Going to Court: A Roadmap for People Representing Themselves in Criminal Court

This roadmap to criminal law is divided into four different sections.

The Basics explains what criminal law is and how criminal court cases are started.

Next, **Going to Court – a Step-By-Step Guide** details important steps for self-represented litigants to be aware of between being arrested and leaving court after a matter concludes.

Then, there is a section on **Other Things to Know about Court** that provides information such as what to wear and what to say in court.

Finally, if you scroll to the bottom you will find a list of **Common Criminal Law Terms and Definitions** and other **Legal Resources**.

A. The Basics

WHAT IS CRIMINAL LAW?

Criminal law is a system of laws intended to protect society from certain harmful behaviours and actions, by making them unlawful and punishing people who carry out those behaviours and actions.

Criminal laws are exclusively made by the federal government, through the Canadian Parliament. Most criminal laws, as well as the punishments associated with them and their definitions, are found in a law called the ***Criminal Code of Canada***, which was passed by Parliament and is often amended and updated. Other criminal laws are also found in the ***Controlled Drugs and Substances Act*** (dealing with drug offences), the ***Youth Criminal Justice Act*** (dealing with criminal offences by youth), among others.

The reason the federal government makes criminal laws is that all of society has an interest in protecting against criminal activity, punishing

offenders who commit criminal acts, and trying to convince people to not commit criminal acts in the future. It is also in the public's interest to ensure that criminal laws are the same regardless of what province or territory an alleged crime is committed.

This is why private individuals cannot start a criminal prosecution or case, unlike in civil law or family law. Instead, criminal charges are laid and criminal cases are started by the government. In court, you might hear the government being officially referred to as "The Queen in Right of Canada" or the "Crown", which reflects the fact that the Queen is Canada's head of state.

While criminal laws are made by the federal government in Ottawa, the administration and organization of courts and the hiring of criminal prosecutors to enforce these laws are the responsibility of each province. The provincial government of Newfoundland and Labrador is responsible for running the criminal courts in the province. As well, the provincial government hires criminal prosecutors, called Crown Attorneys, to bring forward criminal cases for prosecution in court.

TYPES OF CRIMINAL OFFENCES

There are three types of offences in our criminal law. They are called summary offences, indictable offences and hybrid offences.

Summary

Summary offences are less serious crimes. For summary offences, charges must be laid within six months of the offence taking place. In most cases, the maximum sentence for summary offences is 6 months in jail or a $5000 fine, although specific summary offences may have different maximum sentences. Summary offences include matters such as making a false statement when attempting to obtain a passport, disturbing the peace, or joyriding (taking a vehicle without consent). These cases are dealt with in a quicker, or "summary", manner at the Provincial Court level, and are heard by a judge alone, with no jury.

Indictable

Indictable offences carry higher maximum sentences and are generally of a very serious nature. There is no time limit to lay charges for indictable

offences. Types of offences that are automatically indictable include murder, robbery, breaking and entering into a dwelling house, and other serious offences. Typically, indictable offences are tried at the Superior Court level. In Newfoundland and Labrador, this court is called the Supreme Court, Trial Division.

Hybrid

Hybrid offences are those offences that can be classified as either summary or indictable. Most Criminal Code offences fall into this category. When an offence may be classified either as summary or indictable, the classification is decided by the Crown Attorney (the lawyer representing the government). Typically, the Crown will choose the summary procedure when the case is less serious, involves a person with a shorter or non-existent criminal record, or does not involve serious violence and injury to a victim. If the Crown elects to proceed by way of summary conviction, the case will be heard at Provincial Court by a judge alone. In more serious cases, the Crown may elect to proceed by way of indictment. In this case, the accused person has a choice about where they want to have the case heard – either in Provincial Court or in Supreme Court, Trial Division. A person choosing to have the case heard in Supreme Court, Trial Division will have an additional decision to make – whether they want the case heard by a judge alone, or by a judge and jury.

HOW DOES A CRIMINAL CASE START?

In Newfoundland and Labrador, the police are responsible for starting most criminal cases. This process is called ***laying a charge***. Typically, the police start an investigation after receiving a complaint or after they observe a criminal act themselves. The police are responsible for collecting evidence, interviewing witnesses, and deciding if there is enough information to arrest a particular person and lay a charge against them for a certain crime.

WHAT HAPPENS AFTER ARREST?

When a person is arrested, a police officer must tell the person why they have been arrested, and also inform them of what rights they have, based on the *Charter of Rights and Freedoms*. These include the right to remain

silent and not speak with police and the right to contact a lawyer for legal advice.

After a person is arrested, the investigating officer must ***lay an information*** with the court. This means that the officer must prepare a document stating the name of the person they believe committed a crime, the date and place where they believe it occurred, and other details about the alleged offence. That information is then sworn by the officer before a judge or justice of the peace.

The reason police arrest a person when they lay a charge is because they want to be sure the person knows what crime they are being charged with and that they will be at court when the charge is going to be heard by a judge. This is why sometimes a person who has been arrested is released on ***bail*** soon after. In this case, they will be given an ***appearance notice*** with a date, time, and location to appear in court to face the charge(s) against them. In some situations, the police may make the person sign an ***undertaking*** before release, which involves the person promising to follow certain conditions before they appear in court. A condition might be to not visit certain people or places, or to report to a certain police station every week. Failure to follow these conditions may lead to re-arrest, detention in jail before a trial, and additional criminal charges.

