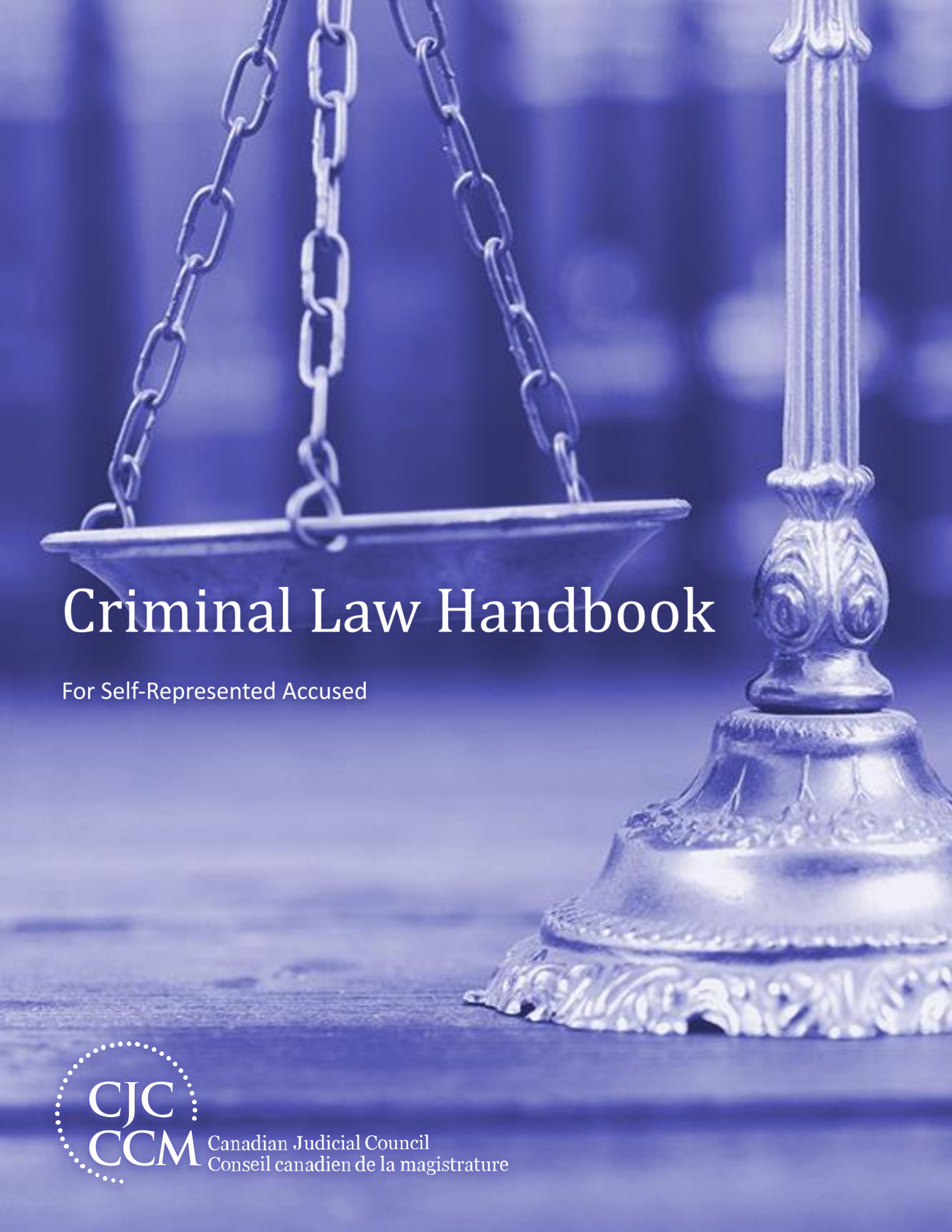


Criminal Law Handbook

For Self-Represented Accused

CJC CCM
Canadian Judicial Council
Conseil canadien de la magistrature

Table of Contents

Criminal Law Handbook for Self-Represented Accused

Note to Readers

This Handbook is intended as a reference for self-represented litigants (SRLs) who are accused of committing a crime and are required to appear in a Canadian criminal court (with emphasis on superior court). While this Handbook cannot anticipate all of the possible situations that may arise, it is intended to provide you, the SRL accused, with a starting point to assist and guide you. [Note: throughout this document, both "you" and "the accused" are used interchangeably, depending on the context.]

This handbook does **not provide legal advice** and must not be used as a substitute for the advice that a lawyer may provide. The handbook provides general information only.

Certain laws and court procedures are different in each province and territory. Information in this handbook may not be applicable to your situation.

Language

Throughout this document, the term "self-represented" (SRL) is used to describe persons who appear in court without representation from a lawyer. The use of this term is not meant to suggest or imply the reasons the individual is without representation, or comment on the wisdom of self-representation.

This handbook tries to describe legal processes in plain language, but we provided definitions for words that are not normally used outside of the legal context in **Section 12: Glossary**.

Hyperlinks

Hyperlinks have been added where referenced material is available online. Clicking or pressing "Ctrl" while clicking on a link in the Handbook will open the target document in your default web browser.

Criminal Process – Broad Outline

In simple terms (expressed here so that the order of the more detailed proceeding to follow in this handbook makes sense, because it will not necessarily speak to everything in chronological order, and is occasionally repetitive so as to be as detailed as possible), in the normal chronology a criminal case usually proceeds in the following order:

1. Police investigation – if you are aware of such an investigation that may apply to you, you may wish to seek legal advice;

2. You are arrested by the police or the police serve (deliver to you) notice that you have been charged with an offence – usually in a form called a summons, promise to appear or an appearance notice, advising you to appear in Provincial / Territorial Court;

3. If you receive such a notice, it will direct you to appear in Provincial / Territorial Court on a certain date and time and you will keep your liberty until then. Alternatively, under the provisions of the *Criminal Code*, you may be arrested and put in custody to appear on the specified date – in the process the police will read to you details of certain rights to which you are entitled, including right to a lawyer (it is advisable that you take this opportunity to seek a lawyer's advice);

4. If you are arrested and put into custody to appear on the specified date, the Crown must bring a bail application (sometimes called "judicial interim release") in Provincial / Territorial Court within 24 hours of your arrest (in limited circumstances, such as murder, the bail application must be made to the superior court). In the process you should be informed of the offences with which you are charged and be advised of certain rights to which you are entitled, including the right to retain and instruct a lawyer (it is advisable that you take this opportunity to seek the lawyer's advice before the bail application is heard). You should arrange to have your lawyer present for your bail hearing, if you have one, or, if not, ask for the free assistance of duty counsel. If bail is granted (usually there are conditions), you will be released and you must attend court as set out in the Release Order;

5. If bail is denied, you will remain in custody, often called "remand", until your trial. However, you do have the right to seek a review (appeal) of your denial for bail in the superior court in your province; you must fill out a bail review application, arrange to have it served on the Crown and file it with the Court;

6. Once you are charged with an offence, the Crown has a duty to provide you with "Disclosure". This means that the Crown must provide to you copies of all relevant information pertaining to your case. There are some limitations on what you may receive and what needs to be provided to you;

7. Generally speaking, offences are classified in three categories. Summary Conviction Offences, Indictable Offences and Hybrid Offences (where the Crown Prosecutor formally decides whether they wish to engage the Summary Conviction Process or the Indictable Process). If the Crown elects the Summary Conviction Process, the case

proceeds using the procedures relating to Summary Conviction matters. If the Crown elects the Indictable Process, the case will proceed using the Indictable Process. If the Crown elects the Summary Conviction Process (if a Hybrid offence) or if the offence is categorized as a Summary Conviction Offence, the charge will usually be heard in the provincial court. If the Crown elects the Indictable Process (if a Hybrid offence) or if the offence is categorized as an Indictable offence, the accused usually has the option to elect whether to be tried by a provincial court judge, a superior court judge sitting without a jury, or a superior court judge sitting with a jury. There are many exceptions to this process;

8. If the Crown elects to have the charges determined in superior court (Indictable Procedure), there: (a) may be a Preliminary Inquiry (for cases with maximum penalty of 14 or more years imprisonment – and in some other cases – however, there are currently steps being considered / taken by Parliament to limit Preliminary Inquiries – so check the *Criminal Code*) in provincial / territorial court, to see if there is sufficient evidence to proceed in superior court, and at the end of that process, if there is found to be such evidence, or you don't contest it, you will be remanded to superior court for trial; or (b) where there is no right to a Preliminary Inquiry, you will be, similarly, remanded to superior court for trial. In either case an "Indictment" will be filed and a date set for you to appear in superior court (the Crown may, at any time, handle the matter by a "Direct Indictment" in which case the matter thereafter goes directly to superior court);

9. In superior court, you will attend at an Arraignment on the date set, where there will be a number of steps: (a) you may enter a plea of Guilty (in which circumstances, the matter will proceed to Sentencing), or Not Guilty (if you don't enter a plea, it will be presumed to be "Not Guilty"), after which the case will proceed to trial; (b) have the right (in most, but not all cases) to elect to be tried by a judge alone or a judge and jury (if you have the right to so elect, but don't do so, election to judge and jury will be presumed); (c) dates will be set for trial, a pre-trial conference (in certain cases – usually for a trial of more than 3 - 5 days), and for jury selection (if a judge and jury trial) – all of this may take more than one appearance in Arraignment.

10. Pending the trial date any scheduled pre-trial conference will take place (often on one or more occasion) and certain pre-trial motions or applications (to determine the admissibility of certain evidence such as the voluntariness of statements made by the accused, or Charter breaches) will take place as necessary, before a case management judge appointed by the Chief Justice or designate;

11. The trial proceeds after which the judge or jury will find you guilty or not guilty – if not guilty, you are free to go (if there are no other charges proceeding against you), whereas if you are found guilty, you will proceed to Sentencing;

12. If you are found guilty, Sentencing will take place on that day or a subsequent day(s);

13. If you do not accept the finding of guilt and / or sentence, you have certain rights of appeal.

1. Self-Represented Accused's Rights, Responsibilities & Supports

1.1 Statement of Principles on SRLs

In 2006, the Canadian Judicial Council issued a statement of principles on self-represented persons to foster access to justice and equal treatment under the law. Read the full statement of principles here. The following are the highlights of the statement.

To promote rights of access to justice

"Access to justice" is usually a term used in civil or family law, where a person takes steps to seek or protect a legal remedy or right. However, in criminal law, an accused is compelled by the Crown to come to court to answer a charge of alleged wrong doing. With this being recognized, there is a broader aspect of access to justice, which is used here in a criminal context. Thus, in this context, access to justice for those who represent themselves requires that all aspects of the court process be open, transparent, clearly defined, fair, simple, convenient and accommodating.

The court process in criminal cases should, to the extent possible, be supplemented by processes including case management (see s. 551.1 of the *Criminal Code*), and pre-trial conferences.

Information, assistance and self-help support for self-represented persons should be made available through the normal means of information, including pamphlets, telephone and courthouse inquiries, legal clinics and internet searches.

All self-represented parties should be:

- informed of the potential consequences and responsibilities of proceeding without a lawyer;
- informed of or referred to available sources of representation, including those available from Legal Aid, pro bono assistance and community and other services; and
- informed of or referred to other appropriate sources of information, education, advice and assistance.

To promote equal justice

Judges and court administrators do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons. Generally, self-represented persons should not be denied rights on the basis of a minor or easily rectified deficiency in their

case. In criminal law, however, where the *Charter of Rights and Freedoms (Charter)* often has a greater role, the rights of self-represented accused are substantive, quite complex, often changing as cases are decided, and beyond the scope of this Criminal Handbook – thus, legal advice should be sought.

Where appropriate, judges engage, as early in the court process as possible, in such pre-trial conference activities as are required to protect the rights and interests of self-represented accused.

Depending on the circumstances and nature of the case, the presiding judge may:

- explain the process;
- inquire whether the accused understands the process and the procedure;
- make referrals to agencies able to assist the accused in the preparation of the case;
- provide information about the law and evidentiary requirements; and
- modify the traditional order of taking evidence.

Responsibilities of the participants in the justice system – both justices and court administrators

Judges and court administrators try to meet the needs of self-represented persons for information, referral, simplicity and assistance.

Forms, rules and procedures have been developed (see the *Criminal Code* and formal written rules in each province or territory) which are intended to be understandable and easily accessed by self-represented persons.

To the extent possible, judges and court administrators have developed / made available packages for self-represented persons and standardized court forms (check at the criminal registry in the courthouse where your proceeding is taking place).

Judges and court administrators have an obligation to assist a self-represented accused through the criminal trial process so as to help ensure that the trial is fair. In response, a self-represented accused has an obligation not to be disrespectful, frivolous, unreasonable, vexatious, or abusive.

1.2 Right of Accused to Represent Themself

You have the right to represent yourself, and to appear in court without a lawyer. But, it is highly advisable to get a lawyer if able to do so. Lawyers provide experience and legal expertise that help to reduce the stress and time of a legal case. They can also provide valuable advice

that can help defend or fairly resolve the case. In criminal cases, it is important to get good legal advice because the consequences of being found guilty may be very serious. A lawyer may be better able to help resolve a case in a way that may prevent receiving a criminal record or reduce jail-time or fines.

1.3 Accused Responsibilities

The Crown must prove the case against you, as an accused, beyond a reasonable doubt. Therefore, you need not prove anything, and are entitled to do nothing in your own defence. Nevertheless, you may wish, in the appropriate way and time, to raise questions that cause a reasonable doubt. In this context if you wish to raise a reasonable doubt, you may take any reasonable steps to do so. The information in this Handbook is intended to assist in doing so.

To the extent that you wish to take steps raise a reasonable doubt, learning about the court process, the rules and the law that relates to the case against you, may assist you. The fact that you do not have a lawyer will not excuse you from having to follow court rules and processes.

You have the right to be in the courtroom throughout the hearing or trial. However, that right is not absolute: if you disrupt the hearing, the judge can require you to leave the courtroom, and may also find you in contempt of court, which means not following the judge's orders. The punishment for contempt of court may include a fine or jail.

1.4 Role of the Judge

Judges ensure that the case is dealt with fairly and impartially, and also ensure that the law of evidence and procedures of the court are followed. Judges consider the offence(s) charged, hear from witnesses, assess the credibility of witnesses, consider arguments, and make decisions based on the law and the facts. Where there is no jury, a judge will decide whether you will be found guilty beyond a reasonable doubt or not at the end of the trial.

If there is a jury, the judge will not decide whether you will be found guilty or not guilty, but will instruct the jury on the law so they can make an appropriate decision as to whether or not you will be found guilty beyond a reasonable doubt.

A judge cannot provide you with legal advice or tell you how to protect your rights or how to run your case. They must remain neutral and unbiased. A judge will, however, provide you with information about the process and help explain and clarify what is happening. If you do not understand what is happening or what you are being asked to do, you should ask the judge to explain.

Do not contact the judge outside of the courtroom. If you need to send any letters or

information when you are not in a hearing, send it through the courthouse staff. Make sure to also send to Crown counsel a copy of everything you are sending to the court.

1.5 Legal Assistance

Free or Low-Cost Lawyers

If you do not have a lawyer because you cannot pay for one, you can try applying for a legal aid lawyer. There are certain criteria such as income level or type of case that may allow you to qualify for free legal aid. Check with your local legal aid provider to see if you qualify. If you do not qualify for legal aid, check to see what other free or low-cost legal services are provided in your area. There are often legal clinics and non-profit organizations that can provide some legal advice. See Resources at the end of this Handbook.

If you cannot get a lawyer and have been denied Legal Aid

There is no general right to a court-appointed lawyer in Canada. However, in certain circumstances (lack of financial ability, seriousness of case, and other factors), you may make an application to a judge (a "Rowbotham Application") to halt (stay) the case, unless the Government funds a lawyer for you (through Legal Aid).

Additionally, the judge, in certain circumstances, may appoint a lawyer to act as a friend of the court (*amicus curiae*) to ensure a fair trial.

To qualify you must show you:

1. need a lawyer but cannot afford one;
2. have been denied legal aid, and exhausted all avenues of appeal of the legal aid denial;
3. face a serious criminal charge(s); and
4. face a complex criminal proceeding.

How to file a Rowbotham Application

First you need to apply to the court in writing to ask for an adjournment of your case while your Rowbotham Application is being considered, by submitting the following two documents to the courthouse staff:

1. Affidavit: a written statement, sworn under oath or affirmed, explaining your situation and background that supports your application; and

2. Notice of Application and Constitutional Issue: a document that tells the Federal Government (federal charges), and / or provincial or territorial government (provincial or territorial charges), and local Crown office that you are asking for your case to be temporarily halted (stayed) until you have a government-funded lawyer to represent you.

You must serve (deliver) the documents to the following:

- The local Crown (government lawyer).
- The Attorney General of Canada (if a federal charge).
- The Attorney General of your province / territory (if not a federal charge).

If you do not know where to send these documents, you may ask the courthouse staff for the appropriate addresses. The government will send you a letter explaining what the next steps are for you to follow.

Legal Advice

If you cannot afford a lawyer to represent you throughout your trial, and cannot get legal aid or a Rowbotham Order, you might still be able to get legal advice. A lawyer might provide limited services to a client. Lawyers call these services "unbundled" or "limited scope" legal services. If you think you can handle some parts of your case, you can pay a lawyer to do the parts that you cannot do. It is an arrangement where you pay only for what you want. It is a mid-way option between full legal representation and no legal representation.

Here are some examples where you might pay a lawyer for limited or unbundled services:

- You pay the lawyer to research the law. The lawyer can provide you with a summary of case law that can help you.
- Your lawyer helps you prepare the documents that are necessary for the court hearing, and gives you advice on how to make your own application in court.
- You prepare your own court documents and hire the lawyer to represent you in a court hearing.

An agreement with a lawyer for legal work is called a “retainer”. A written retainer letter sets out the work that the lawyer has agreed to do, and what the lawyer will not do. The retainer agreement sets out the scope of your lawyer’s involvement in the file. It is very important that both you and your lawyer understand and agree on which tasks you have asked your lawyer to do. Your lawyer will want to be sure that you understand the work that you will be doing on your own and that you are capable of handling it. Your lawyer will prepare the retainer letter.

Your case may be complicated. If you want to go ahead without a lawyer, you may do so. However, having the assistance of a lawyer to assist with complex legal and factual issues is preferable. Even if you do not retain a lawyer it is advisable to speak to a lawyer to get some legal advice. Legal advice will help you better represent yourself. So, make sure to use all possible methods available to you of getting legal advice.

Preparing to meet with a lawyer

Your first meeting with a lawyer is an important step in dealing with your case. In addition to giving you a chance to meet each other, you can also learn a lot about your criminal case, and what the result is likely to be.

What a lawyer will want to know:

- **Basic information**: The lawyer will want to know your situation and the reason that you decided to consult them.
- **All relevant information**: It is very important to tell the lawyer everything that they want to know that is related to your case, not just the information that supports your side of the story. It is sometimes difficult to know what is relevant and what is not, but the lawyer will help you sort this out.
- **The truth**: It is important to tell the lawyer the truth so they can advise you properly. Remember what you say to the lawyer remains confidential (there are some very narrow exceptions to this rule such as if you tell the lawyer about harm you are planning to do to someone). A lawyer cannot act for you if you are planning to testify and not tell the truth.
- **Documents**: You must also provide all relevant documents to the lawyer. Take a file of documents to your appointment containing anything that relates to the offence with which you are charged, including all the disclosure provided by Crown Counsel.

Documents to take to your first meeting with a lawyer:

- A written summary of the facts and the criminal charge(s) you are facing.
- Any disclosure you have received from the Crown.
- Important documents, such as letters, invoices, receipts, photographs, court documents, agreements, diagrams, maps and contracts.
- Personal contact information, including your personal and business addresses, telephone numbers, email addresses.
- Contact information for witnesses.

Review the ***Questions to Ask a Lawyer Worksheet*** so you get a better idea of what to ask the

lawyer.

1.6 Questions to Ask a Lawyer Worksheet

Some of the following questions may not apply to your situation. Read the worksheet before visiting a lawyer and cross off the questions you do not need to ask.

- What experience do you (the lawyer) have with similar cases?
- How would you handle my case?
- How does the law affect my situation?
- What are my options?
- Is there a maximum or minimum sentence for the charges?
- What happens if I plead guilty? How will it affect my automobile driving licence or insurance (if a driving offence), future employment, my immigration status, or my ability to travel outside of Canada?
- How do I obtain disclosure from Crown?
- Do I need statements from witnesses?
- How strong is my case?
- Can you explain the charges to me?
- How long will it take before my case goes to trial?
- What sentence is the court likely to order if I am found guilty?
- If I am successful at trial, what happens?
- How much will it cost to handle my case?
- When will I receive bills from you, and when am I expected to pay?
- How can I reduce the cost? Can I handle some of the legal work myself? What is your hourly rate?
- Does the lawyer need a retainer fee right away?
- How is it best to contact the lawyer, and how soon can I expect a reply?
- What do you expect from me and what can I expect from you?

1.7 Appearing in Court without a Lawyer

When you appear in court without a lawyer, the judge will likely ask you if you have obtained a lawyer or if you wish to. If you would like to obtain a lawyer but have not been able to yet, you may ask the judge to grant an adjournment to obtain a lawyer. Explain to the judge:

- that you wish to hire a lawyer;
- the reason why you have not been able to get a lawyer yet; and
- that you wish to request an adjournment of your case until you have a lawyer (this must be a reasonable amount of time; you cannot use this as a tactic to delay the case).

Understand that if you tell the judge you wish to go ahead without legal representation, it may be difficult to change your mind after the trial has started. If you choose to represent yourself you give up the right to the effective assistance of counsel and cannot appeal the resulting decision on the basis that you did not have representation.

2. First Steps in your Criminal Case

2.1 The Charge

If you have been charged with a criminal offence, you will almost certainly need to go to court. This can often be a difficult and stressful time. If you choose to represent yourself, it is important to access any supports available to help you deal with the emotions, and to understand the court process and prepare for your case. See **Section 13: Resources** for a list of available services in your region.

You should have received a document (such as a summons, or appearance notice or an "Information") from the police or court informing you of the crime with which you are being charged and the date to appear in court for your first appearance. If you were arrested, you might be held in custody until you are brought before a judge and may seek bail. If you are granted bail, you will receive a document (an undertaking, or recognizance, or Release Order) informing you of any conditions you must follow while your charges are pending, and the date to appear in court for your next appearance. If you are not in custody and fail to attend court, a warrant for your arrest may be issued, so it is important that you show up for your first court appearance. If you do not, you are liable to be arrested and held in custody until your trial proceeds. It is far more difficult to obtain your release if you have failed to attend court or breached a condition of your release.

If you are found guilty or plead guilty, you will, except in certain circumstances, have a criminal record and face consequences such as jail time, fines or community service. If you are not a Canadian citizen, this may also affect your immigration status. A criminal record may affect your future work, and your ability to travel outside of Canada. Additionally, if a driving offence, in (or outside) the court process, there may be a licence suspension, demerit points and insurance fee increases. There may be other consequences. Thus, in criminal cases, it is important to get good legal advice because the consequences of being found guilty could be very serious – a lawyer may be better able to help resolve a case in a way that may prevent receiving a criminal record or reduce jail-time or fines or reduce other potential consequences.

