending on the circumstances, a person may have to stay in police custody until he/she goes to court. If held in custody, the accused person must appear before a judge within 24 hours, or as soon as possible if a judge is not available in that time.

A bail hearing may happen at this first court appearance. Sometimes it is delayed to give the accused person time to get witnesses and prepare for it. The bail hearing has nothing to do with whether or not the accused person is guilty. It is a hearing to decide whether the accused person can be released from custody until his/her actual trial.

There are several reasons why a person may be held in custody without bail:

- To make sure the accused person will actually attend his/her hearing in court
- To ensure public safety, if the accused is likely to commit more crimes if released
- Based on the seriousness of the crime and how strong the prosecution's case is, a judge may decide to hold the accused in custody to maintain the public's confidence in the justice system

There is no set formula for deciding bail conditions or amounts.

If bail is granted, it may be subject to some of these common conditions:

- Staying away from the victim of the crime
- Checking in with the police regularly
- Not using or possessing alcohol or drugs
- Giving up passport
- Staying in the province

### **What is disclosure?**

Disclosure refers to the obligation of the Crown Attorney (or prosecutor) to disclose all relevant evidence it has about a criminal case to the defence lawyer or the accused person. This includes any evidence the police collected during the investigation, even evidence the Crown Attorney doesn't intend to use during the trial. This evidence may be what is used against an accused person or it may help the defence. This helps to make sure that the accused person is given a fair trial. An accused person does not have the obligation to disclose any relevant evidence it has about the criminal case to the Crown Attorney.

### **What happens during a trial?**

At a criminal trial, the accused person is presumed innocent until they are proven guilty. This is a right granted by the Canadian Charter of Rights and Freedoms. The Crown Attorney has the burden of proving the accused person's guilt beyond a reasonable doubt.

When appearing at court for a criminal trial, the accused person will sit at the front of the courtroom. A judge will ask if the accused and the Crown Attorney are ready for trial – if either answers no, the judge must be given a good reason to delay the trial, otherwise it will continue.

If the accused or the Crown Attorney asks for an exclusion order, this means that the judge excludes anyone from the courtroom (asks them to leave) who is giving evidence or testifying. If the accused

person is a witness or will be testifying, they cannot be asked to leave, and have the right to remain in the courtroom for the whole trial.

First the Crown Attorney will call witnesses and present evidence. The defence has the opportunity to **cross-examine** any witnesses called by the Crown Attorney. This is meant to challenge the credibility and the story of the Crown Attorney's witnesses. Then the defence (accused person/defence lawyers) will present its case, also calling witnesses and presenting evidence. The Crown has the opportunity to cross-examine witnesses presented by the defence. The Crown and the defence then both have the opportunity to sum up their cases. This is when both sides can briefly restate all the points that are in their favour and that argue for their side of the case.

Finally, the judge will make a decision called the verdict. This decision is based on whether the evidence presented against the accused person is enough to prove that s/he is guilty beyond a reasonable doubt. If there is a jury involved, the jury will reach a decision together based on the same evidence and process.

If a judge finds an accused person not guilty, that person is **acquitted**.

If a judge finds an accused person guilty, the next step is for that person to be sentenced (have their punishment decided) by a judge.

### **If a person is found guilty, who decides the sentence?**

A sentence is the punishment an accused person receives if s/he is found guilty of or pleads guilty to a crime. If an accused person is found guilty, his/her sentence is decided by a judge.

When deciding on a sentence, a judge must consider things like:

- Whether the accused plead guilty or was found guilty
- How serious the offence was
- How involved the accused was in the crime (planned it; used a weapon)
- If there was a previous criminal record
- The accused person's attitude – is s/he sorry for committing the offence?
- What kind of sentence is usually given for the offence in question
- If legislation mandates a minimum and/or maximum sentence for the crime(s) the accused committed.

### **If a person is sentenced for a crime, what sentence might they receive?**

There are six (6) basic types of sentences:

- Absolute or conditional discharge
  - o Absolute discharge means the person has been found guilty but there is no conviction entered. They do not have to follow any conditions and their criminal record should be erased, if they stay out of trouble, after 1 year. A conditional discharge is similar, but the accused person must follow a probation order and stay out of trouble. The person's criminal record will typically be erased after 3 years.
- Probation

- Regular reporting to probation officer. May involve restriction from the use of alcohol or drugs, community service, or having to stay away from the victim of the crime, or other conditions set by a judge.
- Fine
  - Usually accompanies probation or a jail term. Judge will take into account the ability to pay a fine.
- Restitution
  - Usually paid to the victim to compensate for any harm done to them in committing the offence. It could be for physical or psychological injuries, damaged property, etc.
- Jail and Conditional sentences
  - A jail term is when the convicted person is held in custody. A sentence of less than 2 years is usually served in a provincial prison (i.e. Her Majesty's Penitentiary). A sentence of more than 2 years is usually served in a federal prison.
  - An example of a conditional sentence is house arrest, with specific conditions to follow as set by a judge.
- Prohibitions
  - This is to prevent an action that could result in a re-offence, because, for example, it was the action that resulted in the crime a person is convicted of (e.g. driving, possessing a firearm, being present at daycares or schools)

### **What is probation?**

Probation is when an offender (person convicted of a crime) remains in the community instead of in jail, under the supervision of a probation officer.

### **Who is a probation officer?**

A probation officer is a trained professional who is authorized by the court to supervise and help provide guidance to an offender that is under a probation order.

### **What if I do not follow my probation order?**

Probation is an official order from the court. This means that it must be followed. Not doing so may result in further criminal charges. Not following the conditions of probation is an offence, under Section 733.1 of the Criminal Code. Breach of a court order is considered by the courts to be very serious.

### **How can you challenge a decision made at a criminal trial?**

When an offender wants to challenge a decision made at a criminal trial, they are appealing the decision. In Newfoundland and Labrador, if the trial was held in Provincial Court, the offender will need to file an appeal with the Supreme Court, General Trial Division. If the trial was held in the Supreme Court, Trial Division, the offender will need to file an appeal with the Supreme Court, Court of Appeal.

It is recommended that a person wishing to appeal a court decision seek advice from a lawyer.

The person filing for an appeal is called the **appellant**. That person must file multiple copies of the **Notice of Appeal** form with the Registry of the Court of Appeal. Any required fees must also be paid.

Documents required for an appeal include:

- Notice of Appeal:
  - The first form to be filed with the court.
- Appeal Book:
  - Contains documents that were previously filed with the lower court.
- Factum:
  - A summary of facts and issues relating to the appeal.
  - The argument being brought forward and the order or relief being sought by the person filing the appeal.
- Book of Authorities:
  - Any relevant case law or legislation applicable to the offender's case being appealed.
- Transcript
  - A written copy of any oral evidence given by witnesses at the original trial.