However, if the police believe the person is at risk of committing additional crimes, is a threat to the safety of the public or specific people, or may not show up for their court date, they may choose to keep the person in ***custody*** instead of granting them bail. In this situation, the person must be brought before a judge within 24 hours, with a ***bail hearing*** to be held soon after. The judge will hear the charges against them and decide to either keep the person in custody until their trial or to be released until the trial begins, usually with a requirement to follow certain conditions.

B. Going to Court – A Step-By-Step Guide

This is a 13-step guide. It outlines what happens when you are charged with an offence, from being arrested to receiving a verdict and sentencing, and where to go to pursue an appeal.

1. ARREST

If you have been charged with a criminal offence, you will have to appear in court to face the charge(s) against you. The police officer who arrested you, or the court, will tell you when and where you must make your first appearance in court.
This information may be given to you in a number of different ways.

Appearance Notice or Summons

You may receive an ***appearance notice*** or a ***summons***, likely from a police officer. This document will tell you a time, date, and location that you must appear in court to hear the charge(s) against you. Often, an appearance notice or summons is issued for less serious offences (summary offences), such as theft under $5,000 or common assault. You are required to attend court at the time and in the location listed on the appearance notice or summons. If you do not attend court at this time, a judge may issue a warrant for your arrest, and you could face an additional criminal charge under s. 145 of the *Criminal Code* for Failure to Attend Court.

Promise to Appear and Undertakings

For more serious cases, you may receive a ***promise to appear*** document, either issued by the police officer who arrested you, or by a judge. Generally, this type of document is issued when the police have a concern that you may commit additional crimes or may not show up for court. Often, the promise to appear is attached to another document, called an ***undertaking***. An undertaking is a promise you make to follow certain conditions before the charges against you are dealt with (either by a trial or by you making a guilty plea). These documents may be issued by a police officer, and you would be required to sign them before being released from the police station.

Recognizance and Surety

In other situations, you may be kept in custody by the police officer, and then brought before a judge to hear the charges against you. At this time, a judge may issue an undertaking, or a similar document called a ***recognizance***. A recognizance will also require you to follow certain conditions before your trial, but will also likely involve either the deposit or promise of money to the court as a guarantee that you will follow the conditions and come back to court as scheduled. In certain cases, another person will be require to deposit or promise money to the court on your behalf, and that person takes responsibility that you will follow the conditions set by the court. This person is called a ***surety***.

Attached to the undertaking or recognizance will also be a promise to appear, with the time, date, and location that you must come back to court. You will be required to sign all of these documents before you will be released from custody. If you refuse to sign any of the documents, you will remain in custody until your trial date.

2. SEEKING LEGAL ADVICE

Whether or not you have a lawyer to represent you at a criminal trial, seeking legal advice is always advisable if you have been arrested or charged with a criminal offence. You have the right to speak with a lawyer and receive legal advice from the time you are arrested. The police officer who arrests you must make you aware of this right, and provide you with the opportunity to call a lawyer soon after your arrest (usually after you are transported to the police station).

As well, the police officer is required to inform you about Legal Aid. The Legal Aid Commission of Newfoundland and Labrador provides free legal advice for everyone and legal representation for those who qualify. Upon arrest, you must be provided the phone number for a Legal Aid lawyer, who will provide advice over the phone, 24 hours a day.

If you wish to seek Legal Aid representation, you may apply at a Legal Aid intake office. The locations of Legal Aid offices across the province are located in the Resources section at the back of this publication.

3. FIRST APPEARANCE

When you arrive in court, on the time, date, and in the location listed on your summons, appearance notice, or promise to appear, you will have your ***first appearance*** before a judge. This is usually a very brief appearance, where your name will be called by the judge or court clerk, and you will be asked to stand near the front of the courtroom, facing the judge, and between the Crown and defence lawyers who are in court. Often, there will be several other people appearing before the judge at the same time. You will have to wait in the courtroom until your name is called, at which point you will come forward.

At the first court appearance, the judge will read out the charge(s) against you, including a brief description of the time, date, location, and details of the alleged criminal charge(s).

If the charge against you is a hybrid offence, as described above, the judge will likely ask the Crown Attorney if they plan to proceed by way of "summary conviction" or by way of "indictment". This means that the Crown Attorney will choose if they plan to treat the charge as a less serious or more serious offence. The differences between summary conviction and indictment are explained in the section "Types of Offences" above.

The judge may also ask for your plea at this time. You have the right to enter a plea of guilty, in which case the judge may proceed to sentence you immediately, or may give you another date to return to court for sentencing. Otherwise, you may enter a plea of not guilty, in which case the judge will set a date for a trial to be held, at which time the judge or a jury will hear the evidence and decide whether you should be found guilty or not guilty.

You also can postpone this decision in order to seek legal advice, look at the evidence that the Crown Attorney has against you, or simply think the matter through. If you would like more time to think about your plea, ask the judge and provide the reason for the postponement. In almost every situation, the judge should allow you to enter a plea on another date.

At the end of your first appearance, if you have not pleaded guilty and been given a sentence immediately, the judge will give you another date to appear back in court. If you have pleaded guilty or not guilty, this new date will be for a sentencing hearing or for a trial. However, if you have not yet made that decision, the new date will simply be to hear your plea. This appearance will likely be listed on the court docket as "Adjourned for Election and/or Plea".