When you are accused on an offence, you are presumed to be innocent until proven guilty. It is the job of the Crown (lawyers acting on behalf of the government), to persuade a judge or jury that you are guilty beyond a reasonable doubt. You are also given an opportunity – but are not required - to present a defence. However, you do not need to prove that you are not guilty – the obligation of establishing guilt beyond a reasonable doubt in only on the Crown. If the Crown has not proven that you are guilty beyond a reasonable doubt, you will be found not

guilty. If the Crown proves your guilt beyond a reasonable doubt, you will be found guilty. The judge or jury will make the decision about your guilt.

Type of offence

If you want to represent yourself, it is very important first to understand the charges against you. For a detailed look at how to understand the elements of the charge see Section 4.1. For now, it is important to know that you may be charged with an indictable offence, summary conviction offence or hybrid offence (where the Crown has a right to proceed as an indictable or summary conviction offence – see Glossary).

2.2 First Appearance

Your first appearance in court is often a brief procedural hearing. The purpose of the first appearance is to have you respond to the charges against you, and, possibly, to get more information (disclosure) about the charges against you. You will need to go to a specific courtroom or appearance room in the courthouse before a judge or judicial case manager. The Crown lawyer will also be present. You will likely receive documents called *particulars* or *disclosure* from the Crown. Disclosure (particulars) lists the charges against you, and what the Crown will rely on to prove you are guilty. If you have not received this information you should ask the Crown for it.

Questions that might be asked of you during your 1st appearance:

1. Do you understand the charges against you?
2. Are you planning on getting a lawyer?
3. Are you ready to make a plea (guilty or not guilty) or do you need more time?
4. Have you been given disclosure from the Crown?

At your first appearance the charges against you may be read to you. If you do not understand the charge you can ask the judge to explain it.

Steps to follow on your first appearance

If you are not in custody, go to the courtroom listed on your summons, appearance notice or Information – if there is not one listed, ask the courthouse staff for help. If you are in custody, you will be taken to the courtroom.

If you are not in custody, let the clerk or sheriff know you have arrived (some courts have a sign-in procedure) and wait for your name to be called.

When your name is called you can walk up to the front of the court.

If you need an interpreter, let the court know.

Answer the questions asked of you. If you have already decided that you want to plead guilty you can do so now, but you may want to / perhaps should get legal advice before you do that. If you want to plead not guilty, you will have to set a preliminary inquiry date (where available) or trial date, almost always at a later time. If you need more time to decide, receive or review disclosure, set a preliminary inquiry or trial date, or to get advice, ask for an adjournment.

If the Crown hasn't provided Disclosure (which is the information related to your case) ask the Court to direct the Crown to do so.

2.3 Disclosure

It is a fundamental element of the fair and proper operation of the Canadian criminal justice system that if you are accused of a crime, you have the right to the disclosure of all relevant information in the possession or control of the Crown, with the exception of privileged information. "All relevant information", in this context, generally means that there is a reasonable possibility that the information will be useful to you as the accused in answering the charges and making a defence. Usually, in a criminal case, disclosure will include at least the following:

- the information / indictment: the document that states the charges made against you;
- the police narrative: a summary of what the police say happened;
- statements of all witnesses who have been interviewed by the police;
- statements or transcripts / video or statements you made to the police, if any;
- police notes;
- photos and / or video, if any; and
- any other materials relevant to the case.

Sometimes disclosure will not be available at your first appearance. In that situation, the matter will need to be adjourned (rescheduled to a later date) in order for disclosure to be provided to you. Sometimes partial disclosure will be made at the first appearance, and there will be subsequent disclosure made as it becomes available. You have a right to request further disclosure of specific things if you believe the police are in possession of additional relevant materials, or if further relevant materials could be available to the police through investigation. The Crown lawyer in court may tell you how you can collect the rest of your disclosure. You can also call or attend the Crown office to request or pick up further disclosure.

2.4 Pleas

You will be asked to plead not guilty or guilty. You should consider carefully how you will plead. Only make a plea after you understand all the consequences of your plea. If you have not had a

chance to review your disclosure and have not had any legal advice a judge will be unlikely to accept a guilty plea from you. Before accepting a guilty plea, the judge will want to know that you have reviewed the disclosure, had an opportunity to receive legal advice, and are aware of the Crown's position about what sentence the Crown seeks.

Remember that it is always possible to change your plea from not guilty to guilty. However, once you plead guilty, you may not be able to change your plea to not guilty. If you have entered a guilty plea but have not been sentenced, you can ask the judge to let you withdraw your guilty plea. However, your request may be refused. After sentencing, the only way to change your guilty plea is through an appeal, and the requirements for having a guilty plea set aside are very strict.

You do not need to give any explanation of why you are pleading a certain way. You have the right to plead not guilty. If you plead not guilty, there will be a trial. Before you decide to plead guilty, be sure to know what the punishment might be. You should also consider other consequences such as immigration status, loss of a license for motor vehicle offences, insurance implications, future employment and travel outside of Canada. Additionally, some crimes have a minimum sentence. For example, robbery with a firearm has a minimum sentence of 4 years in prison, this means if you plead guilty to robbery with a firearm, you will be sentenced to 4 years or more regardless of your circumstances.

All offences have a maximum sentence (except the offence of contempt of court). You should find out what the maximum sentence is for the offence(s) with which you are charged, because the maximum sentence indicates how serious the offence is considered to be, relative to other types of offences.

Some offences have a minimum sentence, you can look it up in the *Criminal Code of Canada* (which is available online and at court libraries) or speak to a lawyer. You can also ask the judge about the sentencing maximums or any minimums.

After you have been given your disclosure and had time to review it, you will be asked if you have decided how you want to plead. If you are not ready to make a plea at this time, tell the court why you need more time before you plead. If you refuse to plead guilty or not guilty, the court will decide that you have pled not guilty and there will be a trial.

Pleading guilty

If you plead guilty, you admit that you committed the offence described in the charge against you. You also give up your right to a trial. The court will record that you plead guilty, which may

mean that you will have a criminal record. Having a criminal record can affect some of your rights and your future. If you are not a Canadian citizen, you may be deported from Canada.

Before you plead guilty make sure:

1. You are doing so voluntarily and not as a result of a threat or promise.
2. You understand that you are admitting to all the elements (essential parts) of the offence – see Section 4.1.
3. You understand the consequences:
    - Know what sentence the Crown is asking for if you plead guilty.
    - Know what the maximum sentence is, and find out if there is a minimum sentence.
    - Understand the impact a criminal record may have (e.g. travel limitations, work restrictions, immigration, etc.).
4. Get legal advice, if possible. Even if you are unable to have a lawyer represent you, having one meeting with a lawyer to get their advice can significantly help you with your case. To learn more about how to get legal advice, see **Section 1.5 Legal Assistance**.
5. You understand that the court is not bound by any agreement made between you and the Crown about what your sentence should be (e.g. a joint submission).

If you plead guilty, you will need to go to a sentencing hearing. Your sentencing hearing might be the same day as your guilty plea or set for a different day. This is where the judge will decide about what sentence (e.g. jail time, or fine, or other penalties / restrictions) you will be given. At the sentencing hearing you can present your argument, highlighting any circumstances favourable to you that should be considered by the judge. To learn more about sentencing hearings and how to prepare for them, see Section 10. If you are not ready to proceed with your presentation, you should ask the court to adjourn the sentencing hearing to a later date so that you can prepare.

Pleading not guilty

If you plead not guilty, you will have a trial. At the trial the Crown will need to prove the charge(s) against you, beyond a reasonable doubt. You will also have an opportunity to present a defence (if you wish) or call into question the Crown case – i.e. raise issues that may create a reasonable doubt. However, before you have a trial you will likely need to attend an arraignment / scheduling hearing to determine the particulars of the process leading up to and at your trial, which will be dependent on the processes in your jurisdiction.

2.5 Arraignment / Scheduling

The arraignment / scheduling hearing is a hearing at court before either a judge or judicial case manager. Here are some common issues that might be dealt with at the arraignment hearing:

- If there is any remaining disclosure needed from the Crown.
- How you are going to plead (if you have not done so yet).
- Whether you wish to have the trial in French or English.
- Whether an interpreter for another language will be needed in the trial.
- The number of witnesses the Crown expects to call and whether you anticipate calling any defence witnesses (generally, you do not have to tell the Crown about your witnesses, but there are exceptions such as if your witness is an expert or will support you alibi).
- The time estimate of the Crown's and Defence case.
- Setting a date for your trial and often a pre-trial conference date.

Sometimes these issues are dealt with at a pre-trial conference instead of at an arraignment hearing. For more information on pre-trial conferences, see **Section 9.1 Pre-Trial**.

Election

At your arraignment you may also have the opportunity to make an election. Generally, only indictable offences, or hybrid offences (here the Crown has an election on how to proceed) that are moving forward as indictable offences, have election options. Summary offences (and some "absolute jurisdiction" cases) will be heard in Provincial / Territorial court as a judge alone (no jury) trials. An election gives you the ability to choose the type of trial you wish to have.

- Provincial / Territorial Court (judge alone, no jury)
- Superior trial court judge alone without a jury (may not be an option in all jurisdictions);
- Superior trial court with a jury.

For these offences, you will need to decide at which court you will have your trial. You will also need to decide if you want a jury (where available) or judge (where available) to decide your case. To learn more about jury trials see **Section 8 Jury**.

2.6 Alternative Measures

Sometimes cases are dealt with through alternative measures (also known as "diversion"). Instead of going to trial, you report to a probation office and follow a program set out for you. If

you complete the program, you will not face criminal penalties or get a criminal record. Most often, after completing alternative measures, the Crown will enter a stay of proceedings and not continue the criminal prosecution against you.

You may be eligible for alternative measures if:

- the charge against you is minor (especially if it is your first offence);
- you admit guilt, take responsibility for your actions and express remorse; and
- you are aware of your rights and willingly agree to participate in the alternative measures.

You are not eligible for alternative measures if you want to plead not guilty. If the Crown agrees to recommend you for alternative measures and the probation office accepts you, you will need to successfully carry out the conditions of an alternative measures agreement. This may include community service work, writing an essay or letter of apology, or counselling. You must go to all your court appearances until you are told you no longer have to come back. If you do not successfully finish your alternative measures program, the Crown can restart the case against you. To apply for alternative measures, you may need to write a letter of application for diversion. Your letter should include the following:

- Write that the letter is *without prejudice* (this means they cannot use it in court against you)
- Describe the offence
- Admit to all the essential elements (see **Section 4.1**) of the charge
- Your background (such as your age, education, family situation)
- The effect a criminal record would have on you
- Your feelings of remorse for your actions

Fill out the ***Alternative Measure Worksheet***.

2.7 Alternative Measures (Diversion) Worksheet

You may wish to share this worksheet with the Crown when applying for alternative measures.

Facts ***WITHOUT PREJUDICE***

Name_____ Today's Date_____

Court file #_____ Charge_____

Next Court Date_____ Court_____

Offence Date_____ Offence Location_____

Address (where mail can be sent)

_____

_____

Phone number (where you can get calls) _____

Email address _____

Personal history

Birthplace _____ Birthdate_____

Immigration Status _____ Indigenous ____Yes ____No

First language _____ Citizenship _____

Marital status _____ Years together _____

Employed (where, for how long) _____

Will a criminal record affect your job? _____Yes _____No

How? _____

_____

# of people you support_____ Education completed _____

Associations and / or interests (list) _____

Health

History of substance abuse? ___Yes___No

Treatment history_____

_____

Date started _____ Date Completed _____

Health issues / disabilities _____

_____

In counseling: ___Yes ___No Currently under a doctor's care: ___Yes ___No

Currently on medication (list) _____

_____

Other information

Why did you commit the offence? _____

_____

Do you regret your actions? _____

_____

What was your mental / physical state when the offence was committed? _____

_____

List anything else about what happened that would help determine whether you should be considered for diversion.

_____

_____

3. Bail

3.1 Overview

If you are arrested and charged with an offence, you could be held in custody or you could be released on bail ("judicial interim release") until your trial. A bail hearing is where a judge decides whether you should be released or held in custody until your trial, and if you are released, what types of conditions you should follow in the meantime.

You have the right to have a duty counsel lawyer (lawyers available at the courthouse or on-line who help accused persons for free) to help you with your bail hearing. You may apply to legal aid if you cannot pay for a lawyer yourself. You do not have to have a lawyer, but you may be at a disadvantage at your bail hearing if you do not have assistance from a lawyer. A lawyer can negotiate with Crown, find more details about the allegations, and help you prepare and put in place a release plan (conditions that may make custody unnecessary) to present to the Court. You should talk to a lawyer to get advice on how to best present your bail case.

Right to disclosure

As discussed above, the Crown is required to give you copies of the information, called disclosure, they have about your case and the evidence that it intends to call at your trial. Although the Crown must do this quickly, it is unlikely that it will be able to make full disclosure before your bail hearing.

The Crown should at least give you a copy of the charges against you, the facts alleged relating to the charges, the names of some of the important witnesses it will probably call at trial. Sometimes you will be given additional disclosure, such as a description of what those witnesses will probably say. If the Crown have not done so, you may ask that they do so before your bail hearing, although that may delay your potential release.

3.2 Bail Hearing

Once you have been arrested and charged, you should be brought in front of a judge or justice of the peace for a bail hearing as soon as possible, usually within 24 hours of your arrest. If your bail hearing will be relatively straightforward you usually have the opportunity to run the hearing right away, although you or the Crown counsel may apply to adjourn the bail hearing if either one of you needs more time to prepare – you should normally seek legal counsel (including duty counsel) before you proceed with bail. However, if your bail hearing will be more complicated, the court will set a longer hearing, likely at a later date.

At your bail hearing, the judge is not deciding whether you are guilty or not guilty. The hearing is only to decide if you should stay in custody or be released until your trial.

Note: If you have been charged with murder or other serious offences listed in section 469 of the *Criminal Code*, there are different procedures in place for obtaining bail and you should consult a lawyer. You will have to file an application for bail with one or more affidavits describing the facts you want the Court to consider in deciding where you should be released or held in custody. The Court will set a date for the bail hearing.

Grounds for Detention

You are still entitled to the presumption of innocence at this point. As a result, with some exceptions, it is up to the Crown to show why you should be detained or kept in jail until your trial or sentencing. There are three grounds (i.e. reasons) the Crown can argue you should be detained, and they must state which grounds apply in your case. The three grounds are:

- **Primary ground: To ensure you attend court when required to do so**. The Court may consider your criminal record, if you have any history of failing to attend court, and your connections with the community. If the Court is not confident you will attend court, you may be detained.
- **Secondary ground: To ensure the protection of the public**. If the crime you are accused of committing is violent, you have a long criminal record, or you have a history of failing to comply with court orders, the Court may find that you are a danger to the public and may not release you.
- **Tertiary ground: To maintain confidence in the administration of justice**. This is usually only used for very serious offences. The Court will consider the strength of the Crown's case, the seriousness of the offence, the circumstances, and the potential jail sentence.

Reverse Onus

In some circumstances, the onus is shifted to you to show why you should be released. These circumstances include if you breached a condition while out on bail, or if you are accused of committing an offence involving trafficking hard drugs, as well as certain offences involving firearms, among others. For a full list of reverse onus offences, see section 515(6) of the *Criminal Code of Canada*.

Evidence

Most bail hearings are conducted with oral (spoken not written) submissions from the Crown, your lawyer / duty counsel (if you have one), and you. Hearsay (see **Section 7.2 Hearsay**) may be allowed (there may be restrictions) at bail hearings, and in many provinces, the Crown may

simply narrate (give / tell) an outline of the charges against you and the evidence it has to prove your guilt. If you have a criminal record, the Crown will likely present that to the court. If the Crown does call witnesses (not usual), you will have a right to cross-examine them.

You can also call witnesses to give evidence at your bail hearing. Accused may call potential sureties (family members or friends who the court appoints to supervise you while you are on bail) as witnesses at bail hearings. You may also decide to testify but be aware that if you testify and you talk about the events that led to the charges against you, the Crown is then allowed to ask you about these events. If you do not testify about the facts of your case, the Crown cannot cross-examine you about the events that led to your charges.

At bail hearings, the Court typically is interested in understanding your personal circumstances. For that reason, evidence typically presented by the accused includes:

- where you will be living;
- who you will be living with;
- what you will be doing if you are released from custody (work, school, etc.);
- if there is anyone willing to vouch (be a surety) you;
- your willingness to obey conditions of your release; and
- if you or another person can deposit money with the court as a guarantee of you accepting the conditions of your release.

After all the evidence and submissions have been presented, you and the Crown will each explain to the judge why you should or should not be released. The judge will decide if you should be released without conditions, released with conditions, or detained / denied bail.

Release Plan and Conditions

Pay attention to what the Crown argues are the reasons for you to be detained – the Crown, normally, has the onus to show why you should be detained. You will have the opportunity to show why the Crown's concerns are unfounded or can be relieved with certain conditions to your release.

The conditions the Court may impose upon release, if any, depend on your personal circumstances as well as those of the alleged offence. If the Crown has very serious concerns about your release, be prepared to provide a strong release plan with conditions that will address their concerns. The following are common conditions the Court may impose and you could suggest as part of a release plan:

- Report to a bail supervisor.

- Attend counselling.
- Reside at a certain address.
- Release only to a recovery home.
- No contact with certain individuals.
- Restrictions to specific geographic areas.
- No weapons - sometimes mandatory depending on what you are charged with.
- Cash deposit and / or surety to guarantee you will come to court when required, may be required if you live more than 200km from court.
- Other conditions the Court deems reasonable.

If you have any money to deposit, you should tell the court how much you have. Cash deposits should be tailored to your financial situation.

Sometimes it is worth delaying your bail hearing to get a good release plan in place (and the advice of a lawyer) as it may increase the likelihood of your release.

It is very important that you follow the conditions of your bail. If you fail to follow your conditions you might be arrested again and your chances of being released from custody will be significantly reduced. If you find yourself in a position where you might not be able to follow your conditions, you should talk to a lawyer, your bail supervisor, or Crown, about having your conditions changed. This is also important because breaching your conditions is an offence and could result in more charges. If you breach your conditions, the Court may decide that you are unable to follow court orders and detain you.

Revoking Bail

If you are accused of breaching the conditions of your release or of committing a new offence while out on bail, a judge may issue a warrant for your arrest and the Crown may apply to revoke your bail. In that case, you will be in a reverse onus position and will need to show the judge why you should be released again. The judge may revoke your current bail and either detain you, release you on stricter conditions, or not change anything at all.

3.3 Bail Review

If you have been denied bail or if you want to change your bail conditions, you can apply (on notice to the Crown) to have a bail review hearing in the superior court.

Reopening Bail on Consent

Reopening your bail means you will have another chance in the court that granted (or denied) bail, to change your conditions of release or argue for your release, on a changed circumstance, without a formal review. This will only happen if the Crown consents to reopen your bail. Otherwise, you must apply for a bail review.

Bail Review

You may apply at any time, after denial of bail, and every 30 days thereafter, before trial for a judge of a superior court to review your bail order. Although you can apply every 30 days, realistically, unless something material has changed, it is unlikely that the court is going to reconsider the terms of a Release Order. To apply for a bail review you usually need to file and serve on the Crown:

- a notice of application;
- supporting affidavits; and
- the transcript of the original bail hearing.

The review will be based on the transcript and exhibits of the original hearing and the original judge's decision. You are usually responsible for obtaining and paying for the transcript of the original hearing (which can be expensive). You and the Crown may also present further evidence. This additional evidence can be given by affidavits or by calling witnesses.

If the review was requested by you, you must convince the judge that at least one of two things happened:

1. the original judge made a mistake in how they interpreted or applied the law to your case, and that this error affected how the judge made their decision; or,
2. there has been a material change in circumstances since your original bail hearing, and that if the decision was made today, the decision would be different.

You and the Crown will have the opportunity to show the judge why you should be held in or released from custody or why your bail conditions should be changed. The judge will either dismiss your application (i.e. make no changes to the bail order) or make a new order that they think is right in the circumstances. If you wish, you can ask the judge to make an order that the evidence and the arguments at your bail hearing, as well as the judge's decision, cannot be published or broadcast (publication ban) until your trial is over.

Note: You may also have an automatic right to apply for a detention review if you are held in custody for 90 days (s.525 of the *Criminal Code*). You should seek legal advice to better

understand your rights to a detention review.

4. Building Your Defence

As the accused, you are innocent until proven guilty. It is the Crown's responsibility to prove your guilt beyond a reasonable doubt. This means if the judge or jury has a reasonable doubt that you committed the crime, they cannot find you guilty. You do not need to prove your innocence – or anything. You may put forward a specific defence if you wish, but you are not required to do so. You may also try to convince the judge or jury that the Crown has not proven your guilt beyond a reasonable doubt, but, again, you are not required to do so. Or you may wish to do both.

4.1 Understand what the Crown needs to Prove

If you want to raise a reasonable doubt that the Crown has not proven your guilt, the first step is to understand what it is the Crown needs to prove.

In general, the Crown needs to prove:

- the time and date of the offence (these are usually not seriously in dispute);
- the location of the offence (e.g. it happened in X location, in which province / territory) (this too is not usually seriously in dispute);
- the identity of the accused (e.g. that it was, in fact, you who committed the offence); and
- the elements (essential parts) of the crime actually happened.

Time and location

The Crown must prove that the offence happened at a certain time and place. They can do this through witness testimony or documentary or other evidence, such as video surveillance footage marked with a date. If you raise a doubt, that you were not there at that time, the Crown will not be able to prove their case. To do this you might have a witness that can vouch you were somewhere else (an alibi).

For example, if the Crown is saying you damaged property on Main Street, Town X, on Sunday, February 5th, at a certain alleged time, and a doubt is raised about that by a witness saying that, at the alleged time, you were at work across town. However, there are certain rules regarding notice for an alibi defence - you must tell the Crown of any alibi defences before the trial, so they have a chance to check it out.

Identity

The Crown will need to prove that the person who committed the offence is, in fact, you. For instance, if they have eye witnesses, they will be asked to identify you in the courtroom as the same person they say committed the crime. Consider the strength of the evidence. Did they have a good clear vision of the crime or not (e.g. it was very dark or foggy or they were too far to really see). Maybe the witness needed glasses but were not wearing glasses that night. Or they only saw someone in a blue jacket and blond hair, but they did not see a face. You may question whether they have positively identified you. For example, if the video surveillance is blurry or only shows the back of someone's head you can argue it is not enough to prove beyond a reasonable doubt that the person was you.

Elements of the charge

In order to show that you committed an offence, the Crown must prove that you did each of the things that make up the elements (essential parts) of the offence. Often, they must also show that you did it intentionally or with recklessness. Look up the law you are accused of breaking (often this is a charge in the *Criminal Code of Canada* or the *Controlled Drugs and Substances Act*, but it may also be under another federal or provincial statute). Then break down the elements of the charge.

For example (usually such a charge appears in provincial / territorial court, not superior court):

Assault (section 265(1)(a) of the *Criminal Code of Canada*) is:

- the intentional use, or threat of use, of force against another person directly or indirectly, without that person's consent (agreement).

Elements: intention to apply force; threat of force or actual force applied; lack of consent. Therefore, assault could be as minor as pushing someone out of the way or as serious as a violent punch. It also includes indirect contact such as throwing objects at someone.

Consider another example (again, such a charge usually appears in provincial / territorial court, not superior). Let us examine a situation where you are charged with mischief (section 430 of the *Criminal Code of Canada*). The first thing you will want to do is look up the offence under the *Criminal Code of Canada*.

One definition of mischief is found in section 430(1)(a) of the *Criminal Code of Canada*), the relevant portions of which, read:

1. Everyone commits mischief who willfully

    (a) destroys or damages property;

Therefore, if you are charged with mischief, the Crown must prove 3 things:

1. that you damaged or destroyed property;
2. that property was someone else's; and
3. you did this intentionally.

For each of these elements you will want to consider what evidence the Crown has to prove it. Or is there a way to raise a reasonable doubt about any of these elements. For example, you may bring out evidence that the property was already damaged or that the property is actually yours.

Defences

You may want to consider if there are any specific defences (defences described in the statute or case law). For example, the defence of alibi discussed above. Other examples of specific defences are often more complex and require specific legal advice, and are, thus, beyond the scope of this handbook.

4.2 Strategy

For each of the things the Crown must prove, think about how you may create a reasonable doubt. Remember that you don't need to prove anything. The Crown must prove your guilt beyond a reasonable doubt. However, you may wish to have a strategy respecting how you might be able to raise a reasonable doubt. For example, can you raise a doubt that a witness used to identify you is not credible – is mistaken or might have a reason to blame you for something you did not do? Maybe you can raise a doubt that they are saying contradictory things in their statement. When you have a defence strategy, consider how you may raise a reasonable doubt.

Take a look at the example of being charged with mischief. These are some examples of strategies one could present to support a reasonable doubt about the Crown's case. The defence's strategy will depend on the facts of the case. Then fill out the ***Your Defence Strategy Worksheet***.

Example: Charged with mischief

	Crown's case	Crown's evidence	Your defence	Your evidence
Time and date	February 5th, 9:00 p.m.	Ms. Hopkin's testimony: she saw someone smash the fence of house at 1240 Main Street, Town X, at 9:00 p.m. when she was walking home.	You were at work on February 5th at 9:00 p.m.	Co-worker witness saw you working. Your work timesheet.
Location	1240 Main Street, Town X	Ms. Hopkin's testimony: Police Officer called to scene.	You work far from there.	Co-worker witness gives address of your work.
Identification	It was you.	Ms. Hopkin's testimony: She saw someone with blond hair 6ft with a blue jacket.	Ms. Hopkin is not reliable. It was dark and her memory is not so good.	Cross-examine Get her to confirm that it was hard to see. Her statement said she was not sure about hair colour, maybe blond.
Elements of charge	Damage to house, intentionally done.	Photograph of property damage. Eye Witness saw you drive into fence.	Property already damaged. Or if you were there, it was not intentionally done; you needed to suddenly swerve out of the lane because a child jumped on the street.	Witness that can testify property was damaged in January. When neighbour accidently drove into fence. Witnesses saw this happen. Or, the only way to avoid hitting a child was to hit the fence. No intent to damage property.

4.3 Your Defence Strategy Worksheet

Fill in the worksheet considering what the Crown needs to prove, what evidence they have to prove the elements of the charge, your strategy to raise a reasonable doubt.

	Crown's case	Crown's evidence	Your defence	Your evidence
Time and date				
Location				
Identification				
Elements of charge				

5. Legal Research

You may wonder what legal research is and why do it? Legal research is about learning and understanding the law. A judge can only give you what you are entitled to under the law. By knowing the law, you can develop a stronger, more convincing argument.

5.1 Researching Legislation and Case Law

Case law is the previous decisions of judges in earlier cases. You might have heard the term "precedent". Precedent is when a decision made by a judge becomes the standard for how other judges at lower courts make decisions. Laws are not always clear. They can be interpreted in different ways. A judge must decide how to interpret the law. Case law helps to guide judges on how to interpret the law and make decisions in a case.

Imagine there is a law saying: *You cannot ride your bike on major roads without a helmet.* If the law does not define what "major" roads are, a judge must decide. Now, imagine that a previous judge wrote a decision saying that: *Roads with 4 or more lanes are major roads.* This creates a precedent for judges of lower courts, and deserving of respect by judges of the same level. It is case law. Other judges making decisions about bike helmets and roads will usually use this judge's 4 lane definition to make decisions.

Legislation is also law. Case law provides guidance on how the legislated laws should be interpreted. As you can see, using case law to support your case can help the judge understand how to interpret the law in your favour. The key to using case law is to be sure to use cases that support your claim. To do this, you need to be able to research past cases. When you are representing yourself in court, this kind of legal research is difficult, but important.

Imagine, for example, that you are able to find a recent case from your jurisdiction where the situation is like yours and the decision is the same as the one you want. Providing this information to the judge may be very persuasive in helping to support your case.

At the same time, it is important not to ignore cases that clearly do not support the outcome you want. There is a good chance the Crown will use those cases. You need to be able to say why these cases do not apply in your situation, in other words, you need to *distinguish* those cases. If you are finding lots of cases that do not support the legal argument you are making, you may need to reconsider your position.

Where to find case law

When you go about doing your research, be sure to use the resources within your community. Courthouse libraries are often able to help you locate case law. There are also online databases where you can search for cases. A good free online case law database is CanLII. See **Section 13: Resources** for more information.

5.2 Choosing the Right Case

Before you start your research, you have to know what you are looking for. There are four keys to success for choosing the right case(s).

1. Similar facts
2. Best outcome
3. Court
4. Date

1. **Similar facts**: You want to find cases that have facts or issues that are like those in your case. If you find these cases, you can use them in court and ask the judge to decide your case in a similar way. Present cases where the facts are like your case and the decision is the same as the outcome you want.
2. **Best outcome:** You need to find cases that relate to the outcome you want. For example, if you want the judge to agree that the other guy consented to the bar fight, you will search for a case where consent disproved assault. Select cases where the outcomes of the cases are the same as the outcome you want. However, you shouldn't ignore case decisions that are not in your favour. Think of ways that your case is different than (distinguished from) the less favourable case or why that case should not apply in this scenario.
3. **Court:** The next most important consideration is the level of the court and the location. In Canada, higher level courts can override the decisions made by lower level courts. Decisions from a higher-level court, are binding on lower level courts. Decisions from the same level, or lower level, of court can be persuasive but are not binding, meaning they could help convince a judge to decide the same way, but the judge is not required to follow that court's decision.

   The Supreme Court of Canada is the highest court in Canada. Each jurisdiction (province or territory) in Canada has its own courts. Usually these courts include the court of appeal (the highest court in each province or territory), superior trial court and provincial / territorial court. If you cannot find a decision from the Supreme Court of Canada or from a court in your jurisdiction you can search courts from other provinces. Decisions from different provincial / territorial courts are not binding. Those decisions are to be respected, but may or may not be followed.

When searching for case law, select decisions from the courts in this order:

1. Supreme Court of Canada.
2. Courts in your jurisdiction, in order of importance: appeal, superior trial, provincial court.
3. Courts from other provinces (court of appeal, superior trial, provincial / territorial).

4. **Date:** The date of the decision is the final consideration when selecting cases. Keep in mind that each of the other three points is a higher priority than this one.

   What happens if you find two decisions from the same level of court with similar facts and outcomes? Look at the date. Select cases where the decision is most recent. A judge may put more weight on a decision from last year than a decision from the 1990s.

   Also, make sure the decision has not been overturned. When a decision is overturned, it means that a higher court has ruled that the decision is no longer good law. Over time, our society changes and so does the interpretation of laws. Be careful when using any case that is more than 15 or 20 years old. The law may be out of date and the interpretation of the law may have been overturned.

Case Study

Imagine, hypothetically, that you are preparing for a trial in BC Supreme Court. There is a law that states: *You must have some trees in your front yard.* What does "some" mean?

The law is not clear. So, you research case law. You find 2 cases.

- Case 1: Alberta superior trial court says "some means at least 3 trees".
- Case 2: BC Court of Appeal says "some means at least 1 tree".

Which case is best? The most important case will be the BC Court of Appeal. That case is binding on BC Supreme Court. Thus, according to BC case law, you must have at least one tree in your front yard. If you had found a Supreme Court of Canada case that said "some means at least 2 trees", you would select that case because it is from a higher level of court. The judge would need to follow this case.

6. Becoming Familiar with Court Processes

6.1 The Courtroom

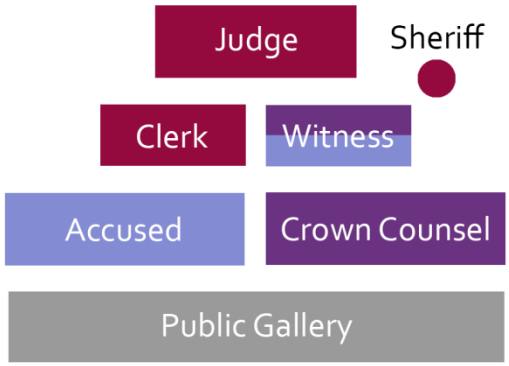
The courtroom can be intimidating place, especially if you have never been to one before. You should spend some time watching trials or hearings to get comfortable with what you might expect. It will especially be useful to see how other people present before the judge.

Courtrooms are almost always open to the public so you are free, subject to routine security checks, to walk in and out as you please. You will be able to find information about what hearings are happening in which courtroom. Usually there are lists of proceedings for that day posted on notice boards or electronic screens in the courthouse. If you need help, feel free to ask the court staff and they can help you.

It might be a good idea to brush up on courtroom behaviour before your attend. The last thing you want to do is be disruptive when court is in session.

Courtroom layout

Courtrooms come in different shapes and sizes, but they look similar inside. Usually there will be a raised desk directly in front of the door that you enter. This is where the judge sits when the court is in session.



In front of the raised desk where the judge sits, there is a desk where the court clerk will sit. The court clerk is the person who helps to administer the case and ensure the process runs smoothly. The clerk is the person who accepts physical evidence (exhibits), administers oaths to witnesses, keeps track of proceedings, and helps the court stay organized and efficient. Listen to the clerk's instructions, like you would listen to the judge.

A court reporter may be sitting near the clerk. The court reporter's job is to record everything that is said at the hearing for later use. Alternatively, there may be a digital recording. A transcript of the hearing might be useful to a party who wants to launch an appeal.

There is often a seat near the court clerk. This is called the witness box. If you have someone coming to testify, this is where they will sit or stand when they are speaking to the court and being questioned.

In most courtrooms, both parties in the case sit across directly in front of the judge's desk at separate tables. At your hearing you will sit at a table, and the Crown will sit at the other. If you have not been granted bail, at your routine court appearances before trial, you will be brought into the courtroom to a section of enclosed seating to the side of the room. This is known as the in-custody box. You will address the court from here.

A sheriff (other terms may be used) is a uniformed peace officer who maintains order and security in the courtroom. The sheriff may be sitting somewhere in the courtroom. They will keep track of who is coming in and out of the courtroom. They or the court clerk will command everyone to rise when the judge enters and exits the courtroom. Listen to the sheriff's instructions, like you would listen to the judge.

Some courtrooms may have another section of seating to the side of the room. This is called the jury box. This is where jurors sit as they listen to proceedings when the case is before a jury.

Finally, the general public and people interested in your case, such as friends or family, may sit in the public seating at the back of the courtroom. This section is called the gallery. The gallery is separated from the rest of the courtroom by a railing, called the "bar". The only people that can pass in front of the bar into the inner part of the courtroom are lawyers and people who are directly involved in the case.

6.2 Courtroom Behaviour

Court can be a stressful experience for many people. It is a formal place that puts a strong emphasis on process. If you are going to court, there are some things you need to keep in mind if you want to be successful.

Be courteous and respectful at all times

No matter what happens, it is your responsibility to be respectful and courteous to everyone in court at all times. You can expect to be treated with the same respect and courtesy by the judge and the court staff during the process.

Understand that court staff have boundaries they cannot cross

Court staff will help you as much as they can. They understand that the court process can be complicated and stressful. But sometimes, they have limits to what they can do. If court staff refuses to help you with something, it may be because they are not permitted to give the assistance you are requesting.

Keep your emotions in check

No matter what happens at your hearing, you are going to be better off if you remain calm at all times.

Arrive early

You should arrive at court at least fifteen minutes before your hearing so that you have enough time to get to the right courtroom. Make sure you are not late for your hearing.

Dress appropriately

You should dress as professionally as possible. You should be neat, modest, and well-groomed for your court appearance. Dressing in a neat and professional way will help show the judge that you are serious about your case and respectful of the court process. You want to make a good impression.

Speak appropriately

When you are in superior court, the proper way to address the judge is usually "My Lord", "My Lady", or "Justice" – some courts use "Your Honour". If in doubt, use "sir" or "madam", or ask the clerk. You should usually call everyone else by their last name: Mr. _____ or Ms. _____ – however, in modern times with different binary or non-binary name choices, it is proper to ask how they would like to be addressed. Do your best to speak clearly and calmly (but loud enough to be heard by all and to be recorded by the digital recorder) when it is your turn to speak. Take your time.

Do not use slang and be mature about the way you address the court. Never swear or insult anyone in the courtroom. You always want to make a good impression.

Be organized

Make sure that you are organized and ready to tell what is appropriate for you to tell the court, if you wish. You should know where all of your paperwork is and you should not waste time fumbling around with your papers. It is a good practice to organize all of your paperwork with

tabs that can be easily referenced by you and by the judge.

Know the decorum and protocols of court

Everyone will have a chance to speak in court. Be patient and attentive. Never interrupt anyone when they are speaking in court. Do not make a scene if the judge or the other party says something you disagree with. Rolling your eyes or being sarcastic or offensive will not help you. Be mature, and be respectful at all times, no matter how you are feeling about what is being said.

There are expectations for how people act in court. You should stand whenever the judge enters or leaves the courtroom. If there is a jury, you should stand when the jury enters or leaves the courtroom to show respect. Stand whenever you wish to say something. You should address all of your comments to the judge.

6.3 Presentation Skills

Speaking in a courtroom can be especially nerve-wracking. Here are some tips on how to make a good presentation of your case.

Prepare

What the judge decides can have a serious, long-term effect on your life. This is your chance, if you wish, to give your relevant evidence to tell your version of the events. If you wish to give evidence, you want to make sure you are getting the right evidence before the judge. Make sure to prepare (write down) what narrative (words and descriptions) you are going to give and what questions you are going to ask witnesses, so you do not forget to ask them. If you are going to testify, be sure to prepare in advance what you are going to say.

The best approach is somewhere in between improvising and reading a script. Ideally, you should have a list of points that you need to cover. These points can be keywords or short phrases. You should refer to this list while you are speaking. But you should have practiced enough to not stare at the list all the time.

Practice really does make perfect. Try to get your practice to imitate what it is going to be like in court; speak standing in a clear voice. Practice in front of a friend or family member. You can also videotape yourself or practice in front of a mirror. Seeing how you present may reveal some of your bad habits, such as distracting hand gestures. The more you practice, the less nervous you will be.

Be clear

Speak slowly and audibly. You want the judge to understand what you are saying. Do not be afraid to pause a few seconds between ideas instead of barreling through your presentation.

You should not be yelling at the judge. But you want to make sure that the judge and the other party can hear every word you are saying.

Be truthful and professional

If you testify, tell the judge the whole truth. Do not be misleading by telling half-truths or exaggerations. The danger with these half-truths and exaggerations is that you might contradict yourself. If this happens, your credibility will suffer, and you might not be believed. Be professional when you speak; do not use sarcasm or derogatory language.

Be confident and direct

Try to avoid starting every sentence with “I think” or “I believe”. These words make you sound uncertain. Instead use direct statements “I will...”, “I did...”, “I saw”, etc., and in argument, “I submit”. Also, avoid verbal fillers. These are the “um” and “ah” that you tend to say during a casual conversation. But in court, these fillers are distracting. Overall, when you sound confident, you are more credible and believable.

Having good posture makes you look confident and more credible. Try not to slouch, fidget, or lean against the table. When you are speaking, keep eye contact with the judge. This will help you engage the judge. But, it is okay to look at your notes from time to time.

Be calm

Court can be highly emotional. During your trial, if you testify, you might also be asked questions that make you feel uncomfortable. If you are asked an uncomfortable question, try your best to give the most honest and professional reply you can give. Emotional outbursts will not work in your favor.

Be respectful

Even though you are trying to fight for your side of the argument, it is important to be respectful to everyone in court. This makes you look professional and mature. Never make a personal attack on anyone in the courtroom.

Answer the Crown’s and Judge’s questions

If the Crown or judge asks you a question (in cross-examination), or the judge asks you a question (any time), stop speaking immediately and listen to the question. If the judge has a question, that means they need clarification. The judge needs to fully understand your story to be convinced. Listen to the entire question before you answer. A trial is not a test to see how quickly you can answer the questions. You should pause and think about the question before answering.

If you cannot hear the entire question or if you do not understand what is being asked, you can ask that the question be explained or repeated. It is critical to make sure that you are answering the right question.

Even if your answer weakens your position, give your truthful answer anyway. If you ignore or avoid a question, the judge will not be impressed. Remember, do not argue with the judge. Always be respectful, even if the question weakens your position.

6.4 Managing the Stress of Trial

Going through a trial can be very stressful. At times it feels frustrating and emotional. It is vital that you take care of yourself leading up to your trial date as well as during.

Here are a few tips to keep in mind:

- **Stay calm**: Do not let your emotions control you.
- **Have support**: Bring someone you trust to court with you. They cannot talk to you while court is in session but during breaks and lunch, they can encourage and support you. If you want to have the person sit with you in court, you can ask the judge for permission – some courts call such a person a “McKenzie Friend” (they cannot speak in the court, but can hand you notes and give you quiet advice).
- **Rest**: Get a good night sleep before trial. It will benefit you more to be well rested then to stay up preparing the night before.
- **Be professional**: Stay collected and objective. Do not get too emotional.

To help you prepare fill out the ***Before Court Checklist***.

6.5 Before Court Checklist

To be sure you are ready for court, review this checklist:

- ❑ Reviewed all the court documents and the disclosure provided by the Crown, including the police officer's and complainant's statement(s).
- ❑ Clearly understand the Crown's case, and the elements of the offence(s) you are charged with - see Section 4.1.
- ❑ Prepared all witnesses, if you are going to call evidence. They have been served with a subpoena / summons which lets them know where and when to come.
- ❑ Organized all documents and case law.
- ❑ Brought the original document (to be handed to the clerk) and 3 copies (for the other party, judge and yourself) of all document evidence.
- ❑ Prepared your strategy for trial, your opening statement, and questions for your and the other party's witnesses.
- ❑ Wearing appropriate clothing in court.
- ❑ Had a good night sleep before going to court.
- ❑ Know the time and place of your court appearance and plan to arrive early.

7. Evidence

7.1 Introduction

Evidence is defined as "the facts used to support an assertion or conclusion". The judge will decide based on the evidence that is presented at trial. It is the responsibility of the Crown to prove beyond a reasonable doubt that you committed the offence(s). This means that if the judge or jury has some doubt that you did it, they cannot find you guilty. To determine if the Crown can prove this take a look at what evidence the Crown plans to use. Evidence is also important to prove a defence, if you plan to present one.

Disclosure

The Crown is required to give you copies of the information that they have against you and the evidence that they intend to call at your trial, including the exhibits or documents they intend to enter as evidence, as well as any other relevant information the Crown does not intend to present. This is called disclosure. This should include all relevant information, whether it is favourable or unfavourable to your case.

Usually you receive at least an initial disclosure package on your first appearance, but it may not be ready at that time. If you have not received disclosure from the Crown after your first appearance, or you think the disclosure you have is incomplete, you should contact them. See section **2.3 Disclosure** for more information.

Rules of evidence

Only evidence that is not privileged (excluded for some legal reason), but is relevant and material to your case is allowed to be presented in court.

Relevant: Evidence that relates directly to the issues in your case.

For example, if you want to show a witness to a robbery is unreliable:

- Relevant Evidence: the witness' history of lying (having a record for perjury or whose evidence was not accepted in a previous case.
- Not Relevant Evidence: the witness' sexual history.

Material: Evidence that is important or essential to the issues in your case.

For example, if you want to show that a Crown witness is unreliable

- Material Evidence: the witness has a conviction for perjury a year ago.
- Not Material Evidence: the witness has a conviction record for shoplifting 40 years ago.

7.2 Objecting to Evidence

If the Crown feels that any evidence that you introduce is not relevant or material, they may object and ask the judge to exclude the evidence. Likewise, you too have the right to object to any evidence introduced by the Crown if you believe that it is irrelevant or immaterial. To object, simply stand up and when the judge recognizes you, let the judge know what you object to and why you object.

You can also object if the Crown wishes to introduce evidence that may be protected by privilege. Evidence may be privileged if, for example, it concerns legal advice from a lawyer you have consulted or hired to represent you for part of this lawsuit. There are other examples of privilege.

Sometimes, the identity of the person who made a document or made a statement may be in doubt. As a result, the evidence may be unreliable. Unreliable evidence may be excluded or not given any weight (importance).

Hearsay

There are certain types of evidence that are not generally allowed. “Hearsay” is information being offered for the truth of what was said, but is something that you (or another witness) learned from someone else, without the witness having first-hand knowledge of it. Hearsay evidence is generally not allowed, but there are exceptions. This is a complex area of the law, on which you should get legal advice, if you don’t understand it. Here just the basics will be provided.

If you want to prove Jane rode her bike yesterday:

- “My brother told me that Jane Smith told him that she biked to work yesterday” is hearsay.
- “I saw Jane Smith arriving at work on her bike yesterday” is not hearsay, because you observed it.

If John testifies that he heard Mary say that she wrote a note, it would be hearsay if you wanted to use John’s statement to prove that Mary wrote the note. However, it is not hearsay if John actually saw Mary write the note and testifies that he saw her write it.

Exceptions to hearsay

Sometimes, hearsay can be introduced as evidence. In order for hearsay to be admissible as an exception to the rule that hearsay is generally inadmissible, the evidence must be necessary and reliable. The judge will also weigh the probative value (importance) and the prejudicial effect (potential harm) of the evidence.

- **Necessary**: Hearsay evidence is necessary if it is important evidence and there is no other way to have the evidence entered. For example, if an eye witness died but they made a statement to the police soon after the offence.

- **Reliable**: Hearsay evidence might be reliable if it can be trusted because of the circumstances in which the statement or document was made. For example, a statement may have been videotaped or made under oath. It must come from a reliable person, or it must be shown that the person who made the statements had no reason to lie.

Find out if the Crown is going to use such evidence. The following are *some* common exceptions to the hearsay rule:

Unavailable witness: Hearsay evidence might be necessary if the person who saw or heard something is not available to the court or is suffering from some disability. For example, hearsay evidence may be necessary and admissible if a witness has died and therefore cannot testify.