4. KNOWING THE CROWN'S CASE AGAINST YOU

If you have decided to represent yourself during a criminal case, it is highly advisable to read the case that the Crown Attorney has against you and consider the evidence that the police have collected in your case.

Disclosure

The Crown Attorney's office is required to provide you with a copy of all the information collected by the police in relation to the charge(s) against you. They must give you this information as soon as possible, and must continue providing you with information and evidence relevant to your case as they become aware of it, even during a trial. This information is called ***disclosure***.

You have the right to know the case and the charges against you in order to help prepare to defend yourself during a trial. This includes all the evidence that the police have collected during their investigation. The exception to this rule is that any personal information about witnesses in the case, such as phone numbers, addresses, or medical information, may be blacked out or redacted, unless it is relevant to the charge(s) against you.

Typically, if a person is represented by a lawyer, the Crown Attorney will provide the disclosure directly to the defence lawyer. However, if you are representing yourself in court, the Crown Attorney will be required to provide the disclosure package directly to you. The Crown Attorney may do this during your first appearance in court. You can also request the disclosure package directly from the Crown Attorney's office by going there in person or calling. It may be advisable to call in advance so that

the Crown Attorney's office can prepare the disclosure package for you before you arrive to pick it up.

This information is extremely important. Be careful not to lose or misplace the disclosure package, as the Crown Attorney's office may not be able to give you additional copies. Before you appear again in court, and certainly before you go to trial, study the disclosure package carefully to understand the evidence the police have collected about the charge(s) against you. This information may also help you decide whether to plead guilty or whether to plead not guilty and go to trial.

Pre-Trial Discussions with the Crown Attorney

In almost every case where the defendant has a lawyer, the Crown Attorney and the defence lawyer will actually discuss the case before trial, and try to work out an agreement before the trial takes place. This also helps the lawyers understand the issues that may come up during the trial, in order to simplify the process and avoid unnecessary delays or court appearances.

Often, the Crown Attorney and defence lawyer will also have ***plea negotiations***. This involves a discussion about making an agreement for the accused person to plead guilty to the charge(s) against him or her. Sometimes, the Crown Attorney may agree to drop or reduce some charges against the accused person, in exchange for that person pleading guilty before the trial. As well, the defence lawyer and Crown Attorney will often try to come to an agreement about the sentence the accused person should receive.

While it is ultimately up to the judge to decide the appropriate sentence for a person, he or she will base their decision on information provided by the Crown and defence attorneys. In fact, the Crown and defence can make what are called ***joint submissions*** to the judge. This may include an agreed-upon sentencing recommendation. In this case, the judge will almost always agree with the recommendation made by the two lawyers, although the judge is not required to follow the recommendation.

If you are representing yourself in a criminal case, you have the right to discuss your case in this way with the Crown Attorney prior to your trial. You may do this by speaking to the Crown Attorney outside of court

before or after a court appearance, or by calling the Crown Attorney's office to discuss the matter over the phone or even to set up an in-person appointment.

During this time, it may be a good idea to seek a ***sentencing position*** from the Crown Attorney. This means asking what sentence the Crown Attorney will recommend to the judge if you plead guilty or are found guilty of the charge(s). Typically, the Crown Attorney will offer to ask for a reduced sentence if you plead guilty prior to a trial, and a more serious sentence if you have a full trial and are then found guilty.

5. PRE-TRIAL APPEARANCES

Often, a case will have multiple appearances before a judge between the first appearance and the actual trial or sentencing hearing. As the accused person, you will be required to attend all of these appearances, unless you have a lawyer representing you. You will be informed by the judge or court clerk of any pre-trial appearances that you must attend.

Typically, these pre-trial appearances involve sorting out logistical issues and procedures before the trial. They may allow the Crown Attorney to provide disclosure to you, give time for you to find a lawyer if you wish to have one, involve scheduling the date for the trial, or provide an opportunity for you to enter your plea.

These appearances will often happen at the same time as appearances for many other cases. Like in the first appearance, you will sit in the public area of the courtroom and wait until your name is called before coming forward in front of the judge.

Pre-trial appearances are often also an opportunity for pre-trial applications to be submitted and heard. For example, if you believe that a violation of the ***Canadian Charter of Rights and Freedoms*** has taken place, you can make an application to the judge arguing for a violation to be found and certain remedies to occur as a result, such as the exclusion of certain evidence from the trial or the dismissal of the charges.

6. ENTERING A PLEA BEFORE TRIAL

One of the most important parts of any criminal case is when the accused person pleads guilty or not guilty to the charge(s) against them. As mentioned above, you can decide whether you want to do this at the first appearance or at a later pre-trial appearance. In any case, the judge will eventually require you to enter a plea after a reasonable amount of time.

If you plead guilty to the charge(s) against you, it means you are accepting responsibility for the charges against you and that you agree with the facts of the case, which will typically be read out by the Crown Attorney in court.

Section 606 of the ***Criminal Code*** sets out the conditions for a guilty plea to be accepted by the court. If you make a guilty plea, the court can only accept it if it is satisfied that you:

- are making the plea voluntarily

- understand that the guilty plea is an admission of the essential elements of the criminal offence (i.e. that you committed the crime on a certain date and that you intended to commit the crime)

- understand the nature and consequences of the plea (meaning you understand that you will receive a sentence for pleading guilty), and

- understand that the court is not bound by any agreement made between yourself and the prosecutor (meaning that the judge has the final say on the sentence, even if the Crown Attorney and you, or your lawyer, had worked out an agreement about a sentence).