Business records: Another exception to the hearsay rule, under legislation in the *Canada Evidence Act* and provincial / territorial evidence acts, is business record evidence. For example, statements and records prepared in the usual course of business, by a bank, or company, are generally admissible as proof of the information set out in the statements or records, as long as:

- the statements or records were made in the ordinary course of a person's/company's duties;
- the witness has personal knowledge of how the statements or records were made;
- the witness had a duty to make the statements or records; and
- the witness has no reason to misrepresent or lie about the contents of the statements or records.

State of mind: Hearsay evidence can be introduced not for the truth of what was said by someone who is not a witness, but to show the witnesses' intentions or state of mind when they were told something – e.g. "Alice told me that there was a truck coming fast down the hill,

that appeared to have no brakes, so I took evasive action to avoid it". In this example, you can introduce evidence of statements made by the other person as a basis for your state of mind or intention. However, when you introduce such evidence, you cannot take the statement out of context. You also cannot only provide the parts that you wish, and you cannot unfairly edit the other person's statements. You must put the whole of the statement to the court.

Admissions by you, the accused: Any admission you may have made may be placed into evidence by the Crown (not by you), if certain conditions are satisfied. For example, the Crown may ask the judge to allow it to introduce into evidence a statement that the Crown says you made to the police. But before the Crown is allowed to place the statement into evidence, the Crown must satisfy the judge, beyond a reasonable doubt, that the statement the Crown wants to admit was made by you and that you made it voluntarily.

"Voluntary" generally means that the police did not threaten you into making the statement. It also means that the police did not induce you make the statement (e.g. promise that things would go better if you made the statement). The Crown must prove that you knew what you were saying when you made the statement. If the Crown cannot prove these things, the admission will not be allowed.

7.3 Types of Evidence

In legal matters, there are two types of evidence:

- **"Real" Evidence (Things)**: This can be any physical or electronic record or document (discussed in more detail below) that provides information, (e.g. contracts, receipts, emails, pictures, videos, etc.), or any type of thing (e.g. drugs, weapon, clothing, blood sample); and
- **Oral evidence**: This is testimony given in court (e.g. by a witness or the accused).

Oral evidence may be direct evidence (the witness saying "I saw that it was raining outside") or circumstantial evidence ("I believe it had been raining outside because X can in wearing a rain coat that was covered with water drops"). The evidence should support your position and allow the judge to make the conclusion you want. For example, if your conclusion is "it is raining outside", your evidence to support this might be that the witness saw it raining, or that the witness had good reason to assume it was raining because, of the wet raincoat.

7.4 Documentary Evidence

Document evidence is not just paper documents. Document evidence could be a picture, video, sound recording, text message, email or something else, introduced by agreement of the Crown

and the accused, or referenced in the evidence of a witness. The Crown will most likely need a range of document evidence to prove their case. For example, in a criminal case documents might include photographs of the crime scene, police statements or 9-1-1 call recordings.

If you plan to put documents into evidence, you need to have your document evidence organized, and present it to a Crown witness to verify it, or, in your evidence, put it in by agreement of the Crown, or through a witness you call.

Things that have been entered into evidence are called “exhibits” and each exhibit is logged in the court’s record. Each exhibit is numbered for easy reference. You should make a list of the things that are entered into evidence and their exhibit number, or ask the court clerk for a copy of the exhibit list at the end of each court day.

If you wish to enter a document, photograph or object as an exhibit, you must either have the agreement of the Crown or have a witness identify the thing. Identifying the thing means that the witness is able to say that they made, saw or had possession of the thing and that they recognize it.

You must then show the item to the Crown, and then ask that it be entered as an exhibit. The judge will consider whether it is allowed, and then enter it or refuse to enter it as an exhibit. If it is entered, the court clerk will then assign a number to the exhibit.

When an exhibit is a written document that you want to rely on to support your case, you must prove that:

- it is accurate;
- it fairly represents the facts and is free of any intention to mislead; and
- it can be verified on oath or affirmation by a witness (the author or another person capable of doing so).

When an exhibit is an object rather than a document, you must prove that:

- it is relevant to an issue in the case;
- it is authentic or real, for example it is the original object and that it has not changed in any way that could be misleading; and
- you must be able to account for everything that happened to the object (called continuity) since you acquired it.

When the exhibit is a photograph, videotape, audiotape or any other kind of recording, like a computer file, you must prove that:

- it is accurate;
- it fairly represents the facts and are free of any intention to mislead through, for example, editing or camera angles; and
- the witness (the person who made the recording) can verify it on oath or affirmation.

Ideally, it is best if you can put the original document or recording into evidence. However, if you cannot produce the original, you may be able to get someone to authenticate the copy if authentication is required.

Steps for dealing with document evidence

- **Gather**: In criminal cases, the Crown should provide you with the disclosure package with the relevant documents that the Crown has. Collect any additional documents you want to rely on that are relevant to your case, (e.g. receipt, assessments, emails, medical records, etc.). Make sure you have each witness' statements and notes. If you think you are missing a document, write to Crown to request it.
- **Organize**: You need a system for sorting all of the document evidence you will gather or that has been provided to you by the Crown. It will be helpful to have a series of containers to hold the document evidence. Some people use envelopes, file folders, boxes, and / or filing cabinets. The key is to have a system that will help keep you organized.

  Sort your documents according to the issues. Create separate files for each issue. For example, have one file about communications you had with the victim prior to the offence. Alternatively, you could sort by date of when things happened and draft a chronology of events.

  As you gather document evidence, you will find it helpful to create sub-categories for some of the key issues. For example, you may wish to separate the police notes and statements by police officer. Whatever works for you – have a system and stick to it.
- **Assess**: Consider each document. Is it really helping your case? How? Be specific. Judges do not like reading through stacks of irrelevant or immaterial information. Include only relevant evidence that supports the point you are trying to prove.

Third Party Documents

Sometimes, you can ask that someone other than the police give you documents as long as they relate to you or to the witnesses who will give evidence at trial. These are "third party records". Third parties are not usually obligated to disclose them without their consent or a court order. Helpful third-party records sometimes include: medical records, psychiatric records, therapeutic records, counseling records, education records, employment records, etc.

All of the documents that you intend to use at your trial must be available for the trial. To make certain that they are available, you can ask the third party for the documents, or apply for a court order (usually a few weeks before the trial to allow for the steps that follow) for those documents to be produced. If you wish to make this application, called an O'Connor application, you must serve a copy of the application on the Crown and the person who has those documents. You must also serve a subpoena on the person who has or is responsible for those documents. You will need to show that the documents are relevant. If they are found to be relevant then the documents may be ordered for the judge's inspection. After inspecting them, the judge will decide what portions of the disclosure will be provided to you. You should seek legal advice for such an application.

7.5 Oral Evidence

Oral evidence is when a person testifies. To testify means to make oral statements in court that are sworn or affirmed to be true. If you decide to testify you are a witness in your own case. We will discuss your testimony and the testimony of other witnesses separately.

7.6 Testifying

You have the right to remain silent. You do not have to testify. The fact that you do not testify cannot be used against you.

During the trial, you will be able to take the witness stand and testify in support of your own position, if you wish. When doing this you will be testifying just like any other witness. You will have to take an oath or affirm to tell the truth. If you decide to testify you will talk about (give your version (narrative) as to what happened) the facts of the case. When you are done, you will be cross-examined by the Crown**.**

When testifying, you will not be allowed to argue your case. This means that you cannot explain the legal issues or why you believe the court should decide in your favour. The time to make your argument is when all the evidence is finished and you give your closing arguments.

There are some special rules about evidence you can be asked about:

- Criminal record

  If you have a criminal record, you may not want the judge and jury to know about any previous convictions, particularly if you have a record of offences like those you are now charged. Before you testify, you can ask the judge to order that the Crown not cross-examine you about all or part of your criminal record. The judge will decide on what part of your criminal record can be used at trial.

- Good character

  You should also know that if you say that you are not the type of person who would commit the offences with which you are charged; the Crown will then be allowed to cross-examine you about your character. The Crown can do this whenever you say something positive about your character, even if you just say something like "I am an honest person" or "I never steal". If you give evidence that you have a good character, the Crown can introduce evidence to suggest that you have a bad character.

The Dos and Don'ts of testifying

Dos	Don'ts
• Tell the truth. • Come prepare, consider carefully what and how, you will present your testimony, before you come to court. • Answer questions asked of you by the judge and the Crown. • Talk only about facts that are relevant and material to the issues in the case.	• Lie or mislead (tell only a part). • Argue your case. • Try to explain your legal issues. • Speak about evidence of your good character if you don't want to risk being asked about any evidence of bad character.

If you plan to testify, fill out the **Testimony Worksheet** to prepare.

7.7 Testimony Worksheet

For each issue of you case write out the main points you want to show, what evidence you have to support it and any specific documents you will be presenting.

Issue

_____

Main point you want to establish:

_____

_____

Your Evidence:

_____

_____

Supporting Documents:

_____

_____

Issue

_____

Main point you want to establish:

_____

_____

Your Evidence:

_____

_____

Supporting Documents:

_____

_____

Issue

_____

Main point you want to establish:

_____

_____

Your Evidence:

_____

_____

Supporting Documents:

_____

_____

Issue

_____

Main point you want to establish:

_____

_____

Your Evidence:

_____

_____

Supporting Documents:

_____

_____

7.8 Witnesses

You may decide to ask people to come to court to give evidence on your behalf as witnesses. This is not mandatory; you can decide not to call witnesses. Some accused persons will decide not to call a witness because they believe the Crown cannot prove their case. However, it is a very strategic decision as to whether you should call evidence – a lawyer's advice is usually very helpful. Nevertheless, if you don't call witnesses or testify yourself, a jury or judge will only have the Crown's evidence on which to base their decision.

If you bring witnesses to court to testify in your defence (you will usually have to subpoena them to come beforehand – see below), they will need to answer questions asked by you, the Crown, and the judge. When the witness you call to court is testifying, you will get to ask questions first.

Who to call as a witness

You may call witnesses to give evidence on any relevant and material issue raised in your criminal case. You should only call a witness if they can give evidence that will help you strengthen your position or weaken the Crown's case. If you have documents you want to present to the court, you may need to have a witness explain them or verify their authenticity. Witnesses can also give evidence on things they heard or saw. For example, if your neighbour told you about seeing a fire in your backyard, you could have your neighbour provide this information in court, if it is relevant.

Where there is a choice, it is important that the witnesses you choose are credible, articulate, and sincere. You cannot tell your witnesses what to say, except to tell them that they must tell the truth. A witness cannot lie when they answer. If they do, it may hurt your case, and there may be serious penalties against them for perjury, such as a fine or jail time. But it is helpful to review with your witnesses the questions that you will ask and the information they will provide. Be sure the witness understands they may also be cross-examined. It is helpful to consider what questions the Crown or the judge may ask. Remember that it is not the number of witnesses you call that counts, but the relevance and importance of what they have to say.

Calling witnesses

A witness is notified that they need to attend court when you send them a court form called a subpoena to witness. A blank form may be obtained from the courthouse staff. You will fill out the name and address of the witness and serve it (deliver it personally to them) on the witness. In some jurisdictions you will file the subpoena with the sheriffs, bailiffs or other court officials who will serve the witness. You may be required to file the form in court before you serve it on

your witness. Defence witnesses are usually not paid, but they may be entitled to compensation from you for travel costs and expenses – check your jurisdiction's rules in this regard.

If a witness fails to come to the trial and they have received a subpoena, the court can issue a warrant for their arrest.

Remind your witnesses to bring with them any documents they have relating to your case that you wish to bring up during your trial.

Expert witness

In certain situations, you may want to call an expert to present evidence. An expert witness is a person who has special knowledge about something, such as medicine, or engineering, or most anything that may be the subject of special knowledge. An expert witness is called to shed light on issues that are complex and outside of the common knowledge that the judge or jury may possess.

Usually witnesses are not allowed to present their opinions at court. Evidence given by an expert witness is an exception to this rule. Experts can talk about their opinion on something within their field of expertise. Experts cannot offer opinions outside of their area of expertise. For example, a coroner cannot provide an opinion about a forgery, but can provide an opinion about how a victim they examined died. Expert witnesses may be entitled to a certain amount of money from the person who calls them as a witness as compensation for the time spent in coming to court along with travelling and meal expenses.

If you want to present expert evidence in court, you must:

1. Get the expert to prepare a written report;
2. Deliver this report to the Crown before the trial;
3. Have the court accept the witness as being an expert;
4. Notify the expert to come to court in the same way as for other witnesses (see above); and
5. Pay any applicable fees or expenses for the expert witness.

Expert report

For an expert to testify at a trial you need to give the Crown notice of the name of the expert and a description of their area of expertise, as well as a statement of their qualifications. You must do this at least 30 days before the trial (unless the rules in your jurisdiction or a judge specifies a different notice period). You must also serve the Crown with a report from that

expert a reasonable time before the trial. See s. 657.3 of the *Criminal Code*.

The requirements for expert reports vary across Canada so you should review your own jurisdiction's Criminal Rules of Court. Usually, however, the report should set out the expert's name, address, qualifications and describe what the expert will say at trial. The report must state the expert's findings, opinions and conclusions. It must also state the documents, calculations and data that they used in reaching their opinions or conclusions.

The judge will not accept a summary of the report prepared by you or another party. The full report by the expert must be used at trial. In most cases, the expert will also have to be at the trial to explain their opinion and answer questions about it.

Once they produce the report, that expert may be questioned by you and the Crown at trial. You can ask about their opinions, including any discussions between the expert and the person who hired the expert.

Establishing a witness is an expert

Before an expert witness can give their opinion to the court, the judge must agree that the witness is an expert. Depending on the practice in your jurisdiction, a *voir dire* hearing is held to allow the judge to decide this.

In the *voir dire* hearing the person calling the expert must convince the trial judge of three things. First, that the expert will actually offer relevant information regarding the case. Second, that the expert is a qualified expert in their field. Third, that the evidence they will provide cannot be excluded for any legal reason.

To show that your expert witness is a qualified expert, it must be established that they have the right training and / or experience to give an opinion on a particular subject. First, tell the judge what subject or field you are asking the expert to testify about (e.g. pathology, psychiatry, accounting, engineering, etc.). Then ask the expert about their education, qualifications, work, and other experience in that subject area or field. The Crown will then have a chance to cross-examine the expert about the proposed area of expertise and their qualifications or experience in that field.

If the Crown calls an expert witness and you do not agree that the Crown's expert is qualified, you may cross-examine the expert on their qualifications.

The judge decides if the witness is qualified to give expert evidence, and in what field of expertise.

If the Crown calls an expert witness and the judge accepts that they are properly qualified to give their opinion as an expert, you still have the right to question the expert about the facts they relied on to form any opinion they give. You can still disagree with the expert's analysis or conclusions. When you cross-examine the expert, you might focus on showing that the facts used by the expert in forming the opinion are different than the facts in the case. Or, that the opinion itself is wrong.

If the judge decides that the expert is not qualified, that witness may still give evidence about facts of which they have personal knowledge, but they are not allowed to give opinion evidence.

Take inventory of your evidence (both documental and oral) and fill out the ***Evidence Inventory Worksheet.*** This will help you keep track of your evidence so you can recognize any gaps in your evidence, can be sure to ask key questions and can present a stronger case.

7.9 Evidence Inventory Worksheet

Fill in the worksheet organized by issues. Identify the issue the evidence falls into, what the evidence is and any identifying details about it, and why the evidence is important to your case.

*For example: **Issue**: proving self-defence; **Evidence**: video recording outside bar; **Specifics**: recording shows other guy coming at you with a knife, attacking first; **Relevance**: had to hit him in self-defence.*

Issue 1: _____

Evidence: _____

Specifics: _____

Relevance: _____

Issue 2: _____

Evidence: _____

Specifics: _____

Relevance: _____

Issue 3: _____

Evidence: _____

Specifics: _____

Relevance: _____

Issue 4: _____

Evidence: _____

Specifics: _____

Relevance: _____

8. Jury

[Note that there are jury trials and judge alone trials (the latter most frequent). Section 9 deals with both in general. This section focuses on some matters unique to jury trials. Where you have a jury trial you should consider both together.]

For certain criminal charges you may choose for your case to be decided by a jury. If you choose to have a jury they will vote and make the decision regarding your guilt. Your jury will usually be made up of 12 ordinary people selected from a panel of potential jurors. You and Crown counsel are present for the jury selection, and each have some role in that process. You should refer to the jury as "the jury" or as "members of the jury".

If you have a jury, you will still have a judge who will be present throughout your trial. The judge will help with the procedures of court, make decisions about what evidence is allowed and ensure the trial is conducted fairly. They will help the jury understand the evidence, and how to deliberate regarding the evidence, but will not direct the jury on how to decide, as to whether you are guilty or not guilty.

8.1 Jury Selection

The first step in your trial is to select a jury. A list of potential jurors is put together by court staff to form a "jury panel" or "jury array" that is intended to be as representative of the community in which the trial will be heard. From that list, individual jurors are randomly selected and called forward at a jury selection hearing. You and the Crown will select a jury of 12 people from the jury panel (in some cases up to 14 people – there are separate procedures for picking more than 12, and for releasing any more than 12 before deliberations – see *Criminal Code*, ss. 631 and 652.1). There are several ways a potential juror can be challenged.

Jury Panel Challenge

First, you or the Crown can challenge the entire jury panel, on the basis that the court staff who brought the jury panel in was biased, acted dishonestly or intentionally misbehaved in some important way. This challenge is called a challenge to the array and must be in writing and must explain the problem with the court staff's conduct.

Peremptory challenge

Until September 2019, each of the Crown and an accused were given a number (depending on the seriousness of the charge) of "peremptory challenges", where they could reject, up to the number limit, potential jurors as they were randomly selected, without giving any reason for

the rejection. As a result of changes to the *Criminal Code*, these rights have been terminated. However, case law in some jurisdictions, pending appeal to the Supreme Court of Canada, has allowed these procedures to continue for cases that were in the system when the law was changed. If you believe this might apply to your case, it would be good to get legal advice, or discuss it with the Crown, who could refer you to those old sections of the *Criminal Code*. In the circumstances, further guidance will not be given in this Handbook.

Challenge for cause

A challenge for cause is when you challenge a potential jury member's ability to serve as a juror because: the prospective juror is not eligible or able to be a juror by reason provisions of the jury legislation in your jurisdiction, or some relationship to people who are involved in the case; or not neutral and unbiased, by media publicity, or by their attitude towards people or issues because of potential prejudices.

The first type of challenge for cause if the potential juror is not eligible or able to serve as a juror:

- not qualified to serve as a juror;
- exempt or excluded from serving as a juror;
- does not speak the official language of Canada that the trial will be conduct in; or
- physically unable to carry out the duties of a juror.

There are no limits on the number of times that you can challenge for cause for these reasons.

Another type of challenge for cause is based on a concern that there is widespread bias in the community that could affect the ability of juries to be impartial. For a challenge for cause to be made for this reason, the judge must give permission in advance. Check the criminal rules in your jurisdiction to see what notice requirements apply if you want this type of challenge for cause process to be used.

If the judge allows this latter type of challenge for cause, the judge will ask the potential juror, who is challenged for cause, be called into a separate courtroom and sworn to tell the truth. The judge will then ask questions about whether the juror is biased. The judge will decide what question(s) will be asked of jurors who are called forward to determine this. The judge will ask the question(s) of each juror called forward. A sample question could be:

- "Would your ability to judge the evidence in the case neutrally and without bias or prejudice be affected by the fact that the person charged is a [modify as required: a black person / an indigenous person]?"

After hearing the juror's answer, the judge will decide whether the potential juror is acceptable to serve as a juror.

8.2 Jury Trial

The judge's role in a jury trial is to decide what law applies to your case, to deal with evidence problems, to make sure that the trial is properly conducted, and that the jury properly instructed. The purpose of judicial instructions to the jury is to educate the jury so that it can make an informed decision, but not to tell the jury what decision to make. Final jury instructions must leave the jury with a clear understanding of the factual issues to be resolved, the legal principles governing the factual issues, the evidence adduced at trial, the positions of the parties, and the evidence relevant to the positions of the parties on those issues.

The jury's job is to decide whether you are guilty or not guilty. The jury will do this by considering the evidence presented in the trial and the judge's instructions. Although the judge, in final instructions, will be commenting on the evidence after all of the evidence is finished, it is the jury's view of the evidence that counts. The judge is the trier (decision maker) of the law and the jury is the trier (decision maker) of the facts.

From time to time, the jury may be asked to leave the courtroom so legal issues or problems with the evidence can be dealt with. This is to ensure the jury is not influenced by what is said and by any evidence that cannot be admitted.

Address to the jury

After all the witnesses have been called, you and the Crown will be able to make closing arguments ("closing addresses") to the jury about what the jury's decision should be. This is done orally, not in writing. However, you will want to make some notes to refer to as you speak.

The purpose of your closing address to the jury is:

- to outline and failure of the Crown to prove an element of the offence (e.g. failure to prove that the force applied in an assault charge was not with consent of the alleged victim);
- any defence you advance (e.g. alibi);
- to review the evidence that supports any defence you raise (e.g. your witness says you were not at the scene of the alleged crime at the time it was alleged to have been committed); and
- to point out the weaknesses (reasonable doubt) in the evidence led by the Crown.

If you have given evidence or asked any other witnesses to give evidence, you will give your address to the jury first. If you have not given any evidence, the Crown will go first and you will address the jury last. You must not refer to anything that has not come out in the evidence.

Final instructions ("Charge") to the jury

The judge will give final instructions (or "charge") to the jury after your and the Crown's address to the jury. The charge to the jury is when the judge reviews the evidence heard during the trial and explains the law that relates to the evidence and to the charges against you. The jury will then leave the courtroom to consider the evidence and the law ("deliberate"), and make its decision.

Before the judge gives the charge, there may be a pre-charge conference in the absence of the jury. You and the Crown can request specific instructions to be included in the charge to the jury.

You will be given an opportunity after the jury has left the courtroom after the judge's charge to point out any mistakes or to object to anything said in the charge by the judge to the jury. If the judge agrees with you, the jury will be called back into the courtroom and the charge will be clarified.

9. Trial

[Note that there are jury trials and judge alone trials (the latter is most frequent). **Section 8** deals specifically with jury trials, while this section deals with both in general. This section focuses on some matters not unique to jury trials. Where you have a jury trial you should consider both together, but when you have a judge alone trial this section will be what you need to consider.]

9.1 Pre-Trial

You may be asked to attend a pre-trial conference. The main purpose of the pre-trial conference is to clarify the issues in the trial and to discuss how the trial will proceed. The judge will also explain to you what is expected at trial, and may suggest additional resources to assist you.

Here are some topics that may be covered at your pre-trial conference (these and some other topics may be included in a written pre-trial conference form set out in the Criminal Rules in your jurisdiction):

- The judge's role to assist but not provide legal advice.
- The advantages of having a lawyer represent you.
- The elements of the charges (making sure you understand them).
- The consequences if you are found guilty.
- Whether there has been full disclosure.
- Whether there are issues that need to be decided in a *voir dire* (e.g. about the admissibility of certain evidence).
- Review of the witnesses expected to be called.