The most important thing to remember is that a guilty plea is an admission that you committed the crime(s) you are charged with and understanding that you will face some punishment for the crime.

Even if you are not being represented by a lawyer, it may be useful to seek some legal advice before entering a guilty plea. Most courts will have a Legal Aid duty counsel present that you can meet with before entering a plea. You may also wish to call PLIAN's Lawyer Referral Service (722-2643 or 1-888-660-7788) to set up a consultation with a criminal lawyer.

If you plead guilty and your plea is accepted by the court, all that will be left is for a ***sentencing hearing*** to be held to determine your sentence. Skip to the end of this step-by-step guide to read the step explaining the Sentencing Hearing.

7. TRIAL

If you plead not guilty to charge(s) against you, a criminal trial will be held so that a judge or jury can decide whether you should be found guilty or not guilty of the criminal offences in question. First of all, a trial date will be set during one of your pre-trial appearances. The judge will also set how long the trial will be expected to last. The trial can be set for as short as half a day (meaning it is expected to take up only either a morning or afternoon in court), or for a full day, or for multiple days, if the trial is more complex and has more witnesses.

Judge or Jury

In most cases, a trial will be held in front of a judge alone. For certain indictable offences, such as murder, the trial must be held in front of a jury. In hybrid offence cases, if the Crown has chosen to proceed by indictment, the accused person may choose to have the trial heard in front of a jury. In these cases, the jury serves as the ***trier of fact***, meaning the jury will decide if the person is to be found guilty or not guilty.

In these cases, a judge will still be present, and he or she serves as the ***trier of law***, meaning that the judge still decides the outcome of legal questions that come up during the trial, such as objections to unfair questions put to witnesses, whether evidence is admissible, Charter applications, and the decision on an appropriate sentence in the event of a finding of guilt. In cases where there is no jury, the judge serves as both the ***trier of fact*** and the ***trier of law***.

Evidence

The trial itself is where the Crown and the defence present evidence to the judge or jury about the alleged crime. For the most part, this happens through ***eyewitness testimony***, meaning evidence provided by people who were directly involved in or saw the alleged offence take place.

Often, the police officer or officers who were involved in investigating the alleged crime will also provide evidence about their investigation, even if they did not directly observe the alleged crime take place.

As well, there may be expert or scientific witnesses called to give evidence about the case, even though they also likely did not directly observe the alleged crime. For example, these types of witnesses could include a doctor who observed and diagnosed a victim's injuries or a scientist who studied the blood taken from a person accused of impaired driving and calculated their blood alcohol level.

8. THE CROWN'S CASE

Direct Examination

In every trial, the Crown Attorney will present their evidence first. This is because the Crown has the ***burden*** or ***onus of proof*** in every criminal case. In other words, an accused person is presumed to be innocent until found guilty by a judge or jury. As well, you have no responsibility to disprove the criminal charges against you. In fact, as the accused person, you do not have to do anything in a criminal trial. It is entirely up to the Crown Attorney to show enough evidence for the judge or jury to find you guilty ***beyond a reasonable doubt***.

The Crown Attorney will present evidence by questioning witnesses related to the case. These witnesses will likely include any police officers who were involved in the investigation, any alleged victim of the crime, any other people who saw what happened or were connected to the alleged crime, and any expert or scientific witnesses who can assist the judge or jury in finding out what happened.

Cross-Examination

Immediately after the Crown Attorney finishes questioning a witness, you (or your lawyer, if you have one) will have an opportunity to ask your own questions to the same person (if you have a lawyer this would be their job). This part of the trial is called cross-examination. The purpose of cross-examination is to test the witness' story and to see if there are any gaps in their credibility or honesty.

For this purpose, cross-examination allows the questioner to ask ***leading*** questions, which are not allowed during ***direct examination***, or the first part of a witness' testimony.

Leading questions are essentially questions that suggest an answer to the witness. Ideally, they force the witness to only answer either "Yes" or "No" to the question. In this way, the questioner can suggest errors, inconsistencies, or gaps in credibility to the witness, as a way of pointing them out to the judge and poking holes in the Crown Attorney's case.

Some examples of leading questions that may occur in cross-examination are:

> "Mr. Smith, you said you saw the robbery take place across the street. But you were not wearing your glasses at the time, were you?"
>
> "Constable Jones, you said you took the picture of the crime scene at 10 PM. However, isn't it true that the picture was actually taken at 2 AM?"
>
> "Ms. Walsh, you said you got a clear view of the attacker's face. But, isn't it true that the attacker was wearing a mask?"

Note that cross-examination is not the time to raise new facts or to argue in your own defence. Instead, it is meant to test the credibility and accuracy of the witnesses' statements that were given during direct examination. You will have the opportunity to call your own evidence and make arguments in your own defence after the Crown Attorney closes their case. The judge will likely stop you from asking questions that are not relevant to the particular case, that are repetitive, or that are unnecessarily aggressive to the witness.

9. THE DEFENCE CASE (YOUR CASE)

After the Crown Attorney is finished calling all of the Crown's witnesses, you or your lawyer will have the chance to present evidence to the judge or jury. Please remember that there is no requirement for you to do this. The full burden is on the Crown to prove the case. However, this is an opportunity for you to raise a defence to the charges against you (such as, for example, self-defence, alibi, necessity, or others). This may be done through other witnesses who observed the alleged crime scene or situation, or it may involve you, yourself, testifying as the accused. While this may be a good opportunity for you to explain your side of the story, remember that there is no requirement for an accused person to testify, and that doing so means the Crown Attorney is allowed to cross-examine you.