If you have any issues or questions about the trial you should ask them at your pre-trial conference.

9.2 Overview and Summary of Steps in the Trial

Your trial might be from half a day to multiple days in length, depending on how complex the issues are and how many witnesses will give evidence. The trial is where the Crown will try to prove your guilt beyond a reasonable doubt and you may try to disprove or raise a reasonable doubt about the Crown's case, and / or present your own defence.

You should take notes about everything that happens during the trial. This will help you to remember what the judge said, what Crown has said and what the witnesses have said. This will also help you prepare the questions you want to ask witnesses and with the argument you are going to make at the end of the trial.

If you cannot hear what is said or if you cannot see something that a witness is referring to, you should let the judge know. It is very important that you are able to hear everything that everyone says, and see everything that a witness may be describing in an exhibit.

Steps in the trial:

- **Preliminary matters**: The trial begins with the Judge dealing with certain preliminary matters, including: arraigning you (the clerk asking you whether you plead guilty or not guilty), exclusion of witnesses (until they are called), publication bans, any preliminary motions or applications, etc. Judge's opening instructions to the jury: When it is a jury trial.
- **Crown's opening statement**: The trial begins with the Crown explaining the background to the charges and the evidence that they expect to call. What the Crown says in the opening statement is not evidence. You must not interrupt their opening statement even if you disagree with some parts of it. Keep a note of anything you disagree with so that you remember to address it in some way (e.g. in cross-examination of a Crown witness, or through your own opening statement (if you call evidence) or evidence or the evidence of a witness you call). If you do not know how to address it, ask the judge for guidance.
- **Crown's evidence / witnesses**: After the opening statement, the Crown will call witnesses to give evidence, and present documents. Once the Crown is done asking their questions you may cross-examine the witness and ask them your questions, but you are not required to do so – and there is no obligation to do so. This is a very strategic decision.

  If you decide to cross-examine a Crown witness, the Crown may be allowed to re-examine their witness to clarify any answers in cross-examination that were left unclear. The Crown then calls their next witness and the questioning process repeats until all the Crown's witnesses have testified, and the Crown has "closed its case" (stated that it is not calling any more evidence). At the end of the Crown's case**,** if the Crown has missed providing any evidence on an essential element of the offence, you can bring an application before the judge for a directed verdict of acquittal – see Section 9.8.
- **Accused's decision as to whether to call evidence**: Following the Crown's evidence and close of the Crown's case, you will have to decide if you are going to call evidence. Again, remember there is no requirement that you present evidence or call witnesses – this is a

very strategic decision on which legal advice would be helpful. If you don't call evidence the case will move to the argument stage.

- **Accused's opening statement**: If you decide to testify or to call evidence, you may – but are not required to – give an opening statement. Your opening statement should outline the evidence that you expect you and your witnesses (if any) will give when they testify.

  You are not required to give an opening statement, but you may if you wish. However, before you make this decision, you should remember three things. First, anything you say in your opening statement is not evidence and cannot be treated as evidence. Second, you do not need to reveal the nature of any defence before you start to call your witnesses. Third, generally (alibi witnesses are an exception), you do not need to identify your witnesses, before you call them.

- **Accused's witnesses**: After you have made an opening statement (if you wish to), then you can call your witnesses one at a time to give evidence. If you choose to give evidence yourself, you would normally be the first witness. You don't need to ask yourself questions but can state your evidence in narrative form – statements of what you want to tell the court about the facts of the case that you know.

  For any other witnesses you call, you will ask them questions first. The Crown is entitled to cross-examine each of your witnesses – including, you, if you testify. You may then be allowed to ask more questions of each witness in re-examination, but only if you ask about things that were new, and not part of your first examination but came out of the Crown's cross-examination of your witness.

- **Closing arguments of accused and crown**: You and the Crown will make closing arguments that summarize your evidence and the law. This is when you can present a legal argument and refer to any case law. If you testify yourself and / or call any witness(es), you will make your closing argument first. If you did not call any witnesses or testify, the Crown will make their closing argument first.

  Judge's closing instructions to the jury (if there is a jury): This is sometimes called the judge's charge to the jury.

- **Verdict**: The judge or jury will make their decision to find you either guilty or not guilty. If found guilty, the judge will declare you convicted, and your sentence (punishment) will be determined at a sentencing hearing. This can be done right after the trial or at a later date. If you need time to prepare you should ask for a later date.

- **Sentencing**: This is when you have been found guilty. In jury trials, for some offences, the jury may be asked for a recommendation on sentence. Once the jury is dismissed, the judge will ask the clerk to record a conviction on each offence for which you have been found guilty (there may be exceptions to this with multiple findings of guilt). Then, the

Crown and you will make arguments about the appropriate punishment, which the Judge will determine.

9.3 Opening Statements

Opening statements allow the judge and jury to understand what will happen at trial. Both the Crown and you (if you are presenting evidence) will be given the opportunity to make an opening statement. The Crown will start and explain what you are charged with. They may also give some background information and explain what witnesses they will call and what they expect them to say. Anything said during the opening is not evidence and cannot be used as a reason for the verdict.

If you decide you will be calling witnesses or testifying you can make an opening statement at the end of the Crown's case. It would be a chance to outline what you expect to say and what your witnesses are expected to say. However, you do not need to make an opening statement and do not need to reveal your defence.

9.4 Witnesses at Trial

Calling witnesses

If you decide to call witnesses, you will need to tell the court clerk the name of the person you wish to call. The clerk will call the witness to come into the courtroom. The witness will then go into the witness box and take an oath or affirm to tell the truth, and you can begin your direct examination (or examination-in-chief) – questioning. The Crown will have the opportunity to cross-examine your witnesses. The judge may ask questions of the witnesses every now and then. Those questions will simply be to clarify the evidence that the witness has given or to fill in gaps. You cannot discuss a witness' evidence with them during a break in their evidence during the trial.

Questioning witnesses

Before your trial you will want to think about questions to ask the witnesses. There are three ways to question witnesses:

1. Direct Examination;
2. Cross Examination; and
3. Re-examination.

Direct examination (or Examination in Chief)

The questions you ask your witness and the questions the Crown asks of their witnesses are called direct examination or examination in chief. For a direct examination you may only ask open questions (questions that do not suggest answers and that allow for explanations). Open questions usually begin with words like who, what, why, where, how, tell me about, or describe.

The opposite of an open question is a leading question. Leading questions, as the name indicates, leads the witness to a particular answer. They are usually answered with a yes or no. Leading questions allow you to control what the witness talks about and often helps you get the witness to give a specific answer. This is why you are not allowed to ask your own witnesses leading questions. Open questions usually call for longer answers and do not restrict the witness to saying yes or no.

Here are some examples to show you the difference:

- Open Question: “what colour is your car?”
- Leading Question: “you own a green car, correct?”
- Open Question: “at what time did you get home?”
- Leading Question: “you got home at ten o’clock, didn’t you?”

When you are asking your witnesses questions, simply ask them to describe the facts as they remember them.

Dos and Don’ts of direct examination

Dos	Don’ts
• Start by asking background questions (e.g. How do you know the parties?). • Let the witness finish answering before you ask the next question (do not interrupt). • Keep your questions simple and clear. • Organize your questions according to chronology or issue. • Be precise with questions.	• Ask leading questions: questions that suggest the answer. • Ask long questions. • Ask complex or confusing questions. • Ask two questions at the same time (it will be unclear which one the witness is answering). • Be too broad. • Ask them to give their opinions, unless

	they are an expert witness.

Once you have finished examining your witness the Crown will be allowed to cross examine them.

Cross-examination

Once the Crown has finished questioning a witness they have called, you may (but are not required to) question that witness. Asking questions of another party's witness is called cross-examination. When cross-examining a witness, you are allowed to ask leading questions. Leading questions are questions that suggest the answer, such as "you have a blue car, don't you?" or "you work at ABC Plumbing, correct?".

You must also be careful that your questions are actually questions and not statements made by you. Save your arguments for your closing statement, not during cross-examination.

During cross-examination, you are allowed to try to put the witness in a bad light. You can ask questions that challenge their credibility and the accuracy of their testimony.

The witnesses called by the Crown have probably given statements to the police. You can use these statements and any transcripts (for example, preliminary inquiry evidence) when you cross-examine a witness who made a statement.

If the witness said something different in the statement than in his or her evidence at trial, you can cross-examine the witness about his or her earlier statement. If the witness said something favourable about your case in an earlier statement, you can ask about that too. You could read the earlier statement to the witness, ask if he or she recalls saying it, and then ask if it was true.

Cross-examination allows you to:

1. Challenge or test the truthfulness or reliability of their evidence.
2. Get more details about their evidence.
3. Get evidence that supports your case. You will want to get the witness to agree to facts you present.
4. Discredit the witness. This approach is used so the judge or jury might minimize or disregard evidence or comments that do not support your case. You can do this by bringing into question their memory or their truthfulness; show that they may be biased or that they are inconsistent with their story.

5. Cross-examination may help you to get useful information, enhance your position, bring out facts that the witness has not explained, and introduce facts that weaken the witness' evidence or the Crown's position.
6. Cross-examination may help you show whether the witness is truthful, sincere, and credible.

If you intend to challenge or contradict the evidence of a witness, you must confront them with the evidence you intend to present so they have an opportunity to respond to it. Otherwise, you may not be allowed to contradict them (called the rule in *Brown v. Dunn*). This means you must put your version of events to the witness (e.g. is true that you told the police something different when they first contacted you?), if you want to submit later in your evidence and / or closing argument that your version is the accurate one.

The results of cross-examination may help you to determine whether you will call evidence. When you are cross-examining, it may be helpful to think about:

- the attitude and behaviour of the witness in the witness box;
- the ability and opportunity that the witness had to observe the things they testify about;
- the ability of the witness to give an accurate account of what they saw and heard;
- whether the witness has any reason to be biased or prejudiced, or has an interest in the outcome of the case;
- whether the witness attempted to answer questions in a forthright manner, or whether they were argumentative or evasive; and
- whether the testimony given by the witness was impartial and objective or whether it was slanted.

Dos and Don'ts of Cross Examination

Dos	Don'ts
• May ask leading questions. • In your questioning, move from general to specific. • Be clear and brief. Use simple language. • Listen to the answers given and note important ones. • Treat the witness with respect. • Ask only one question at a time. • Be precise with questions. • Ask questions that discredit their testimony, if it is not consistent with the position you are putting forward.	• Argue with the witness. • Repeat a question asked during direct examination that may hurt your case. • Ask them to give their opinions, unless they are an expert witness. • Comment about their answer; you can do this during your closing statement.

Objecting to questions

The judge can disallow any question that is unnecessarily rude or is irrelevant. The questioner will be stopped if they are unnecessarily harassing or embarrassing a witness.

Either party can object to a question the other party is asking of the witness. They will need to explain to the judge why they are objecting. The judge will then decide whether to allow the question or not.

At any time during the Crown's examination of their witnesses, you can object to the questions that they ask or the answers the witnesses provide. You can also object to the introduction of exhibits, including any documents or other evidence that was seized from you or from other persons.

Common reasons for objecting include:

- leading question where only an open question is appropriate;
- multiple questions before allowing the witness to answer;
- irrelevant line of questioning;
- argumentative question;

- repetitive question;
- vague or ambiguous question;
- hearsay answer;
- the question calls for a speculative answer; and
- opinion – asking someone to provide an opinion when they are not an expert.

If you want to object to a particular question that the other party is asking, simply stand up to let the judge know that you object. Be sure to explain why you object. The judge will listen to your reasons why the question was improper or why the evidence should not be admitted. The Crown can then explain why the question was proper or why the evidence should be admitted. The judge will then decide to allow the evidence or not.

If your trial is a jury trial, the judge may ask the jury to leave the courtroom while the judge hears more from you and the Crown about the objection, and decides whether the question or answer will be allowed.

Re-examining witnesses

Once your cross-examination is complete, the Crown can re-examine their witness. This re-examination (or redirect examination) is very restricted. They cannot ask about new things that were not raised before. They can only ask questions that clarify the witness's evidence in cross-examination. Similarly, you may re-examine your own witnesses, but you may only ask non-leading questions. However, if something entirely new was revealed in cross-examination, you may be allowed to ask questions about that topic. You may, however, have to explain how you did not anticipate the new evidence.

Once re-examination is completed, that is the end of that witness' testimony.

Fill out the ***Witness Worksheet*** if you plan to call witnesses at your trial.

9.5 Witness Worksheet

Fill in each column.

Witness	Points you want them to get across	Document(s) you are putting to them

9.6 *Voir Dire* or Pre-Trial Application

A *voir dire* is a separate hearing before or within a trial to deal with the admissibility of evidence. If there is a jury, the jury will be asked to leave while the *voir dire* is held. Efforts are usually made to identify in advance issues that may need to be the subject of a *voir dire*, and often the *voir dire* will be held in front of a case management judge (s. 551.1 of *Criminal Code*) before the trial starts so that it does not interrupt the trial.

Examples of evidence that might be the subject of a *voir dire* include admissibility of:

- Statements of the accused.
- Hearsay evidence.
- Evidence obtained in a search that might have violated the Charter.

The judge may hear evidence to determine whether the evidence should be allowed. Depending on the issue, you may call witnesses, or testify yourself in the *voir dire*. If you decide to testify or call witnesses, you and they may be cross-examined by the Crown. If you testify, the Crown can (with some restrictions) ask you about the offences with which you are charged but what you say cannot be used in the trial. The jury will not hear about your evidence and the other evidence given in the *voir dire* unless it is repeated during the trial. The Crown may also call witnesses that you will be able to cross-examine.

If the Crown intends to use some of the statements you made during the investigation relating to the charge as evidence, they must prove, beyond a reasonable doubt, that you gave those statements voluntarily. The judge will then hear evidence to determine whether your statements during the investigation were made voluntarily, and without breaching any of your rights under the Charter.

You should review your rights under the Charter (see below) and determine if you think there have been any Charter rights violations in the course of the investigation, in the course of your arrest, or during any searches of your person or belongings that resulted in evidence that the Crown is seeking to rely on. Getting legal advice on any potential Charter violations is extremely important. You may want to raise these issues in a *voir dire* and seek to exclude evidence from your trial. If important evidence is excluded, the Crown may no longer be able to prove their case against you beyond a reasonable doubt.

9.7 Charter Application

The *Charter of Rights and Freedoms* (the "Charter"), is part of Canada's Constitution and applies to the activities of Canadian governments, including to those of the police. The Charter affects all aspects of criminal law in Canada and guarantees a number of rights and freedoms that are designed to protect those who are under criminal investigation, those charged and tried under criminal law, and those who are punished for a crime.

You have a number of rights, including the right to be secure against unreasonable searches or seizures, the right to not be arbitrarily detained or imprisoned, the right to retain and instruct counsel without delay upon arrest, and the right to be tried within a reasonable time. Charter rights, however, are not absolute, as they can be limited if the limitation is demonstrably justified in a free and democratic society. There is significant case law which analyses what counts as a Charter breach and what remedies are appropriate if a breach occurs. It is highly recommended that you have a defence lawyer review your case, as they can advise you of potential breaches. See the **Charter** for a full list of rights and freedoms.

> The material below is a very general and simplified overview of the Charter and the procedure for a Charter application. Specific procedure will vary in different jurisdictions and you should seek legal advice on your criminal matter. See **Section 13: Resources** to find legal help in your area.

To argue that your Charter rights were violated, you make a Charter application to the Court. You need to give notice to the Crown, before the trial, of your application. In some cases, the judge may decide to not hear the application if it is clear the application lacks merit or if there was insufficient notice. Sometimes a case management judge (s. 551.1 of the *Criminal Code*) is appointed to hear your Charter application before the trial begins – check the criminal rules in your jurisdiction. The onus to prove a Charter breach is on the party that made the application. The trial judge, or a case management judge, not the jury (if there is one), will hear the Charter application in a *voir dire* where both sides will present evidence and make arguments.

There are number of remedies available depending on the nature of the Charter breach. Often, the evidence obtained through that violation will be excluded from the trial. However, if the judge finds that the exclusion of the evidence would bring the administration of justice into disrepute, they may still allow the evidence into the trial. In cases of serious Charter violations, the judge may stay the charges against you, meaning the prosecution against you will be stopped.

9.8 Directed Verdict of Acquittal

At the end of the Crown's case, you may ask the judge to decide that you be found not guilty of some or all of the charges on the basis that the Crown failed to prove an essential element of the offence. This is called a non-suit or a directed verdict of acquittal.

You will need to explain why a directed verdict of acquittal should be granted. The judge will decide whether your application will be granted. If the judge grants your application, the trial will come to an end and you will be acquitted. If the judge decides not to grant a directed verdict of acquittal on all or some of the charges, the trial will continue. You will then have to decide whether you will call evidence, by testifying yourself or by calling other witnesses to give evidence.

9.9 Closing Arguments

You and the Crown will make closing arguments that recap your view of the facts and the law. If you, as the accused, have called evidence, you will make your closing arguments first.

The closing argument is the time to describe what decisions you wish the judge / jury to make and why they should make them, based on the evidence presented at the trial. If there is legislation or case law that supports your position, you should explain how the law applies.

In making your closing arguments you may only refer to evidence that has already been given during this trial. You cannot testify again. You cannot refer to any documents or talk about anything not already seen or heard in the trial. If you are going to rely on any cases or statutes, you must have copies available for the Crown, the judge, and the jury (if there is a jury).

It is a good idea to submit your closing statement in written form. Ask the judge if you would be allowed to submit your written closing statement to the judge or jury so they can follow along as you present it. A judge does not need to receive your written closing statement, so ask to see if they will. If they do agree to receive it, make sure all key elements of your legal argument are included.

Once closing arguments have been made, the judge or jury may then retire to consider a verdict.

Fill out the ***Closing Argument Worksheet to help prepare***.

9.10 Closing Statement Worksheet

Fill out this worksheet to help prepare for giving a closing statement. You might need to leave blanks to be filled out during the trial as evidence is brought forward.

Theory of the Case: Briefly state the reasons why the Crown has not proven the case against you beyond a reasonable doubt

_____

_____

_____

Credibility or Reliability Issues of Witnesses (supported by evidence presented at trial)

_____

_____

Relevant Facts (supported by evidence presented at trial)

_____

_____

_____

Supporting Case law

_____

_____

Additional Comments (address arguments made by the Crown, if they argue before you)

_____

_____

_____

9.11 Verdict

Once all the closing arguments are made, the judge or jury will be given time to decide whether you are guilty or not guilty. This decision is called the verdict.

If you have a jury, they will be excused so they can deliberate together and reach a verdict. Once they have come to a unanimous decision, they will be asked to return to the courtroom to give the verdict. If you have a judge alone, they may give a verdict right after trial or at a later date if they need time to consider the evidence and laws.

If you receive a verdict of guilty you will need to have a sentencing hearing. This hearing will determine your punishment.

10. Sentencing

10.1 Overview

If you were found guilty at a trial or if you plead guilty you will attend a sentencing hearing. After a sentencing hearing a judge will decide what sentence to give you. This could be specific jail time, a fine or restrictions (such as no carrying weapons or a curfew). The Crown will present recommendations for what sentence they think would be appropriate. You will also be able present your case for a lesser sentence. You and the Crown may be permitted to call witnesses and present evidence. The judge will then decide on what sentence to give you. In some very serious cases (e.g. murder), the jury might be asked to give a recommendation. A sentencing hearing might be right after your trial or guilty plea or you can ask to have it adjourned to a later date in order to prepare.

Note: even if you did not have a lawyer assist you in the trial, you can still have a lawyer assist you for sentencing.

Objectives of sentencing

A judge needs to consider the following objectives for sentencing when deciding what sentence to give you (see s.718 of the *Criminal Code*):

- Denunciation of the offence
- Deterrence of the offender and of others from similar conduct
- Protection of the public
- Rehabilitation of the offender
- Reparation to victims
- Promotion of a sense of responsibility in the offender

Types of sentences

There are different types of sentences you might be facing. It is important to know the options. The type of sentence applicable to you will depend in part on the offence (some have a minimum jail time or fines attached), your circumstances and arguments you and the Crown present to the judge.

Some common sentencing types:

- **Absolute discharge**: An absolute discharge is a sentence where you have no punishment and will not have a criminal record after a period of 1 year has passed.
- **Conditional discharge**: A conditional discharge is a sentence where you need to complete specific actions (such as community service or an anger management course). Once you have successfully completed these conditions and a further 3 years has passed, you will no longer have a criminal record. If you fail to follow the conditions you might be given another more serious sentence and will have a criminal record.
- **Suspended sentence and probation**: A suspended sentence is when the sentence is postponed until some future time. In the meantime, you will receive an interim probation order which you must follow. Probation orders may put certain limitations on you such as no weapons or a curfew. If you successfully complete all the conditions, you will still have a criminal record, but there may be no other consequence. If you fail, you may be sentenced for the original crime.
- **Restitution orders**: Restitution orders state that you must pay for the cost of repairing any property damage, replacing lost or stolen property, or any physical or psychological injuries suffered by a victim.

- **Fines**: A fine can be ordered on its own, or with another sentencing type. Before ordering you to pay a fine, the judge will ask about your ability to pay. If the sentence for a Criminal Code offence is a fine, you will have a criminal record.
  - **Jail**: You may be sentenced to spend a specific amount of time in jail. If you have already served some time in jail after being charged (for the offence for which you are found guilty) you will be given credit for that time (usually 1 ½ times the actual time) and the credit will be deducted from your sentence. If your sentence is “time served” or, after the credit, is less than you have already served while awaiting your trial, you will not need to return to jail unless you have other charges or another sentence to serve.
  - **Conditional sentence order**: Is where you serve your jail sentence while you still live at home. It is not available for every offence. You will likely be under supervision and have to report periodically. You may be under house arrest, and forbidden to leave your place of residence, except for emergencies or specific stated purposes.

10.2 Preparing for Your Sentencing Hearing

It is important to prepare ahead of time for your sentencing hearing. The sentence you receive

can have a real impact on your life. You will want to ensure you get the best outcome for your situation. It is advisable to seek assistance from a lawyer to help you with your sentencing hearing.

When starting to prepare for your hearing consider the following:

- Check the *Criminal Code* (or the statute under which you are charged) to see what the maximum sentence is for the offence on which you are to be sentenced. Some Annotated Criminal Code texts will have a table of offences to help you find this information.
- Check to see if that offence has a minimum sentence.
- If you don't know already, find out what the Crown will be saying is the appropriate sentence.
- Consider what impact that sentence would have on your life.

It is a good idea to talk to the Crown before the hearing to see if you can reach some agreement on the appropriate sentence. If the Crown's proposed sentence would have a negative effect on you, you can let them know about the impact. For instance, if they are asking for an order that you not leave the city, you will want to let them know how that will affect you, e.g. by preventing you from doing part of your job, or visiting your kids who live in another city. If you and the Crown can come to an agreement on a sentence you can jointly present this to the judge. The judge will consider the "joint submission". While case law strongly suggests that judges should accept joint submissions on sentencing, unless they find the submission unreasonable, the judge is not absolutely bound to agree with you and the Crown. Thus, the judge has the final decision on what sentence you will get.