When the defence presents witnesses, they conduct what is called a ***direct examination***. During this time, only direct or non-leading questions are allowed. In other words, unlike during cross-examination, the questioner cannot suggest the answer to the witness. Questions must be open-ended, and typically would require an answer beyond simply "Yes" or "No".

A good rule of thumb is to focus on questions starting with "Who", "What", "When", 'Where", "Why", and "How". These allow for open-ended answers and will not generally be considered leading.

Examples include:

> "Where were you on the night of June 23rd" (AS OPPOSED TO: "You were at Mr. Jones' house on the night of June 23rd, weren't you?")
>
> "What did you see when you looked through the window?" (AS OPPOSED TO: "Isn't it true that you saw the dead body when you looked through the window"?)
>
> "Who did you see leaving the store?" (AS OPPOSED TO: "You saw Ms. Smith leaving the store, right?")

When thinking about how to prepare your case, you will want to consider which evidence you can show to the judge that will poke holes in the Crown Attorney's evidence, or show a valid defence to the charge or charges against you. For example, if you are charged with an assault, but are arguing that you acted in self-defence, you will need to show evidence (whether by other eyewitnesses or your own testimony) that you were attacked by another person or persons and that you defended yourself against that attack using only proportional (meaning not excessive) force.

If you decide to testify in your own defence, and you are representing yourself, you will be required to take the stand like any other witness, swear or affirm an oath to tell the truth, and be open to cross-examination by the Crown Attorney. If you are representing yourself, it will be a somewhat different process to having a defence lawyer as you will not have your own lawyer to ask you questions as part of a direct examination. In this situation, the judge will likely ask you some questions and get you to tell your side of the story.

Remember: if you use the alibi defence

One thing to remember is that if you are claiming an ***alibi defence***, meaning an argument that you could not have committed the crime because you were in a different location at the same time, there is a requirement to let the Crown Attorney know about this in advance. This is to allow the Crown and the police time to investigate your explanation of events and try to find witnesses who will either support or disprove your story. This advance notice is not required for other defences (like self-defence) or other aspects of the defence case.

10. CLOSING ARGUMENTS

After all of the evidence has been presented, both the Crown and defence sides have the opportunity to make ***closing arguments*** or ***closing submissions*** to the judge or jury. The general practice is that whichever side called evidence last speaks first during the closing arguments. So, if you called evidence in your defence, you will speak first as part of the closing submissions. However, if you did not call any evidence (remember that the defence is not required to do so), then the Crown

Attorney will make his or her arguments first before you have a chance to respond.

During this part of the trial, no new evidence can be brought up to the judge or the jury. Instead, this is a chance to sum up the case, review the evidence you and the Crown presented, show the judge any earlier court cases that might be relevant and help him or her make a decision, and make the best argument for why you should be found not guilty of the charge(s) against you. The Crown Attorney will do essentially the same thing, except they will argue that the judge or jury should find you guilty of the charge(s).

11. VERDICT

After the closing arguments are finished, it is up to the judge or the jury to make their decision. In some cases, the judge may decide right away, and give his or her reasons for the verdict. However, in many situations, the judge will want some time to think about the case and review the evidence. He or she may also write down the reasons for the verdict and present them to both sides on another date. If a jury is involved, they will be given instructions by the judge about how to make their decision, and then will take as much time as needed to come to an agreement about the verdict.

If the judge or jury finds you not guilty of all the charges against you, that is the end of the criminal process against you, unless the Crown decides to appeal the decision to a higher court. For the time being, however, you are free to leave.

If the judge or jury finds you guilty of any of the charges against you, the trial will then move to a sentencing hearing.

If you disagree with the judge or jury's decision, this is not the time to protest or argue against it. If you feel that errors were made during the case or with the judge's decisions and rulings, you have the right to appeal to a higher court and can start this process after the current case concludes. Skip to the end of this step-by-step guide for some details on Appealing.

12. SENTENCING HEARINGS

If a guilty plea is entered, or a finding of guilt is made by the judge or jury at the end of a trial, a sentencing hearing will be held. This is a chance for the Crown and the defence sides to present evidence to the judge and make arguments about what the most appropriate sentence would be for you.

In some cases that are not complex or serious, a sentencing hearing may be held immediately after the trial or as soon as the guilty plea is entered. However, in many cases, sentencing is postponed until another day to give both sides a chance to prepare their arguments for the judge.

If a guilty plea has been entered and no trial held, the sentencing hearing will start with the Crown Attorney reading the facts of the case to the judge. Usually, this summary of the case comes from the police investigation report. You or your lawyer will then be asked if you agree with the statement of the facts made by the Crown Attorney. If there is a disagreement about certain parts of the fact summary, a hearing may be held to resolve the disagreement, while not affecting the guilty plea that had been entered. If the disagreement is too big, the guilty plea may be rejected or withdrawn, and the case will go to a trial.

What the Sentence is Based On

Both the Crown Attorney and the defence side will then have the opportunity to present evidence to the judge to base their sentence on, similar to a trial. However, unlike a trial, at a sentencing hearing the focus is not as much on the facts of the case, but on the circumstances of the accused person.