When presenting your position include:

1. **The sentence you submit is appropriate:** tell the judge what sentence you submit is appropriate, given the circumstances of the offence and your personal circumstances, and why. Tell the judge if you and the crown have agreed on any terms of the sentence, e.g. length or conditions. If you have not reached agreement with the Crown briefly explain what parts of the Crown's position are in dispute.
2. **Your background: Give a brief overview about yourself:**
    - Your full name, age and place of birth.
    - Family background and current status, including whether you have any dependents.
    - Your education and training.

- Your job and employment history.
- Any physical or mental health issues.
- Anything about your background or present circumstances that will help the judge understand your situation and / or your offence.

3. **Your character:** You may want to show the judge evidence of your good character. You can get character reference letters from family, friends, colleagues or employers. The letters will be more useful if the writers make it clear that they are aware of the conviction. If you do not give the letter to the Crown ahead of the sentencing, the Crown may apply for an adjournment so that they can confirm the authenticity of the letters.
4. **Rehabilitation plan:** Have you made any steps to seek treatment if needed, e.g. counseling or drug treatment. If no rehabilitation plan is needed, and you are not likely to reoffend, you can point out that your offence was a one-time event (if that was the case) and give the reason e.g. you have a new focus on work, or a commitment to your first child and are now avoiding previous bad influences. If you were out on bail or had previous conditions, explain how you were able to follow and comply with those conditions.
5. **Sentencing range:** You will want to do some legal research to find other cases involving similar offences and offenders with similar background or circumstances to you. This will give you a sense of the range of sentences given in previous similar cases. Knowing the range will help you argue for a sentence that falls within that range. Point out any cases that support your position for a specific sentence. Consider the following examples:

   Example:

   Situation: You are convicted of assault as a result of a bar fight. This is your first offence, and you have been going to anger management classes. You have recently received a diploma in carpentry. Your research found a sentencing range for offences and circumstances similar to yours to be from 2 months to 2 years imprisonment. In the case where the offender received 2 months, it was a first-time offence and the offender was going to counseling while working full-time. The 2-year sentence was for someone who had several previous assault convictions and had made no rehabilitation plan.

   Argument: You will want to show how the circumstances of the 2 month case are similar to yours and therefore it would be appropriate for you to have a sentence at the lower end of the range, closer to 2 months. You might also show how your situation is different from the higher sentencing case.

   See **Section** 5 to learn more about case law research.

6. **Reasons:** Relate the sentence you are submitting is appropriate for to your situation. If you are arguing for a sentence that is different than the Crown's, you might want to explain why the sentence the Crown is asking for is not appropriate.

   For example, if the Crown is asking for a sentence with the condition that you stay off public transit, you can explain that you need to use the bus to get to work and a condition like this would seriously limit your ability to support your family and yourself, and would therefore make your rehabilitation more difficult.

10.3 Indigenous Sentencing Considerations

If you have been charged with a crime and are an Indigenous person, there are special cultural considerations that the Court must consider in assessing your case. This applies to all Indigenous peoples of Canada, including status and non-status Indian, Inuit, and Métis, whether living on or off reserve. As an Indigenous person, you have special rights generally called "Gladue" rights (named after a case decided by the Supreme Court of Canada). This means the judge is to consider a restorative justice approach to sentencing that will help you and your community heal. The judge:

- Must consider all options other than jail;
- Must consider a community sentence that will help address the issues that got you into trouble – e.g. a drug rehabilitation program, if addiction is a source of your offending;
- Must consider the adverse background cultural impact factors that you, as many Indigenous people face; and
- If a jail sentence is the appropriate sentence, must nonetheless take account of Gladue rights when deciding how long your jail sentence will be.

You must tell the court as soon as possible that you are Indigenous. The judge will want to know about you, your family, your community, and what kinds of community sentences are available to you. You can give this information to the court in a Gladue submission or a Gladue report; or, if you cannot provide the information in those ways, the judge may order that a Gladue report be prepared at public expense.

You should seek legal assistance to help you prepare a Gladue submission or report, or to ask that the judge order that the government pay for a Gladue report to be prepared.

11. Appeals

Appeal deadlines for filing and service are very short. Depending on the jurisdiction and type of matter, you may only have a few weeks or even days to file an appeal, so you must act quickly. Failing to meet a deadline could be fatal to your appeal.

Appeal deadlines, forms and procedure may vary so it is vital that you check the Criminal Rules of Court in your jurisdiction as soon as possible after you receive a judgment on your case to determine your appeal deadline.

If you are acting without the assistance of a lawyer, you may be able to find helpful information and "how to" advice on the appeal court's website. Staff in the appeal court's registry office can also provide advice about appeal procedures. Procedures will vary somewhat from one appeal court to another and each appeal court has its own set of Rules that set out what is required on an appeal. See Resources.

11.1 What is an Appeal?

Once you have received the judge's or jury's decision / order regarding either the verdict or the sentence, you might want to appeal it. You can appeal your conviction, your sentence, or both. An appeal is where you argue in a higher court that the court that made the decision in your case made an error (usually in misapplying the law to the facts of your case). The decision to appeal should not be taken lightly. Making an appeal can be timely and costly. It is important to get legal advice. A lawyer can help assess the probability of success if you were to appeal a decision.

An appeal is not a new hearing or a new trial. There are no affidavits, witnesses or juries. The job of the appeal court is to decide if there were any legal or factual errors made at the trial or in the judgment, and whether the errors had an effect on the outcome.

It is not enough to be unhappy with the result of a trial. In order to succeed on appeal, you must show that the judge's decision was unreasonable or cannot be supported by the evidence, the judge made a mistake about the law, or there was a miscarriage of justice.

Mistake about the facts: This is when the evidence given at trial was misunderstood by the judge or the judge drew an improper inference from it. Appeals on mistake of fact are seldom

allowed and a decision may only be overturned where it is found to be unreasonable or cannot be supported by the evidence. Generally, appeal courts will not disagree with a lower court's decision about the credibility of witnesses.

Mistakes about the law: Generally, if the judge's decision about the law is wrong, the case can be successfully appealed. When there is a jury, you may also be able to appeal if the judge made an error in their instructions to the jury.

11.2 Process of Appealing

You can appeal the decisions of a judge by applying for an appeal to a higher-level court.

For example:

- A decision from a provincial / territorial, or superior trial court will need to appeal to the next level of court the superior appellate court in that province/territory. Some criminal cases, though, must be appealed from the provincial/territorial level directly to the court of appeal level. These tend to be cases where the trial court proceedings were by indictment.
- A decision from the superior trial court will be appealed to the court of appeal. A decision from a court of appeal can be appealed to the Supreme Court of Canada, but that requires leave from the Supreme Court. Leave is not necessary in some cases, such as where one justice dissents on a question of law in the court of appeal.

Leave to appeal

In some circumstances, you will need permission to bring the appeal. This is referred to as "leave to appeal".

For example, when appealing to a court of appeal from sentence, you are required to obtain leave to appeal unless the sentence is one fixed by law. Another example of where leave to appeal is required, is where you have already appealed to a superior appellate court in a province or territory, but you are not satisfied with that court's decision. You must obtain leave to appeal from that decision before a court of appeal will review the decision.

As a practical matter, some courts deal with the question of leave to appeal at the same time that the appeal is argued. You must have regard to the rules of the court to which you wish to appeal

Where a leave to appeal application is required in advance of the appeal, you will need to show that you have an arguable case that the judgment that you appeal involves a mistake of law or facts, in other words that the judge applied the wrong law or misinterpreted the law, applied

the right law in the wrong way, misunderstood the evidence in a serious way or drew an improper inference from the evidence. However, even if you are able to show that there is a mistake of law or fact, the leave judge will still have to decide whether this is the kind of mistake that affected the outcome of your case and that your case is one that the appeal court should hear.

Documents

An appeal is started with a "notice of appeal". The notice of appeal should set out the errors of law or fact on which the appeal is based. Generally, the court will only deal with the grounds set out in the notice of appeal. It is possible to later amend the notice of appeal to set out new grounds of appeal, but that should be done as soon as possible and well before the hearing of the appeal itself.

Depending on the rules of the appeal court, you might also need to file an appeal book. Appeal books generally include the notice of appeal, the information or indictment, the trial transcript and the list of exhibits from the original trial. Usually you should include the transcript from the trial or sentencing.

You might also have to write out your argument in a document referred to as a factum.

There are rules for how each of these appeal court documents should be formatted. You should have regard to those rules.

11.3 Appeal Hearing

The person who started the appeal will speak first. The court will then decide if it is necessary to hear from the other side. If so, the other side will be given an opportunity to speak. After that, the person who started the appeal will have an opportunity to briefly address any new issue the other side raised.

In most appeals, judges will have:

- Written arguments (factums) of both parties; and
- Transcript (or parts thereof) of the proceedings before the lower-court judge that is / are necessary for the hearing of the appeal – including, final jury instructions in a jury trial, reasons for decision of the judge in a judge alone trial, judge's reasons for decision on sentence.

The judges might ask you questions during your presentation to make sure they understand

the case and what you are saying. If you submitted written arguments, you do not need to read them at the appeal hearing. Instead, you should briefly comment on why you think the lower court judge made a mistake and what you would like the appeal court to do. The judges will either give a decision at the end of the hearing or will reserve their decision.

New evidence

Generally, new evidence is not allowed to be presented on appeal. The appeal hearing is based on the record of the previous trial or hearing. If there is evidence you think the court should have which was not presented at the trial or hearing, you must ask for permission to refer to that new evidence. The onus is on you to establish why the court should receive the evidence.

For it to be admissible on appeal, the evidence must be admissible under the normal rules of evidence. Also, you must demonstrate that the evidence is reliable and sufficiently convincing that it could reasonably be expected to have affected the decision at trial. You must also show that the evidence you want to present could not have been presented at the original trial (e.g. you didn't know about it).

If you want to present new evidence, depending on the rules of the court you are appealing to, you may have to prepare:

- a notice of application or notice of motion; and
- an affidavit explaining why the evidence was not presented at trial and why you think it would have been important to the outcome of the trial.

You should attach the new evidence to your affidavit or include it in your affidavit. In general, the judge(s) hearing your appeal will also hear your application to present new evidence, and will decide on both your application to present new evidence and the appeal at the same time.

Time limits

There are strict deadlines that say when an appeal can be made. You should familiarize yourself with those deadlines and comply with them.

If you are outside those deadlines, and if you want to appeal, you will have to apply for an extension of time. Applications for the extension of time can be difficult. You should speak to a lawyer about your application. A judge of the court of appeal has the authority to extend the time to prevent an injustice.

If you want to apply to submit an appeal late, depending on the rules of the court you wish to

appeal to, you will have to file and serve on the Crown:

- A notice of application / notice of motion to extend the time.
- An affidavit explaining why you did not start your appeal by the appeal deadline.

There may be a hearing that you will have to attend. If you are in custody, the court will arrange for an order to be issued requiring you to be brought to court at the right time. However, sometimes there might be an option to (or requirement only to) deal with matter in writing, or to appear by video conference or telephone. If your application for an extension of time is granted, you will have to file your notice of appeal in accordance with the order of the appeal court that issues.

11.4 Applying to have a Lawyer Appointed

A judge can make an order that a lawyer be appointed for you under section 684 of the *Criminal Code*. Under this section, you have to show that it is in the "interests of justice" that you have legal assistance and that you cannot afford to pay for that assistance.

In determining whether it is in the interests of justice to order that funding for counsel be provided, the court will consider whether the appeal has merit and whether the appeal can be properly decided without the assistance of defence counsel.

To start your application, you must have already filed your notice of appeal in court. As a general rule, you must have applied for and been refused legal aid and done everything you could to appeal that refusal but still not have been given a lawyer.

Your affidavit should include reference to:

- How old you are;
- Your highest level of education;
- How good you are in English or French and how good you are at expressing yourself;
- How good you are at reading;
- How well you understand the law that relates to your appeal, and how well you can explain how that law relates to the facts of your case;
- How much experience you have with the criminal law and process;
- Why your appeal is so complicated that you think you need a lawyer to help you; and
- That you do not have sufficient means to obtain paid legal assistance, have made every effort to get a lawyer through legal aid, and have made every appeal available in the legal aid system.

You should attach to your affidavit any letters you have received from legal aid denying

your application for a lawyer and your appeals to legal aid from those letters. If any letters from legal aid talk about the merits or chances of success of your appeal, you should leave out or blackout (redact) those portions if you wish.

File the [notice of application / notice of motion] and your affidavit in court. You will need an extra set of photocopies for each person or organization you have to serve. You will have to serve a copy of your filed application and affidavit on those parties set out in the rules in your jurisdiction.

The rules of the court to which you are appealing will govern how the application will proceed. In most cases, you must attend this hearing but, if you are in custody, arrangements might be made for you to be brought to court or to participate by video conference or telephone.

11.5 Applying for Bail

If the person appealing a conviction or sentence is in custody, a judge of the court of appeal has the authority under the Criminal Code to order him or her to be released from custody until the appeal has been heard and decided. For more details see section 679 of the *Criminal Code.*

To start your bail application, you must have already filed your notice of appeal.

You should talk about three things in your affidavit:

- Why the appeal is not "frivolous", or totally lacking merit (if you are appealing your conviction) or how your appeal has sufficient merit that it would cause unnecessary hardship if you were detained (if you are appealing your sentence);
- You will surrender yourself into custody in accordance with the terms of the order. In other words, that you are not a flight risk; and
- How your detention is not necessary in the public interest, e.g. you are at a low risk of committing an offence while on release.

You should also talk about anything else you think is important for your application. The burden of convincing the Court to release you is on you. You have already been found guilty so there is no longer a presumption of innocence.

Subject to the rules in your jurisdiction, you will need to follow these steps to apply for bail:

1. Complete and file the notice of application / notice of motion and your affidavit.
2. File the decision of the judge on your sentence, and any pre-sentence report.
3. Draft and submit the bail order you would like the court to make.

You must attend this hearing but, if you are in custody, arrangements might be made for you to participate by way of video conference or telephone. The court will arrange for an order to be issued requiring you to be brought to court from custody at the right time.

If your appeal is against only the sentence

Because your appeal is only about your sentence, you can only be released on bail if leave to appeal the sentence has been granted. It is therefore necessary that you first ask a judge to give you permission to appeal. This request is typically made at the same time as the bail application is heard.

12. Glossary

Absolute Discharge: The person does not receive any fine or sentence, and there is no criminal record.

Accused: Someone who has been charged with committing an offence.

Acquittal: When the court finds the accused not guilty of committing an offence. The accused is free to go.

Act: An Act is a written law that has been passed by the federal or provincial legislature. Also called legislation or statute.

Actus Reus: From Latin meaning, guilty act, *actus reus* (physical) refers to the actual doing of the criminal act which must co-exist with *mens rea* (mental) which refers to the intent to commit the act.

Adjournment: The postponement, suspension or interruption of an ongoing hearing, proceeding, or trial, to resume at some future date. This may be at the request of one of the parties, or directed by the Court. It is always the Court who decides whether or not to adjourn the proceedings.

Admissible Evidence: Evidence that may be received by a trial Court to aid the judge or jury. Generally, evidence must be both relevant and material to be admissible, as well as not barred by any specific rule. In addition, the inclusion of the evidence should not be significantly unfair or prejudicial to a party.

Affidavit: A document that contains facts that a person swears or affirms to be true. A lawyer, notary public, or commissioner for affidavits must witness the person's signature and sign it.

Alternative Measures: For a less serious offence, police or Crown might offer an alternative to going to trial. The accused may be given an opportunity to accept personal responsibility for their behaviour by agreeing to make amends to the victim and the community – e.g. by making an apology and / or paying compensation for the loss or damage, or by agreeing to go to drug treatment court.

Appeal: When either the accused, or defence counsel (lawyer) on their behalf, or Crown counsel ask a higher court to review the decision of a lower court because they believe there has been a serious error.

Application: In some courts, called a Motion – a request to a Court to decide on a matter

relevant to the case.

Arraignment Hearing: This is held to determine how the accused person will plead (guilty or not guilty); what mode of trial they elect (jury or judge alone); and (often but not always) when a pre-trial conference, jury selection, pre-trial *voir dires*, and / or the trial will be held.

Bail Hearing: A court hearing where a judge decides if an accused will be released from custody while awaiting their trial or appeal. May also be referred to as a show cause hearing or judicial interim release hearing.

Bail: A court order (a "Release Order") releasing an accused from custody while they are awaiting trial or appeal and requiring them to obey certain conditions (rules) and return to court on a specific date. In some cases, bail orders may require a money deposit or a bail surety. See "Surety" in this glossary.

Beyond a Reasonable Doubt: The burden of proof in criminal law means the judge or jury deciding the case is very sure that the accused is guilty. In a criminal case, Crown counsel must prove all the elements of the offence beyond a reasonable doubt.

Burden of Proof: The party who must prove something, on whatever standard (e.g. beyond a reasonable doubt) has the "burden of proof".

Case Law: Decisions of courts relating to a particular matter or issue. Case law from the same level of court or other jurisdictions may be persuasive, but the court does not have to follow it. Case law from a higher court is binding on the lower court.

Charge: The specific criminal offence(s) a person is accused of committing. If a person is charged, it means they have been formally accused by the Crown of committing a crime.

Complainant: Any person who is the subject of the alleged harm that comprises the charge against an accused – see *Victim.*

Conditional Discharge: You are placed on probation for a certain length of time, during which you have to follow certain conditions (rules). After the probation period is over, if you've met all the conditions the discharge becomes complete and you will not have a criminal record.

Court Order: A legally binding direction by the Court to do something. There are serious legal consequences for disobeying a court order.

Court Reporter: A trained professional who creates official records of things said during examination for discovery/questioning, and court proceedings. This may also be done

electronically

Criminal Record: Information about a person's record of convictions in the criminal justice system. Criminal Records are kept in central computer systems which most police agencies across Canada can access.

Criminal Rules of Court: Rules that govern the criminal practice and procedure of the Court. They provide guidelines for each step in the prosecution of an alleged offence and set time limits for when certain steps must be completed. Additional guidance with Criminal Rules of Court type effect includes, Practice Notes or Practice Directions, or Notices to the Profession and Public.

Cross-Examination: The questioning of a witness by a lawyer or party on the other side – who did not call the witness to testify. Cross-examination takes place after the lawyer or party who called the witness to testify has finished asking question in direct examination (or examination in chief). The purpose of cross-examination is to test the witnesses' truthfulness or reliability. Questions in cross-examination are allowed to be leading, that is, to suggest a certain answer.

Crown Counsel / Prosecutor: Lawyers who work for the government's prosecutions service. It is their job to present the Crown's (or the state's) case in criminal matters. They are also known as prosecutors and "Crown". In Canada, crimes are dealt with as wrongs against society as a whole and therefore, Crown counsel act on behalf of all members of the public and do not represent victims specifically.

Defence Counsel: The lawyer representing the person accused of an offence.

Detention Order: When a detention order is given by a judge, the accused is denied bail and remains in custody until the conclusion of the trial or appeal, subject to bail reviews or detention reviews. A detention order may also contain conditions not to contact the victim, witnesses, or other named persons.

Direct Examination: The questioning of a witness in court by the person who called the witness to court. The questions must be open ended and must not suggest a specific answer – i.e. they cannot be leading questions. Direct examination is also called examination in chief.

Discharge: When a person is found guilty or pleads guilty, but the judge decides that a conviction and criminal record are not necessary. See *Absolute Discharge* and *Conditional Discharge*.

Disclosure: Is the Crown's obligation to give the accused all relevant information it has about the case. The Crown must disclose, or share, with the accused all the relevant information

gathered in the investigation so that the accused can fully defend themself against the charges. The documents and other material provided by the Crown are often called the disclosure package or particulars.

Diversion: See *Alternative Measures*.

Duty Counsel: Lawyers paid by Legal Aid or otherwise publically funded, or pro bono, who may help unrepresented persons, generally at courthouses or places of detention, in providing brief, summary services, related to various civil, family, criminal, or immigration law problems, depending on the jurisdiction, Duty counsel provide free legal advice for a specific court appearance, but do not take on your whole case or represent you at trial. Examples include: in civil court, assisting parties in presenting pre-trial civil applications; in family court, assisting parties in presenting pre-trial family laws, including in relation to obtaining or maintaining restraining orders in family violence cases; in immigration court, providing basic advice and release on first appearances; and in criminal court, providing basic advice and release / bail on first appearance.

Election: For most indictable offences (with some exceptions), the accused is entitled to elect, or choose, how to be tried: by a Provincial Court judge without a jury; or by a superior court judge without a jury; or by a superior court judge with a jury. After the accused elects their mode of trial, they may re-elect (i.e. change to a different mode of trial) but only with the consent of the Crown. Some other legal restrictions set out in the *Criminal Code* may also apply.

Elements of the Offence: Each offence in the *Criminal Code* may be broken down into "elements" that comprise the offence. Each element must be proven beyond a reasonable doubt before the accused is found guilty of the offence.

Evidence: Oral or written statements under oath or affirmation by a witness, or "real" evidence, such as documentation or objects (which become exhibits), presented to the court by agreement of all parties, and the judge, or under evidentiary rules, to prove the facts that are necessary to establish a claim or defence in a civil or family case, or to determine the guilt or maintenance of innocence of an accused in a criminal case.

Exhibit: A document or object admitted as evidence in court.

Expert: A witness who gives evidence to help the court understand technical and scientific issues in the legal action. He or she may give opinions in areas that would not normally be within the judge's knowledge. The expert must be shown to possess the necessary skill and qualifications in the area in which their opinion is sought. An expert can give evidence in

person, and / or by writing a report called an expert report.

Facts: Something that can be shown to be true, to exist, or to have happened. In a legal case it is based on or related to the evidence presented. Matters of fact are issues for a judge or a jury to decide.

Final / Closing Arguments or Submissions: At the end of the trial, you will present your argument to the court (judge alone in civil and family trials and judge and jury in some criminal trials). It is a summary of your position based upon the evidence that has been presented to the court about the decision that the court should make.

First Appearance: Describes the first time the accused is required to come to court.

Guilty: A person found guilty of a criminal offence as originally charged, or a lesser and "included offence" (e.g. simple assault is an included offence of aggravated assault) either as a result of an acknowledgment by the accused pleading guilty, or as a result of a trial at which the accused was found guilty beyond a reasonable doubt.

Hearing: In law, a proceeding before a judge or master (only in some civil and family cases) to determine questions of law and / or questions of fact, whether the hearing of an application or the hearing of a trial.

Hearsay: Inadmissible testimony that is given by a witness for the truth of its contents, who relates what others have said rather than what they personally witnessed or observed. There are a number of exceptions to hearsay being inadmissible – it is a complex legal area.

Hybrid Offence: The *Criminal Code* creates two categories of offences, Indictable and Summary Conviction. Hybrid offences (sometimes known as dual offences) are those which Crown can proceed with under either category. The Crown's decision will be based on the seriousness of the circumstances, when the offence occurred, whether or not the accused has been previously convicted of a similar offence and the likely sentence to be incurred. Once the Crown decides and advises the judge in open court, the offence is treated as the kind the Crown has chosen.

Indictable Offences: A category of criminal offences that are usually more serious crimes and carry greater maximum sentences than summary conviction offences. Because these offences may have a more significant consequence to the accused if convicted, the accused has a choice about what level of court will hear the trial. The accused can usually choose to have the trial held in Provincial / Territorial Court before a Provincial / Territorial Court judge, or a superior court judge alone, or by a superior court judge with a jury. If the accused is found guilty, the potential maximum sentences are the same, regardless of whether the trial was in a superior or provincial/territorial court, or with or without a jury.

Indictment: An indictment is the document used in a superior court that sets out the charges.

Information: An information (sometimes called a summons or appearance notice) is the document used in the provincial / territorial court that sets out the charges.

Innocent Until Proven Guilty: This is the rule that a person accused of a crime is innocent until the judge or the jury decides that the evidence presented by the Crown at the trial proves, beyond a reasonable doubt, that he or she committed the crime.

Intermittent Sentence: An intermittent sentence allows the offender to serve his or her time of incarceration in intervals (for example on weekends).

Issues: Factual or legal matters in dispute between the Crown and the accused in a criminal case.

Judicial Interim Release: See *Bail.*

Jurisdiction: A court's power or authority over people, territories, or subject matter.

Leading Question: A question that prompts or encourages a desired answer. Usually allowed in cross examination but not allowed in direct examination (or examination in chief).

Leave of the Court: The court's permission to proceed with certain types of applications or appeals or to proceed in a certain way.

Legal Advice: Advice from a lawyer about the law as it applies to a particular case. It usually includes information about whether, why and how a party should do something.

Legal Aid: Free legal information, advice and representation for people who cannot afford a lawyer and who qualify for the services.

Limited Scope Retainer: See *Unbundled Services*.

Material Fact: A fact that is important to proving your case.

McKenzie Friend: A McKenzie Friend is allowed to sit with an accused during the trial, and may provide moral, emotional and practical support like organizing documents and taking notes. They can make quiet suggestions, but they cannot address the court or give legal advice.

Mens Rea: From Latin means, guilty mind. *Mens rea* indicates the intent to commit a physical criminal act. *Mens rea* (mental) must co-exist with *actus reus* (physical), the doing of the criminal act.

Motion: In some courts, called an Application – a request to a Court to decide on a matter relevant to the case.

Not Guilty: A plea made by an accused person. This plea signals the burden on the Crown to prove the accused's guilt beyond a reasonable doubt. "Not Guilty" can also be the finding of a judge or jury following a trial in which Crown was unable to prove the accused's guilt beyond a reasonable doubt.

Objection: A statement made by a party during a hearing or trial for the purpose of challenging any specific evidence sought to be introduced. Common objections during trial include when a party inappropriately asks leading questions, when a party asks multiple questions at once, when a party asks vague or confusing questions, when a witness gives inadmissible hearsay evidence or opinion evidence, and when a party tries to introduce privileged information as evidence. The judge determines whether the objection succeeds or not, and may suggest a different form of question. See also *Hearsay*.

O'Connor Application: Is an application made by the accused requesting documentation from a party other than the Crown or its agents, to produce relevant documents for the purpose of using them in court.

Offence: A state recognized crime or violation of a statute (written law passed by the federal parliament or a provincial / territorial legislature) that results in a penalty.

Onus: The burden of proof – who (which party) has to prove something.

Open or Open-ended Questions: Questions that cannot be answered with a simple yes or no. They usually begin with who, what, where, why, and how.

Order: A ruling made by a judge or master that tells a party to do something or not do something. It can also be the document that sets out the decision of the judge or master (in some civil and family cases).

Particulars: See *Disclosure*.

Peace Bond: An order made by a judge in criminal court, designed to protect one person from another. The peace bond lists certain conditions that must be followed by the person the peace bond has been issued against. The conditions usually include that the person have no contact, direct or indirect, with the other person, and that they stay a certain distance from that person's residence, place of work, etc.

Plea: The statement an accused person makes to the court when asked if they plead guilty or

not guilty to the offence charged.

Precedent: An earlier decision of a court or a higher court that should generally be followed in subsequent similar cases.

Preliminary Hearing / Inquiry: A preliminary hearing is a court proceeding that may be held before the trial to determine if there is enough evidence on the charges to proceed with a trial. If there is a preliminary hearing, it is held in the Provincial / Territorial Court.

Privileged Document: A document the other party is not entitled to see because it was created during confidential communications between a lawyer and his or her client, or was created to help conductor or settle the litigation.

Process Server: A professional document server.

Promise to Appear: The accused may be released by a police officer after promising to appear in court on a specific date. The document signed by the accused is called a "Promise to Appear".

Proof Beyond a Reasonable Doubt: It is the responsibility of the Crown to prove an accused's guilt beyond a reasonable doubt before the court can find an accused person guilty. Therefore, after hearing all the evidence, if the court has reasonable doubt about whether the accused is guilty, the accused receives the benefit of that doubt and is acquitted. Also see *Burden of Proof.*

Publication Ban: An order the Court makes that prevents anyone from publishing, broadcasting, or sending any information about the particular matter described in the publication ban. Often, this is information that could identify a victim, witness, or other person who participates in the criminal justice system.

Prosecution: When a person is charged with an offence and legal proceedings are pursued against them.

Re-Examination: Questions asked by the party or counsel who called the witness, after cross-examination by the other party or counsel. Re-examination happens if the cross-examination has brought out new facts, or if something raised for the first time in cross-examination was unclear.

Report to Crown Counsel: A report to Crown counsel (sometimes called a "Crown Information Sheet") is a document completed by a police officer that details the circumstances of an alleged offence and the investigation. The report will contain the date and time of the incident, information about the complainant / victim and witnesses, the person accused of the offence, a written description of the circumstances surrounding the offence and witness statements, if

any.

Retainer: An agreement with a lawyer for legal work is called a “retainer”. A written retainer letter sets out the work that the lawyer has agreed to do, what the lawyer will not do, and how the lawyer’s pay will be calculated. The retainer agreement sets out the scope of your lawyer’s involvement in the file.

Reverse Onus: In bail hearings, it is usually the responsibility of the Crown to "show cause" why an accused should be detained while awaiting trial. In very limited circumstances, this responsibility (onus) shifts to the accused. When this applies, the accused must "show cause" why they should not be detained.

Rowbotham Application: If you’re facing serious and complex criminal charges and you have been denied legal aid but can’t afford a lawyer, you can make a Rowbotham Application to the court. If you are successful, a lawyer will be appointed to you by the government, or the charges against you will be stayed (suspended until a lawyer is appointed). The judge who hears your Rowbotham application will assess your financial situation (have you exhausted the funds available to you?) and the complexity of the case (would the trial be fair if you have to conduct your own defence without a lawyer?).

Search Warrant: A court order authorizing entry to somebody’s property to look for evidence related to an offence.

Sentence: A sentence is the penalty or punishment, pronounced by the Court upon the accused who has pleaded or been found guilty of an offence.

Sheriff / Bailiff: The Sheriff’s / Bailiff’s responsibilities are to make sure the courtroom is safe, and to look after witnesses, jurors or prisoners.

Show Cause: See *bail hearing.*

Statute: See *Act*.

Stay of Proceedings: A stay of proceedings might be directed by Crown or the Court. The first is when the prosecution process is suspended, by the Crown, for up to one year. If the Crown does not recommence the prosecution within one year, the criminal process is terminated. The second is when the Court suspends the case until further notice.

Subpoena: A subpoena (pronounced sub-pena) is an official court document, which orders a witness to come to Court to give evidence and to bring relevant documents, and that failure to do so could have serious negative consequences.

Summary Conviction Offences: These offences are usually less serious than indictable offences. The maximum penalty for a summary offence is usually a $5,000 fine and / or six months in jail. Some summary offences have higher maximum sentences.

Summons: An official notice telling an accused person they must appear in court at a specific time and place to give evidence. A summons is also used to require potential jurors to appear in court on a specific date and time for jury selection.

Superior Trial Court: Hears civil and criminal cases. Depending on the province or territory, this court may be called the Supreme Court, the Court of Queen's Bench, or the Superior Court of Justice.

Surety: is the person who vouches that the accused will attend court as required and will obey all conditions of their bail while he or she is on bail awaiting trial or appeal. Depending on the terms under which a surety is accepted, the surety may be at risk of losing significant assets if the accused does not abide by his or her bail conditions or fails to attend Court.

Testify: To declare or say something in the witness stand under oath / affirmation in a court of law.

Trial: A criminal trial is the court proceeding where the Crown presents its evidence against the accused person, and the accused person may present evidence in their defence (or may elect not to). The judge or jury then determines if, based on the facts and law, the accused person is guilty or not guilty of committing the offence charged.

Unbundled Services: This is a method of legal representation in which a lawyer and a client agree limit the scope of the lawyer's involvement in a legal action, leaving the responsibility for those other aspects of the case to the client in order to save the client money and give them more control and responsibility.

Verdict: The decision the judge or jury makes about whether an accused committed the offence(s) with which they were charged. The verdict can be either guilty or not guilty. In criminal cases, a jury's verdict, must be unanimous.

Victim: The victim (often called the "complainant") is an individual who suffers physical or mental injury, or economic loss as a result of an offence. Primary victims are those who were the direct victim of a crime. Secondary victims may have been victimized by some association with the crime, but not as a direct target.

Voir Dire: It is a hearing held (before or within a trial), without the presence of the jury in jury trials, to determine an issue relating to the trial. For example, a *voir dire* may be used to decide

whether certain aspects of an expert witness' testimony will be allowed, or whether a statement the accused person made to the police was voluntary and admissible in evidence.

Warrant for Arrest: A judicial order that gives the police the power to arrest the person named in the warrant, so that person can be brought to court.

Without Prejudice: This principle will generally prevent statements, whether made in writing or orally, in a genuine, but unsuccessful, attempt to settle or resolve an existing dispute from being put before the court as evidence of admissions against the interest of the party who made them. If they are used to successfully settle or resolve the dispute, they become "with prejudice", and are admissible.

Witness: A person who gives evidence in a court proceeding orally under oath or affirmation, or by affidavit. Witnesses are persons who testify in court because they have some information about the case. A witness may volunteer to testify or may receive a subpoena (a legal document which orders him / her to come to court at a certain time to testify).

Young Person: Under the YCJA (*Youth Criminal Justice Act*) a youth charged with an offence allegedly committed when they were 12 years old or older, but younger than 18, is called a "young person". The charge and prosecution are governed by the YCJA, as well as the *Criminal Code* (or other statute that the charge is under), and there are special considerations and procedures to take account of the young age of the person.

13. Resources (in alphabetical order)

(Note: Many changes have been made to court procedures by reason of COVID-19. Thus, it is recommended that you check the current website of the Court before which you are or may be appearing.)

National Resources
The Canadian Judicial Council An organization created to maintain and improve the quality of judicial services in Canada's superior courts. Includes guides to the judicial system and the role of judges. • Statement of Principles on Self-represented Litigants and Accused Persons
Federal Court **Federal Court Website** The website, updated in April 2019, includes a section entitled "Representing Yourself", which includes checklists, procedural charts, practice guides and important information such as where to find legal help. The site also includes Notices, links to key statutes and rules, recorded entries, decisions, hearing lists, and information on Registry services and locations. **Deadlines Calculator** The Deadlines Calculator helps calculate the due date for service and filing of documents according to the Court Rules and practice directions. **Centre for Access to Justice** The Centre for Access to Justice (CAJ) is a public legal information centre for self-represented litigants consisting of a resource centre and a three-station computer laboratory in the Toronto Registry. Other centres will eventually be rolled out across the country. **E-Filing Resources** A number of Guides, Videos and FAQs are available to help parties navigate the E-Filing System. **Online Fillable Forms** Forms can be completed online and then submitted through the E-Filing System or printed to file in person. **Your Day in Court** This resource provides a general overview of what a self-rep needs to know before going to court.

National Resources

Federal Court of Appeal

- Court Etiquette and Procedures
- Requirements and Recommendations for Filing Electronic Court Documents
- Frequently Asked Questions (FAQs)
- Registry Information
- Hearing Schedule
- Court Costs
- Request for Interpreter

National Self-Represented Litigants Project (NSRLP) The National Self-Represented Litigants Project (NSRLP) is an organization that researches the challenges and hard choices facing the very large numbers of Canadians who now come to court without counsel. NSRLP creates resources for self-represented litigants.

- Resources for Self-Represented Litigants
- National and Provincial Resources The national and provincial resources directory lists organizations, websites, and resources, categorized geographically, that may be helpful for self-represented litigants.

Criminal Code Full document of the *Criminal Code* available online.

Parenting Plan Tool Justice Canada Family Law Guide to making a parenting plan (Parenting Plan tool), information about family violence and abuse, and family justice resources.

Families Change This national website provides age-appropriate information to guide children, teens, and adults through separation and divorce. Information and resources are provided for each region.

CanLII Database of Canadian case law and legislation in both French and English.

- The Canadian Legal Research Writing Guide

Federal Child Support Guidelines: Step-by-Step The Department of Justice has a guide on understanding the Child Support Guidelines and steps for calculating support.

- Provincial and Territorial Child Support Information

Child Support Calculator Free online calculator tool for basic child & spousal support costs.

The Canadian Criminal Law Notebook A free resource of Canadian criminal law. Contains articles on Criminal, evidence, search and seizure, procedure and practice, and sentencing.

Pro Bono Students Canada A law student program that provides legal services without charge to organizations and individuals in need in Canada. You may have a law school with a Pro Bono Students Canada program near you where you can ask for assistance.

- Resources Provides a list of legal help resources by region.

Alberta
Alberta – Law and Justice Government of Alberta website with family law resources, legislation, forms, and guides. • Family Law Assistance Family court and mediation, family law kits, and how to respond to *Divorce Act* or *Family Law Act* application.
Alberta Court Calendar and Indigenous Court Worker and Resolution Services Programs The Court Calendar and Indigenous Court Worker and Resolution Services Programs booklet contains an overview of the sitting dates for Alberta Courts. It includes a listing of Judges, Justices, Masters and Alberta Court personnel, as well as information on the numerous Court Services Programs available.
Resolution and Court Administration Services RCAS staff work to help find solutions for legal issues, offer programs at no cost or a nominal charge, provide services across Alberta, and provide administrative support to all the courts within the province.
Centre for Public Legal Education Alberta (CPLEA) Is a public legal education organization dedicated to making information about the law available in readable and understandable language for Albertans. • Family Resources
Legal Aid Alberta Assists eligible Albertans facing legal issues.
Alberta Courts • Alberta Provincial Court Help for self-represented litigants in Provincial Courts. • Court of Queen's Bench Information about the Family Law court system, including the rules of the Court, relevant court forms, practice notes, and resources.
Criminal Law in Alberta A guide developed to provide general legal information on Criminal Law in Alberta.
LawCentral Alberta Is a portal or collection of links to law-related information and educational resources on justice and legal issues of interest to Albertans. Our purpose is to create an educated public who understands their rights and responsibilities under the law, and who knows where to go for legal help and referral.
Alberta Law Libraries Facilitates access to legal information for the Alberta community, including its judiciary, lawyers, citizens, libraries, and government agencies. There are 11 public library locations across the province, one Crown and 4 Judicial libraries. Their website contains subject based research guides, extensive tools to help understand the world of legal information, an Ask A Law Librarian service, various eResources for patrons, and identifies Alberta-centric organizations that provide specific legal resources for the public.
University of Alberta Libraries: Divorce and Separation This guide is a starting point for individuals seeking legal information and self-help materials they can use on their own. It identifies a number of law-related resources and services on the web.
Student Legal Services of Edmonton Law students provide legal information, assistance for certain civil,

Alberta
criminal, and family issues. • Family Project: (780) 492-8244.
Student Legal Assistance (SLA) – Calgary Is a pro-bono legal clinic that provides legal information and representation to low-income residents of Calgary and the surrounding area.
Grande Prairie Legal Guidance Provides free legal information and advice to low to moderate income people who have a legal issue but do not qualify for legal aid.
Calgary Legal Guidance Offers free and confidential legal advice at evening clinics and outreach clinics to low income Calgarians who do not qualify for legal aid.
Edmonton Community Legal Centre (ECLC) Provides free legal information and advice to low to moderate income people in the Edmonton area. ECLC assists with legal issues related to family, landlord and tenant, employment, human rights, debt, small claims, income support, and immigration matters. Volunteer lawyers provide free legal advice at evening clinics and provide legal information at presentations across the city. Pro bono services are supplemented by the work of paid staff lawyers who will further assist clients in some situations. ECLC also manages a legal clinic in Grande Prairie. ECLC partners with the Association des juristes d'expression française de l'Alberta (AJEFA) to offer francophone services. Bilingual lawyers who are members of AJEFA meet with francophone clients at ECLC's clinics. Volunteer bilingual lawyers also present ECLC's legal information workshops to francophone communities.
Lethbridge Legal Guidance Provides free legal assistance, information and advocacy to individuals experiencing financial difficulties who need legal services and representation, and who do not qualify for legal aid. Volunteer lawyers at evening clinics provide free legal assistance, information, and advocacy in matters relating to family law, civil law, employment law, immigration law, personal injury law, and criminal law.
Medicine Hat Legal Help Centre Provides free legal information and advice to low to moderate income people who have a legal issue but do not qualify for legal aid.
Central Alberta Community Legal Clinic Offers free legal services to people who financially qualify and who do not qualify for legal aid. The Clinic is headquartered in Red Deer and partners with other agencies in Ponoka, Medicine Hat, Fort McMurray, and Lloydminster to provide widespread legal support to smaller communities in Alberta. Volunteer lawyers give legal advice at evening clinics on matters related to family law, civil law, criminal law, wills, and other legal issues. Clients can chat with a lawyer for 30 minutes, following which they may receive further support from a paid staff lawyer.
Fort McMurray Community Legal Clinic
BearPaw Education Produces and distributes culturally relevant legal education resources for Indigenous people in Alberta. We are a department of Native Counselling Services of Alberta.
Pro Bono Law Alberta (PBLA) Volunteer lawyers, through the clinics, also present legal education

Alberta
workshops to the public to inform individuals of their rights, hopefully before a legal issue arises. PBLA promotes access to justice by fostering a pro bono culture in the legal profession. PBLA creates volunteer opportunities for lawyers and works with law firms to develop pro bono policies and projects. In Calgary and Edmonton, PBLA administers the Civil Claims Duty Counsel project and the Queen's Bench Court Assistance Program. Volunteer lawyers staff these programs and support litigants dealing with civil matters at the courthouses in each city.
Alberta Court of Appeal Related Information Court of Appeal locations and contact information Frequently asked questions How to start an appeal, including required documents, filing deadlines and fees Checklists for ensuring your appeal request documents are completed correctly before filing Detailed information on all required documents and processes of the Court of Appeal Filing your documents at the court registry Electronic filing Ordering court transcripts and preparing your appeal record Contact a Case Management Officer with questions about court rules and processes How to prepare an application before the Case Management Officer

Alberta
Court etiquette for in-person hearings How to prepare for an electronic hearing a. Etiquette and best practices b. Logging in and other technical tips c. Troubleshooting common technical issues

British Columbia
The Courts of British Columbia Information and guides on specific court processes. Links to court rules, practice directions, administrative notices and forms: • Provincial Court The Court's plain language website offers practical information on criminal hearings and trials, as well as podcasts and a blog. • Supreme Court Information and guides on specific court processes for self-represented litigants. • Court of Appeal The Court's website contains information and resources for litigants in the Court of Appeal including Court Forms, Rules, Practice Directions, and announcements.
British Columbia Government BC government website includes information regarding BC's justice system, Courthouse services, and legal help resources, including BC's Justice Access Centres.
Legal Information and Services:
Access Pro Bono Coordinates lawyers providing pro bono (free) legal services. It operates: • **Lawyer Referral Service** Connects individuals to lawyers for a 30-minute consultation free of charge and the possibility of retaining the lawyer for representation or other services.
Alternative Dispute Resolution Institute of BC and **Mediate BC** Provide information on arbitration and mediation and have services to help in finding an arbitrator or mediator.
Atira Women's Society Runs a Legal Advocacy Program for low-income women (inclusive of transwomen) in the Downtown Eastside to obtain free legal advocacy in a safe and confidential, women's only space.
Clicklaw Provides legal information, education and help with a British Columbia focus. It has information on specific topics and how to perform legal research. • JP Boyd on Family Law Written in plain language, with rollover definitions for legal words and

British Columbia
phrases, JP Boyd on Family Law provides practical, in-depth coverage of family law and divorce law in British Columbia.
Community Legal Services Society Provides free legal assistance to people facing issues concerning housing rights, workers rights, human rights, and mental health rights. It produces self-help guides, including: • **Judicial Review Self Help Guide** on how to bring a petition for judicial review to the British Columbia Supreme Court from the Residential Tenancy Branch, the Human Rights Tribunal, the Employment and Assistance Appeal Tribunal, the Employment Standards Tribunal, and the Workers' Compensation Appeal Tribunal.
Courthouse Libraries BC Website that provides links to a number of digital resources that can help with legal research and information on the services available at the courthouse libraries throughout the province.
Dial-a-Law Organization that offers legal information and free resources. A starting point for information on the law in British Columbia. • Family Relationships • Divorce & Separation • Resolving Disputes
Disability Alliance BC Employs advocates who can help apply for and appeal the denial of provincial and federal disability benefits.
Elizabeth Fry Society Advocate Program Is a free legal clinic providing support to individuals in need of assistance with situations such as rental disputes, evictions, debt collection, bankruptcy, mental health and employment standards, and accessing income programs.
Employers' Advisers Office Provides free help and assistance to employers dealing with WorkSafeBC, including assistance in relation to registering a business, dealing with injury claims, health and safety issues, and appealing a decision.
Family Law LSS A comprehensive website covering all areas of Family Law including do it yourself guides, resources, and factsheets.
Indigenous Legal Clinic Provides free legal services to the Indigenous community and education to Allard School of Law students.
Justice Education Society A wide array of resources aimed at teaching the public about legal issues, including a live chat feature from 11 am – 2 pm PST providing members of the public with help on legal issues. It produces: • Small Claims Online Help Guide • Supreme Court of BC Online Help Guide • Court of Appeal Online Help Guide • Family Law Legal Help Guides

British Columbia
Law Students' Legal Advice Program Is a non-profit run by law students at the Peter Allard School of Law at the University of British Columbia. It provides free legal advice and representation to clients who would otherwise be unable to afford legal assistance at clinics located throughout the Lower Mainland and produces the LSLAP Manual.
Legal Services Society (Legal Aid BC) Provides free legal representation in cases involving serious family issues, child protection matters, criminal law issues, and some mental health and prison law issues. It produces: • **MyLawBC** Provides information concerning separation and divorce, abuse and family violence, missed mortgage payments, and wills and personal planning through do-it-yourself guides, resources, and factsheets.
Native Courtworker and Counselling Association of BC Provides Indigenous accused persons with information about the criminal justice system and court procedures, as well as referrals, where appropriate and available, to legal and social resources.
People's Law School Offers information concerning an array of common legal problems relating to consumer issues, home and neighbours, money and debt, wills and estates, employment, transport, health, planning, business, and dispute resolution. Among its resources is: • **Dial-a-Law** A repository for plain language written and audio information.
PovNet Find an Advocate Is an online anti-poverty community that connects poverty and family law advocates and pro bono lawyers from across British Columbia on issues concerning housing, income, workers' rights, Indigenous peoples, immigration, and more.
Rise Women's Legal Clinic Is a community legal centre providing accessible legal services that are responsive to the unique needs of self-identifying women. Most of the services offered at Rise are provided by upper-year law students, under the close supervision of Rise's staff lawyers.
Society for Children and Youth of BC Is dedicated to improving the well-being of children and youth in British Columbia through various resources and services including the Child and Youth Legal Centre, which advocates on behalf of vulnerable children and youth in BC.
Tenant Resource & Advisory Centre Promotes the legal protection of residential tenants across British Columbia by providing information, education, support and research on residential tenancy matters. For eligible clients, the Tenant Resource & Advisory Centre offers direct advocacy by negotiating resolutions with problem landlords or providing representation at Residential Tenancy Branch dispute resolution hearings.
The Law Centre Run by the University of Victoria, focuses on assisting people in the Capital Regional District and provides legal education programs to the public. Staff lawyers are supported by law students to provide representation, information and advice on a range of legal issues.
VictimLinkBC A toll-free, confidential, multilingual telephone service available across B.C. and the Yukon 24 hours a day, 7 days a week at 1-800-563-0808. It provides information and referral services to all

British Columbia
victims of crime and immediate crisis support to victims of family and sexual violence, including victims of human trafficking exploited for labour or sexual services.
Workers' Advisers Office Provides free advice and assistance to workers and their dependants on disagreements they may have with WorkSafeBC decisions.