Section 718.1 of the *Criminal Code* states that the fundamental principle of sentencing is to find a sentence that is "proportionate to the gravity of the offence and the degree of responsibility of the offender." In other words, the sentence must reflect how serious the crime was and how much involvement you had in committing the crime.

However, the *Criminal Code* also lists a number of fundamental purposes of sentencing, several of which are about the circumstances of the offender, not the crime. The purposes of sentencing include:

- to denounce unlawful conduct

- to deter the offender and other persons from committing the offences (meaning the sentence should be aimed at stopping the accused from committing the same crime in the future, but it should also try to prevent other people in the community from committing the same type of offence)

- to separate offenders from society, where necessary (meaning that a person may need to be put in jail for a period of time in order to protect the public and stop future criminal acts by that person)

- to assist in rehabilitating offenders (meaning that a sentence should try as best as possible to address the issues in the offender's life that led to the criminal activity. For example, if drugs and alcohol addiction played a part in the crime, then a judge may order that the person seek treatment for addiction as part of the sentence)

- to provide reparations for harm done to victims or to the community

- to promote a sense of responsibility in offenders, and acknowledgment of harm done to victims and to the community

In order for the judge to consider all these factors, he or she will want to hear details about your life and background – including whether any previous criminal record exists and if you have been found guilty for similar criminal offences in the past.

Some circumstances about the actual crime will be discussed as well. For instance, any victim of a crime has the right to prepare a ***victim impact statement***, which discusses the negative impact the crime has had on the victim's life. This statement is provided to the judge, the Crown Attorney, and the defence lawyer or the accused person at the sentencing hearing, and taken into consideration by the judge when he or she makes a decision on the appropriate sentence.

An accused person will also have the right to speak directly to the judge during sentencing, whether or not you are represented by a lawyer. You are not required to speak to the judge, however. Typically, this is used as a chance for the accused to apologize for his or her actions.

The sentencing hearing will also involve both the Crown Attorney and the defence lawyer or the accused person making a submission to the judge about what an appropriate sentence would be for that case. If the Crown and defence have made a plea agreement before the sentencing hearing, they will make the same sentence recommendation to the judge, in what is called a ***joint submission***. While the judge is not bound to accept this submission, in most cases he or she will, unless the judge feels the recommendation was not a fit sentence, given the circumstances. If the Crown and defence cannot agree on a joint submission, they will make arguments for why the judge should accept their sentencing recommendation. Often the Crown will ask for a higher, or more serious sentence, while the defence or accused person will ask for a lighter sentence.

At the end of the sentencing hearing, the judge will tell the lawyers and the accused person what the sentence will be and will explain the reasons for this particular sentence. The judge will also break down exactly which part of the sentence applies to each particular charge for which the accused person is found guilty.

Types of sentences:

Absolute and Conditional Discharges: A judge may apply a discharge if a person is found guilty of an offence that does not carry a minimum sentence or a maximum sentence of either 14 years in jail or life in jail. A discharge effectively means that the person is not convicted of a criminal

offence, but simply found guilty of the charge(s) against him or her. The person will have the discharge listed on their criminal record, but this will be automatically removed from their record after a certain period of time. If the person is given a conditional discharge, they will have to comply with certain conditions as part of a probation for a period of time set by the judge. If the person complies with these conditions, the conditional discharge will be removed from their criminal record after a certain period of time.

Suspended Sentence: If a person is convicted of an offence that carries no minimum punishment, the judge may order that the passing of sentence be suspended and that the person be released on a probation order for a certain period of time, with certain conditions set by the judge. If the person follows the conditions, this will be all the punishment they receive for the offence, but the conviction will still appear on their criminal record. If the person does not follow the probation conditions, they can be charged with breach of probation and also possibly brought back in front of a judge to receive a harsher sentence on the original criminal charge.

Probation: If a person is sentenced to a conditional discharge, a suspended sentence, a fine, or a period of imprisonment for less than two years, a judge may also make a probation order for a certain period of time, and with certain conditions. If the person goes to jail, the probation order will take effect when the person is released from jail.

Each probation order is required to state that the accused person keep the peace and be of good behaviour, that they do not communicate in any way with the victim of the crime or other witnesses or people listed in the probation order, that they also stay away from places listed in the probation order where the victim or other witnesses are likely to be, that they appear in court when required to do so, and that they notify a probation officer or court of any change in address, name, or employment.

Judges will usually add other optional conditions that relate to the circumstances of the criminal case. These may include requirements not to possess or consume alcohol or drugs, to regularly report to a probation officer, not to possess any weapons, and to explore the possibility of

participation in alcohol or drug treatment programs where appropriate. The maximum amount of time a probation order can be in effect is three years.

Fines: A judge may order that a person convicted of a crime pay a fine, in addition to any other punishments for the same convictions. These fines are paid into the court, and are not intended to directly compensate victims for losses due to crime. Direct compensation to victims of crime is possible through a restitution order made by a judge. Most criminal offences will separately list the maximum fines that can be ordered for a conviction under that offence, and sometimes minimum fines are listed as well.

Victim Fine Surcharge: In addition to any other punishments or fines, a person found guilty of any offence in the *Criminal Code* or the *Controlled Drugs and Substances Act* is required to pay a victim fine surcharge, intended to benefit programs supporting victims (such as the Victims Services Program in NL). The required victim fine surcharge is 30% of any fine ordered by the judge. If no fine has been ordered, then the victim fine surcharge is $100 for a summary offence and $200 for an indictable offence.

Restitution: If a person is found guilty of an offence, a judge may order that a person directly pay restitution to another person (typically the victim of the crime). The restitution order is generally in the amount of an actual loss experienced by the victim. For example, in cases of damage to property, the restitution amount would generally be for the replacement value of that property.

Conditional Sentence of Imprisonment: In cases where a person is convicted of a crime and the judge decides to sentence the person to jail time of less than two years, the judge may order that the person serve their sentence in the community, as opposed to going to jail. This type of sentence is often called “house arrest”. This sentence cannot be given if there is a minimum sentence of imprisonment. As well, conditional sentences are not allowed for many serious offences, especially those that cause serious bodily harm or are punishable by long prison sentences. The list of offences that exclude a conditional sentence of imprisonment is set out at s. 742.1 of the *Criminal Code*.

When a judge sentences someone to a conditional sentence of imprisonment, he or she will also impose a number of conditions that the person must follow. These are similar to the conditions given in a probation order, but usually much stricter. Generally, the person under a conditional sentence will be required to remain in their home at all times, except for going to work or school and during certain periods of time when they will be allowed to go out for shopping, exercise, church services, banking, and other similar activities.

Imprisonment: Each criminal offence will typically list the maximum period of jail time that a judge may order if the accused is found guilty. These periods will be different depending on whether the Crown is prosecuting the case by summary conviction (the less serious, shorter procedure) or by indictment (the more serious procedure). In some cases, criminal offences include a mandatory minimum period of imprisonment. For these offences, the judge is required to sentence the person to the minimum period in jail, but can also give a higher sentence than the minimum period as well.

In some situations, if the judge has sentenced a person to jail time for less than 90 days, the judge can order that the sentence be served intermittently. This means that the person serves their sentence only for a few days at a time, and is released from jail in between. How this usually works in Newfoundland and Labrador is that a person serving an intermittent sentence will "check in" to the jail on the weekend (usually on Friday evening) and then be released from jail after the weekend (usually on Monday morning). During the times that the person is not physically in jail, they are required to follow the conditions of a probation order. They must also check in to jail on time each week, and must be sober when they do so. Otherwise, a judge could order that they serve the rest of their sentence continuously. While an intermittent sentence means that it will take a longer period of time for the person to complete their sentence, it does allow the person to continue going to work or school during the week when they are not physically in jail.

13. APPEALS

If you disagree with the judge or jury's decisions and rulings, or feel that errors were made during the case, you have the right to appeal to a higher court. If your trial was held in Provincial Court, you will file an appeal with the ***Supreme Court, General Trial Division***. If your trial was held in the Supreme Court, Trial Division, you will file an appeal with the ***Supreme Court, Court of Appeal***

Please note that a notice of appeal document must be filed with the correct court **within 30 days of the verdict** being made in your trial.

C. Other Things to Know about Court

WHAT TO CALL THE JUDGE

Some people wonder about what the judge should be called. In Provincial Court, the judge is referred to as "Your Honour". In the Supreme Court, typically the judge is called "Justice" and their last name (for example, "Justice Adams"). In the past, judges at Supreme Court were called "My Lord" or "My Lady" and some lawyers will still call the judges at Supreme Court by these terms.

WHAT TO CALL THE CROWN ATTORNEY

While you may hear lawyers on opposite sides call each other "my friend" or "my learned friend", this is typically meant as a term of respect between two members of the bar – it doesn't mean that they are all friends in real life! However, if you are representing yourself, it is best to simply refer to the Crown Attorney as "the Crown" or "the Crown Attorney".

BOWING TO THE JUDGE

Remember to stand when the judge enters and leaves the courtroom. Typically, people in the court briefly bow to the judge when he or she arrives at the judge's bench, at the same time that the judge bows to them. As well, common practice is to bow before leaving the courtroom if the judge is still sitting on the bench.

WHAT TO WEAR

It is always advisable to dress as well as possible for your court appearances and especially for your trial. In Provincial Court, the lawyers are all typically required to wear dark suits. In Supreme Court, the lawyers who are called to the bar will wear court clothes, which includes a robe. You will not be able to wear a robe, and you do not need to wear one, but as a sign of the respect for the court, it is best to dress in a suit or the closest formal clothing to a suit that you have.

D. Common Criminal Law Terms and Definitions

Accused: The person who has been charged with a criminal offence.

Bail: The process by which a person can be released from custody before their criminal trial takes place, usually by agreeing to follow certain conditions and promising a certain amount of money to the court if they fail to follow the conditions or do not show up again for court.

Crown Attorney or Crown Prosecutor: A lawyer representing the government who is responsible for taking cases from the police and prosecuting criminal offences in court. The Crown Attorney must decide with every case if there is a reasonable prospect of conviction and also if prosecuting the case is in the interest of the public. The Crown Attorney does not represent any individual person, even victims of crime, but instead represents the general public, through the government.

Defence Attorney or Defence Counsel: A lawyer hired or assigned to represent an accused person during the criminal process. The defence attorney may be a private lawyer hired by the accused, or could be a lawyer from Legal Aid assigned to represent the accused, if the accused person qualifies for Legal Aid services.

Finding of Guilt: The decision by the judge or jury that the accused did commit the crime that they were charged with. For a verdict of guilty, the judge or jury must find that the accused committed the alleged crime "beyond a reasonable doubt."