Manitoba
Community Legal Education Association Resources for self-represented litigants. Resources for family law, criminal law, and civil law. Resources include a province-wide telephone legal information service (Law Phone-In & Lawyer Referral Program) with a toll-free number, print resources and online resources (unrepresented litigants section on website). • Family Law
Manitoba Justice – Family Law Government website with general information about Family Law, including child support and information for grandparents. • Family Justice Resource Centre The Family Justice Resource Centre is a service provided by Manitoba Justice. Staff can direct you to the services you and your family may need to deal with family law issues. • Family Law in Manitoba – 2014 Public Information Booklet A booklet with information on Family Law and the legal system in Manitoba. • Family Conciliation Provides a range of free conflict resolution services to families going through a separation or divorce.
Manitoba Courts Provides Information about the province's different courts, procedures, rules and forms. • Manitoba Courts Information for Self Representing Offers general information about the province's different courts and their procedures, rules, and forms. • Court of the Queen's Bench – Family Law Offers information about the Family Division of the Court of the Queen's Bench.
Legal Help Centre The Family Law Clinic is a service that is geared towards those individuals who are representing themselves in a family law proceeding. The Clinic is staffed by law students under the supervision of a family law lawyer. This clinic provides assistance with the procedural steps involved in family law. Family Law Clinic appointments are only available by referral from our Drop-In Clinic.
Infojustice Manitoba Is a legal information centre whose purpose is to promote access to justice in French by providing legal information services to francophones. Through workshops and one-on-one meetings, the staff of the information centre seeks to educate francophones and to provide tools to those who choose to represent themselves before the courts.
A Woman's Place A Woman's Place Domestic Violence Support and Legal Services provides supportive

Manitoba
counselling and legal services for women who have exited/are exiting an abusive relationship.
Manitoba Justice – The Criminal Case A step-by-step guide through the criminal justice system in Manitoba.
Legal Aid Manitoba Provides services, representation, and resources for qualified individuals with criminal, family, and immigration issues.
University of Manitoba Community Law Centre Primarily handles summary conviction offences. In addition, it may provide assistance for *Highway Traffic Act* offences, small claims cases that involve consumer problems and individual disputes with Manitoba Public Insurance. The Centre is staffed by 50-100 second and third year law students who volunteer their time. Although students have primary responsibility for their file, they are supervised by a LAM staff lawyer. Members of the faculty and other Legal Aid staff are available to provide information or advice when matters require special expertise.

New Brunswick
Public Legal Education and Information Service of New Brunswick Self-help guides touching on family law, civil law, criminal law, and more. Available in French and English. • Family Law Guides, resources, and information on Family Law in New Brunswick. • Family Violence in New Brunswick (PLEIS) A series of pamphlets dealing with family violence. The purpose of these pamphlets is to provide some basic information about family violence in New Brunswick. It does not contain a complete statement of the law in the area and laws change from time to time. • Civil Law Guides, resources, and information on Civil Law in New Brunswick.   ○ Small Claims Court Guide
Family Law NB Offers general information and resources about Family Law in New Brunswick.
New Brunswick Courts Information on the New Brunswick court system.
Legal Aid – Family Law Services An overview of the services Legal Aid provides and for what type of family matters. • Resources
Legal Aid – Criminal Law Services An overview of the services Legal Aid provides and how to apply.
Law Society of New Brunswick Law Library The Law Society allows the public to access their law library.

Newfoundland and Labrador

The Law Courts of Newfoundland and Labrador

Information on court procedures and help for self-represented litigants

- Supreme Court (Superior Court in NL) Hears matters involving serious criminal charges as well as appeals from the Provincial Court. All jury trials are held in Supreme Court, although some criminal cases will be heard before a judge-alone.
    - Supreme Court Family Division Specialized and unified family law courts on the Avalon Peninsula and West Coast areas of the Province.
    - Supreme Court, General Division Handles family law matters for areas not covered by the unified Family Division.
- Provincial Court (Inferior Court in NL) Court of first instance; handles family law matters relating to support and family violence for areas not covered by the Supreme Court, Family Division. Also handles Traffic, Youth, Small Claims, and other matters.
    - Family Violence Intervention Court Specialized criminal court with the goal of preventing and reducing family violence through various programs. The court focusses on victim safety and offender responsibility.
- Small Claims Court For most civil matters where value does not exceed $25,000.00.
- Court of Appeal Highest court in the province. Hears appeals from Supreme Court, Family and General Division; some decisions of the Provincial Court and decisions of certain administrative tribunals.

Court Information & Publications

- Court of Appeal The Court of Appeal website provides information on representing yourself, access to Guidebooks, frequently asked questions and answers, access to the Court of Appeal Legal Assistance Clinic.
- Supreme Court Family Division Information Court website resources providing information on duty counsel, court docket, and general topic information on divorce, separation, children's matters, property, support enforcement, adoption, ISO, and settlement conferences.
    - Family Justice Services (FJS) Webpage under the Family Division Website provides resources for families going through separation and divorce. It also includes a link to the course Living Apart Parenting Together helps parents make decisions which will take into account the best interests of their children.
- Supreme Court Family Division Information Sessions Information about free Family Law Information Sessions which offers assistance to the public who wish to learn about family law proceedings at the Supreme Court, Family Division.
- Supreme Court Resources for Self-Represented Litigants Court website resources including

Newfoundland and Labrador
information on finding a lawyer, videos on what to expect when attending family court, and other helpful resources. • Provincial Court Information Court website resources providing information on family law matters in Provincial Court. • Provincial court publications • Court Etiquette and Procedures • Supreme Court: A Guide to Accessing Proceedings and Records For the Public and Media
Family Justice Services A division of the Supreme Court. FJS offers services that assist families in resolving custody, access and/or child support issues outside of court. FJS offers free services to residents of Newfoundland and Labrador that are involved in family law matters. Some of their services include: parent education sessions on family law and parenting after separation; dispute resolution in cases of parenting and child support; and counselling services.
Government of **Newfoundland and Labrador – Justice and the Law** General information and guides for self-represented litigants.
Public Legal Information Association of Newfoundland and Labrador (PLIAN) An independent non-profit that provides general information, legal education, and lawyer referrals to all Newfoundlanders and Labradorians, with the intent of increasing access to justice. Guides for family law services, victim support, bail, legal aid, probation and pardons. Services include: • List of Community Resources available to help people navigate the court system. • Family Law Forms Builder An online program that assists self-represented litigants with filling out court forms. Provides guidance on what forms to fill out and how to fill out the forms. • Legal Information Phone Line and Lawyer Referral Service A service offering referrals to lawyers from across the province registered with the Lawyer Referral Service. These lawyers will offer a 30-minute consultation for a small flat fee. • Pro Bono Clinics. • Legal Publication / Information Distribution.
Law Society of Newfoundland and Labrador Law Library The Law Society's Law Library is an important component in the administration and continuing education of the legal profession. Its comprehensive collection of both primary and secondary print and electronic media resources is available for use by both lawyers and members of the public.
Newfoundland and Labrador Legal Aid Commission Independent organization that provides legal counsel for criminal and family matters either for free or on a subsidized basis.
Newfoundland and Labrador Legal Aid Clinics Independent organization that provides legal counsel for criminal and family matters either for free or on a subsidized basis. • Application Form • Application Checklist Note: Applications must be physically mailed or dropped off to an area office.

Northwest Territories

NWT Family Law Guide The Department of Justice publishes a guide to family law in the Northwest Territories called Family Law in the NWT as part of its mission to provide public legal education and information. This comprehensive guide is designed to help you understand these legal processes.

Northwest Territories Government Information about laws and legislation, courts, and government resources.

- Family Law – General Information Government website with information, resources, and programs for Family Law issues.
- Family Law Mediation Program Voluntary, free service to help families agree on issues such as child custody and division of property.
- Legal Aid Information about Legal Aid services and how to apply.

Family Law Mediation Program Voluntary, free service to help families agree on issues such as child custody and division of property.

Northwest Territories Courts Information about the court system in the NWT.

- Wellness Court An alternative to regular criminal court that offers supervised program designed to address the conditions that may contribute to re-offending.

Law Society of the Northwest Territories Legal information and resources for the public.

NWT Law + Victim Services Laws and legislation, the legal system, police, emergency, victim services.

Nova Scotia

Family Law Nova Scotia Information about the law, processes, and courts of Nova Scotia. It will help you understand your legal issue and navigate the legal system.

The Family Law Information Program (FLIP) and FLIP Centers The Family Law Information Program includes the Nova Scotia Family Law website at www.nsfamilylaw.ca and the Family Law Information Program Centres (FLIP Centres).

See in particular the **Going to Court: Self-Represented Parties in Family Law Matters** workbook.

The Courts of Nova Scotia Information about the Nova Scotian court system for litigants.

- Self-represented litigants
- Free Legal Clinics The Courts offer free legal clinics in Halifax, Sydney, Truro and Yarmouth for certain types of Supreme Court and Court of Appeal matters

Legal Information Nova Scotia To find easy to understand legal information to help you deal with everyday legal problems. You are also in the right place for referrals to legal help resources in Nova

Nova Scotia
Scotia, including finding a lawyer or mediator. • Small Claims Court App Frequently Asked Questions, self-help videos and step-by-step instructions for representing yourself on small claims court matters, all in one place. LISNS also has Small Claims Court navigators who provide guidance and support at the locations in Bridgewater and Halifax. • Online Wills App A simple process to help you gather the information you need to prepare a will in Nova Scotia. It will help you decide what to put in your will.
Legal Aid Nova Scotia Provides legal information, legal advice to all Nova Scotians (no financial qualification), and legal representation for those who meet certain qualifications. **Summary Advice Counsel** Is also a service of Legal Aid Nova Scotia.
Dalhousie Legal Aid Service Does community outreach, education, organizing, lobbying and test case litigation to combat injustices affecting persons with low incomes in Nova Scotia. Community groups and community-based agencies with mandates to fight poverty and injustice may apply for legal advice, assistance, and community development and education services. The Service offers advocacy workshops and legal information sessions and works with other groups to lobby the government on social assistance policy and other policies negatively affecting persons with low incomes.
Nova Scotia – Self Represented Litigants This website is designed to offer you resources about how to prepare for court if you are not represented by a lawyer.
Association des juristes d'expression française de la Nouvelle-Écosse (AJEFNE) An organization that aims to improve access to justice for French-speakers. You may speak to one of their legal professionals for free, in person or by phone. ***Note**: Only available in French*
ReachAbility Association Offers form-filling clinics and legal referral services for people representing themselves. These services are temporarily unavailable due to COVID-19.
Halifax Refugee Clinic Provides free legal services for refugees and can include full service for the entire refugee determination procedure or assistance in preparing various applications.
Judges in Canada Videos The Canadian Superior Courts Judges Association (CSCJA) has launched a new educational video, available in English and French, and a related YouTube channel, entitled Judges in Canada. The video teaching tool, aimed at new and young Canadians, as well as the public in general, illustrates what people are entitled to expect from judges in Canadian Courts. The video covers principles fundamental to the justice system, concepts such as Judicial Independence and the Rule of Law.

Nunavut

Legal Services Board of Nunavut As the territory's legal aid plan, LSB is responsible for providing legal services to financially eligible Nunavummiut in the areas of criminal, family and civil law.

- Law Line General information about family law in Nunavut.
- Criminal Law Information about criminal law in Nunavut.

Nunavut Courts Provides information about Nunavut's Courts, which includes the Nunavut Court of Appeal, Nunavut Court of Justice, Youth Justice Court of Nunavut, Justice of the Peace Court, as well as the Court Services Division of the Government of Nunavut.

- How to Basic information on civil, criminal and family processes.

Government of Nunavut Family Services Information about the Department of Family Services programs and services, including Family Violence, Child Protection, and Adoption.

Ontario

Steps to Justice Step-by-step information about legal problems to help people understand and exercise their legal rights. Includes referrals to services that provide in person help, and links to resources such as relevant court forms and guides. Topics covered include separation and divorce; child protection; partner abuse; and restraining orders. The Law Society of Ontario has also launched an emergency family law referral telephone line to assist with urgent family court matters during the covid-19 pandemic.

Community Legal Education Ontario (CLEO) Produces clear, accurate and practical legal information to help people understand and exercise their legal rights in a variety of areas of law including family law, the legal system, and family violence.

- Steps in a Family Law Case This is a set of three interactive flowcharts that take people through the family law court process to learn about what happens at each step and what is required.

Ontario Ministry of the Attorney General – Family Law Information about Ontario's legal system, including finding a lawyer, lawsuits and disputes, family and criminal law, and wills and estates. They also provide Family Law Information Centres in family courts across Ontario.

Ontario Ministry of Attorney General – Applying for probate Information on confirming or securing legal authority to deal with the property and will of a deceased person.

Court Services from the Ministry of the Attorney General Covering a variety of areas including, guides to procedure in civil, divisional and small claims court, and information on court fees, estates and civil case management.

Community Legal Clinics A network of 73 legal clinics funded by Legal Aid Ontario provides legal assistance for low-income people living in Ontario in the areas of employment, housing, and social

Ontario
assistance law.
Legal Aid Ontario Provides legal assistance for low-income people living in Ontario. • Family Law Services Centres Provide eligible clients a range of legal resources and support for family matters. • Summary Legal Advice Telephone Services 1-800-668-8258. • Student Legal Aid Services Societies (SLASS) Operating out of Ontario's seven law schools, volunteer law students provide legal advice and representation.
Ontario Courts Information for litigants in Superior Court cases and Ontario Court of Justice cases. Specific resources for Divisional Court, Small Claims Court and preparing for Simplified Procedure Trials. • Court of Appeal – How to Proceed in the Court of Appeal for Ontario • Superior Court of Justice – Going to court? Information for people involved in a case such as information about how to find a lawyer or legal information, and information about court proceedings at the Superior Court of Justice. • Ontario Court of Justice – Guides for self-represented parties.
Family Law Limited Scope Services Project Provides a directory of lawyers in Ontario who are willing to provide "unbundled" legal services so that people do not have to retain a lawyer to help with their entire case.
Pro Bono Ontario Hotline People who need help with a civil law matter can call the Hotline and get up to 30 minutes of free legal advice or assistance. The Hotline does not cover family or criminal law issues.
Ontario Legal Information Centre People who need help with a civil law matter can call the Centre and get up to 30 minutes of free legal advice or assistance (or if in Ottawa, can meet with a lawyer for 30 minutes).

Prince Edward Island
Courts of Prince Edward Island Information about the PEI court system, forms and resources.
Representing Yourself in Supreme Court
Prince Edward Island Court of Appeal Procedures and Practices Contains information necessary in preparing for an appeal. • How to Commence and Respond to a Civil Appeal • How to Commence and Respond to a Criminal Appeal
Prince Edward Island – Family Law Centre The Family Law Centre provides child-focused programs and services for families. These family justice programs and services promote and emphasize the best

interests of children.
Community Legal Information Provides free legal information through the phone line, website, e-mail, publications, and outreach efforts. They provide lawyer referrals for Islanders who need legal advice and would like to connect with a lawyer. • Lawyer Referral • Family Law
Legal Aid PEI Provides legal representation and assistance to people living on a low income.
Pro Bono Legal Advice Clinic for Self-Represented Litigants Free summary legal advice is offered to self-represented litigants in the areas of family law and civil law.
PEI Public Law Library The law library at the Sir Louis Henry Davies Law Courts Building contains materials for legal research.

Quebec

Courts and Tribunals of Quebec Information about the Quebec court system.

The Court of Québec is a court of first instance with jurisdiction in civil, criminal and penal matters as well as in matters relating to young persons, such as adoption, youth protection and emancipation cases. It also hears administrative matters and appeals, where provided for by law.

The Superior Court of Quebec has jurisdiction throughout Québec and sits in all judicial districts.
In civil matters, the Superior Court hears:

- Cases in which the amount at issue is at least $85,000;
- Divorce and support cases;
- Class actions;
- Cases involving the probate of wills and the homologation of mandates given in the event of incapacity;
- Applications for injunctions to stop harmful activities;
- Except in certain cases provided for by law, cases involving the judicial review of decisions made by courts in Québec other than the Court of Appeal, or made by public bodies in Québec.

The Superior Court hears any application that does not come under the exclusive jurisdiction of another court. It may hear criminal cases such as:

- Criminal cases heard automatically before judge and jury, such as those involving murder or

Quebec

treason;

- Other cases in which the accused elects trial by judge and jury;
- Matters of extraordinary recourse, for example when a person is unlawfully detained in custody, or when the legality of a search warrant is challenged.

Like the Court of Appeal, the Superior Court hears some appeals from decisions:

- Rendered under the *Criminal Code* by a judge in the Youth Division or the Criminal and Penal Division of the Court of Québec, by a municipal court judge or by a justice of the peace;
- Concerning summary offences such as
    - Theft,
    - Prostitution,
    - Driving while impaired;
- Made under other federal and provincial statutes.

Superior Court of Québec Information about court process, rules, forms and other resources.

The Court of Appeal of Quebec is the general appeal court for Québec and as such is the province's highest court.

In civil matters, the Court of Appeal hears:

- Appeals from judgments of the Superior Court or the Court of Québec that terminate a proceeding, where the value of the subject matter of the dispute in appeal is $60,000 or more;
- Appeals from certain other judgments, including those that pertain to personal integrity, status or capacity;
- Appeals concerning the special rights of the State or contempt of court;
- Appeals from all other judgments of the Superior Court or the Court of Québec, with leave from a judge of the Court of Appeal.

In criminal and penal matters, the Court of Appeal hears appeals from verdicts of guilt or acquittal and sentences imposed under the *Criminal Code* or the Code of Penal Procedure.

Specialized tribunals of Quebec are:

- Human Rights Tribunal
- Professions Tribunal
- Administrative Tribunal of Quebec

Justice Québec General information on various areas of the law and the functioning of the justice system in Quebec, and on the programs and services available to the public; as well as forms and

Quebec
templates.
Justice Québec – Couples and Families (Separation and Divorce)
Barreau du Québec – Access to Justice Resources List of access to justice organizations (non-exhaustive).
Bar of Montreal (public)
SOQUIJ – Services aux citoyens Free access to judgments from courts and tribunals in Quebec, as well as the Supreme Court of Canada; access to Quebec and federal laws. ***Note**: Only available in French*
Young Bar of Montreal – Public services Call-in legal clinic; hearing preparation services; Small Claims Court mediation services.
Educaloi A starting point for legal information about the law in Quebec, including Family Law. • Separation and Divorce • Families and Couples
Fondation Barreau du Québec – Seul devant la cour A series of publications to help self-represented litigants through the court process in the Superior Court. ***Note**: Only available in French*
Centres de justice de proximité Centres located in various locations throughout Quebec and provide legal information, support, and referrals.
Justice Pro Bono Provides resources, legal information and legal clinics in Quebec.
Québec Legal Aid Offices Eligibility and service information for Legal Aid.
University Legal Clinics Free and confidential legal information and/or consulting services in various areas of the law: • Clinique juridique de l'UQAM • Cliniques juridiques de l'Université de Sherbrooke • Clinique juridique de l'Université de Montréal (Legal Aid Clinic) • Clinique d'informations juridiques à McGill (Legal Information Clinic at McGill) ***Note**: Only available in French*
Juripop Legal assistance, court representation, document drafting and accompaniment in negotiation and mediation. Services are intended for low-income individuals not eligible for Legal Aid.

Quebec

Boussole juridique Directory of free or low-cost legal services in Quebec.

Mile-End Legal Clinic Legal information, consultation and accompaniment services for low-income individuals who are not eligible for Legal Aid.

Saskatchewan

The Public Legal Education Association of Saskatchewan (PLEA) Is a non-profit, non-government organization that exists to educate and inform the people of Saskatchewan about the law and the legal system. PLEA offers programs and services to the general public as well as to school communities.

- Family Law Saskatchewan Detailed legal information to help you navigate a separation or divorce and everything that follows.

Courts of Saskatchewan Information about court processes, rules, legislation, and resources.

- Provincial Court - Adult Criminal Court
- Court of Queen's Bench – Criminal
- Court of Queen's Bench – Civil Law
- Court of Queen's Bench – Family Law
- Small Claims Court
- Civil and Family Matters

Government of Saskatchewan Find services and information for Saskatchewan residents and visitors.

- Family Matters: Assisting Families through Separation and Divorce The Family Matters program aims to minimize the impact of separation and divorce on all family members – especially children, by providing information and resources to deal with a changing family situation; and assistance to resolve urgent and outstanding issues.
- Represent Yourself in Family Court A Self-Help Kit is a package of court forms and instructions that has been prepared by the Family Law Information Centre of the Ministry of Justice. The kits are to be used by parties who intend to represent themselves in court on several different types of proceedings.
- Courts and Sentencing Find services and information for Saskatchewan residents and visitors.

Law Society of Saskatchewan – Legal Resources Resources and legal research guides.

Yukon
Department of Justice – Family Law Information Centre (FLIC) Is a legal resource for separating or divorcing couples and families in transition. FLIC is an office of the Court Services branch of the Yukon Department of Justice that provides information on family law issues and court procedures.
Yukon Public Legal Education Association (YPLEA) Is a non-profit organization devoted to providing legal information to the public and promoting increased access to the legal system.
Department of Justice – Law Library Resources, research guides and information to help prepare your legal case.
A Guide to Representing Yourself in the Yukon A general guide to help people without a lawyer prepare for court.
Yukon Legal Services Society Information about eligibility requirements for legal aid and other resources.