Judge: The person with the authority to hear a case in Court and, in most cases, make a decision regarding the guilt or innocence of the accused; if there is a jury, the jury would make this decision instead. The judge also determines the appropriate sentence for a person found guilty of a crime in every case, even if a jury has decided on the verdict. The judge oversees the pre-trial and trial proceedings, and makes sure the lawyers involved are following all of the proper legal procedures during the whole process.

Jury: A group of 12 members of the public who are picked to listen to the evidence in certain serious criminal cases and to decide if the accused

person is guilty or innocent of the crimes that they have been charged with.

No Contact Order: A court order preventing the accused from seeing or speaking to a certain person. This person is usually the victim involved, but may also include other witnesses or family members of the victim. The No Contact Order is typically included as part of an undertaking or recognizance prior to trial, or as part of a probation order following a finding of guilt.

Offence: Another word for a crime. Criminal offences are for the most part set out in the *Criminal Code of Canada*, as well as in the *Controlled Drugs and Substances Act* and certain other laws.

Plea: The response made by an accused after he or she is charged with an offence in court. For every criminal charge, the accused person will be asked to respond whether they are "guilty" or "not guilty" of the alleged crime.

Plea Bargaining: Negotiations between the Crown and Defence about the charges against the accused, the plea to be entered, and often the sentence that the accused person would receive. Plea bargaining may result in a withdrawal or reduction of certain charges and an agreed-upon sentencing recommendation to the judge, in exchange for a guilty plea by the accused.

Probation: A sentencing option available to the Court once an accused has been found guilty. A probation order means that the accused must obey certain conditions for a certain period. The conditions vary from case to case, but typically involve reporting to a probation officer, keeping the peace and being of good behavior generally, and also may involve staying away from the victim of the crime or the scene of the crime, refraining from the possession of weapons, and refraining from the use and possession of drugs and alcohol.

Restitution: An order that may be made by the Court for the offender to directly pay certain costs associated with a crime to the victim. This often occurs in cases where there has been some damage to the property of the victim, or some other loss that can be exactly calculated.

Sentence: The punishment given to an accused found guilty of an offence.

Sentencing Hearing: The presentation of evidence to the Court to help the judge decide on the sentence to be given to an accused who has been found guilty. Both the Crown and the Defence typically make submissions to the judge about the accused person's situation, their past criminal history, their prospects for rehabilitation, their risk of committing crimes in the future, and other relevant issues and circumstances.

Statement: A report given to the police by a person connected to a criminal act, during the police investigation. Usually the police will take a statement from the victim of a crime, any eyewitnesses to the crime, and potentially the accused person, if they are willing to speak to the police (the accused is not required to talk to the police).

Subpoena: A Court document that requires a witness to appear in Court and provide evidence. The document states exactly when and where the witness will be required to appear before the Court.

Suspect: A person whom the police believe may have committed a crime. Usually a suspect is someone who has not yet been charged with a crime. After a person has been arrested and charged, they are referred to as *the accused*.

Testify: The process by which a witness gives evidence to the Court during a trial or other hearing (such as a bail hearing). In Court, the witness is required to swear or affirm an oath to tell the truth before they testify.

Trial: A hearing where Crown and Defence present evidence about an alleged criminal offence, leading to the judge or jury making a decision as to whether the person is guilty or not guilty of the alleged criminal offence.

Verdict: The decision made by a judge or jury, following a trial, as to whether the person is guilty or not guilty of the alleged criminal offence.

Victim: The person(s) against whom a crime has been committed.

Witness: A person who testifies in Court because they have some information about the case. A witness could be the victim of the crime, the accused person, or even a person who is not directly connected to the case, but observed the alleged criminal act. Or, the witness may be a person who has other relevant information about an alleged crime that would be useful to the Court.

Other Resources

Public Legal Information Association of NL (PLIAN)
Suite 227, 31 Peet Street, St. John's
Phone: 709-722-2643 or Toll-Free 1-888-660-7788

Legal Aid Commission of NL:

St. John's:

Suite 200, 251 Empire Avenue
St. John's, NL A1C 3H9
Phone: 753-7863
Fax: 753-6226

Carbonear:

21 Industrial Crescent
Carbonear, NL A1Y 1B7
Phone: 596-7835 / 786-6003
Fax: 596-1301

Clarenville:

382F Memorial Drive
Clarenville, NL
A5A 1P4
Phone: 466-7138
Fax: 466-7024

Corner Brook:

19 Union Street
Corner Brook, NL
A2H 5P9
Phone: 639-9226
Fax: 639-1546

Gander:

90 Airport Boulevard
Gander, NL
A1V 2M7
Phone: 256-3991
Fax: 256-4336

Grand Falls-Windsor:

7A Queensway Drive,
Grand Falls-Windsor, NL
A2A 2J3
Phone: 489-9081
Fax: 489-1197

Happy Valley-Goose Bay:

19-21 Burnwood Drive
Happy Valley-Goose Bay, NL
A0P 1E0
Phone: 896-5323
Fax: 896-4444

Labrador West:

Wabush Shopping Centre,
Grenfell Drive,
Wabush, NL A0R 1B0
Phone: 282-3425
Fax: 282-3427

Marystown:

4 Industrial Park
Marystown, NL

A0E 2M0
Phone: 279-3068
Fax: 279-4249

Stephenville:

135 Carolina Avenue
Stephenville, NL
A2N 3B4
Phone: 643-5263
Fax: 643-2798