Defending Yourself in Criminal Court

Community Legal Information Association of PEI, Inc.

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If you are charged with a criminal offence, certain federal offences, or a provincial offence, you will have to go to court to defend yourself against the charge. You can go to court with a lawyer to defend you or you can defend yourself.

It is important to get legal advice if you are charged with a criminal offence. If you are convicted you will have a criminal record and you may have to serve probation, pay a fine or spend time in jail.

If you cannot afford a lawyer, you can apply to Legal Aid to see if you qualify to have a free legal aid lawyer represent you. Legal Aid Offices are in Summerside (902-888-8219) and Charlottetown (902-368-6043).

If you do not qualify for legal aid, you can have a short consultation with a lawyer by calling the Lawyer Referral Service at 1-800-240-9798 or 902-892-0853. You can also use the Yellow Pages to find a lawyer to defend you in court.

There are things you must know if you decide to go to court without a lawyer. The criminal trial procedure can be complicated. Defending yourself in court is not easy. You will be at an immediate disadvantage because you may not know the law or how the courts operate.

This pamphlet explains how a typical criminal trial proceeds through the courts. The information in this pamphlet is not a substitute for legal advice.

The Charge

The police will have filed a document with the court called the "Information". This describes the charge against you. The police provide the “Information” along with a copy of the disclosure (details of the evidence they have against you) to the crown prosecutor. You can contact the crown prosecutor’s office and ask to see a copy of the evidence against you. Sometimes they will not be able to give you a copy of everything but will tell you how you can see it (for example you may have to go to the police station to see video statements). You should bring identification with you so they know you are the person who is actually charged. For charges in Kings and Queens County you can contact the Charlottetown Crown Attorney’s office by calling 902-368-4595. For charges in Prince County you can contact the Summerside Crown Attorney’s office at 902-888-8213.

Get Information

To read the Act or regulation under which you are charged, go to a public library, the barristers’ library at the court-house, the government of Canada’s website at **www.justice.gc.ca** or the government of Prince Edward Island’s website at **www.gov.pe.ca**. You may also wish to call the Lawyer Referral Service at 1-800-240-9798 or 902-892-0853 for a one-time appointment with a lawyer.

Your First Appearance in Court

For most provincial offences you will have been given a ticket. If you wish to contest the charge you will have to go to the courthouse before the date stated on the ticket and tell

the clerk that you are pleading not guilty. The clerk will give you a court date for your trial.

If the police gave you the court date, your trial will not take place the first time you go to court. This appearance is for the reading of the charge. Be on time and sit inside the courtroom. When your name is called, go to the front of the courtroom. The Clerk of the Court or the Judge will read the charge to you and ask you if you understand it. If you do not understand, say so and it will be explained to you.

Crimes are divided into "summary conviction" (less serious offences) or "indictable" (more serious offences), or sometimes they are a combination of the two called “hybrid” offences. What happens next depends on the type of crime you have been charged with.

Summary Conviction Offences

If you are charged with a summary conviction offence, the charge will be read to you and the Judge will ask you if you plead guilty or not guilty. If you think you are innocent or want to see if the charge can be proved against you, plead "not guilty". If you wish to plead guilty, do so. It is a good idea to talk to a lawyer before making this decision.

Indictable Offences

Some indictable offences are dealt with in the same way as summary conviction offences. These are called absolute jurisdiction offences. For other indictable offences, a different type of procedure takes place. After the charge is read to you, the court will ask you how you want to be tried. This is called your election.

You have three options:

1. to be tried by a Provincial Court Judge;
2. to be tried by a Supreme Court Judge sitting alone (without a jury); or
3. to be tried by a Supreme Court Judge with a jury.

After the three options are read to you, you will be asked if you understand your election. If you do not understand, say so and the options will be explained to you.

If you do understand, say "yes". You will then be asked for your choice of procedure. At this point tell the Judge how you want to be tried.

If you choose to be tried by a Provincial Court Judge, you will be asked how you plead to the charge, either guilty or not guilty. If you plead not guilty, a date will be set for your trial.

If you choose to be tried by a Supreme Court Judge with or without a jury, you will have to tell the Judge if you want to have a preliminary inquiry or not. You can decide if you want one and which witnesses you want to hear from after looking at your disclosure. If you do want to have a preliminary inquiry, you must fill out a form (“Form A”) that you give to the crown prosecutor and the court telling them which issues you want to hear about at the preliminary

inquiry and which witnesses you wish to hear from at the preliminary inquiry. You can obtain a copy of this form in advance from the clerk of the Provincial Court where your matter is being heard. After you have provided the completed form to the prosecutor and the court, a date will be set for your preliminary inquiry.

The Preliminary Inquiry

A preliminary inquiry is like a trial, but the court does not find you guilty or not guilty. Instead, the Judge listens to some of the evidence against you to see if there is enough evidence to go ahead with a trial. If the Judge decides there is not enough evidence, this usually means the charge against you will be dropped. If there is enough evidence, you will be given a date to appear in the P.E.I. Supreme Court where you will be asked to plead guilty or not guilty. If you plead guilty, another date will be set for your sentencing. If you plead not guilty, a date for your trial will be set.

Pleading Guilty

If you plead guilty there will be no trial. The Judge will ask you a few questions (called a “plea inquiry”) to make sure that you are pleading guilty voluntarily and that you understand the possible consequences of your plea. The Judge will then ask the Crown Attorney to give the facts that make up the charge. The Crown Attorney will also tell the Judge about your criminal record, if you have one.

After the Crown Attorney has finished speaking, the Judge will ask you if you have anything to say. If you do not agree with the facts or what was said about your criminal record, tell the Judge at this time. If you disagree with the facts

presented, the court may hold a hearing to determine what the true facts are.

This is also the time to tell the Judge any special circumstances about your case and to bring up any other factors that may be relevant. After the Judge hears from you, he or she can either sentence you immediately or ask for a pre-sentence report and postpone sentencing to another day. A pre-sentence report is prepared by Probation Services and explains your background. For further information about sentencing, you may wish to read the pamphlet "Sentencing" which is available from CLIA at 902-892-0853 or 1-800-240-9798 or at www.cliapei.ca

Pleading Not Guilty

Entering a not guilty plea means that your case will go to trial at a later date. If the date suggested is not a good one for you, tell the Judge why it is not good. It will then be up to the Judge to decide whether to go ahead and set the trial for that date or arrange for another day.

Preparing for Trial

Prepare for your defence as soon as possible. Complete preparation is essential. Sometimes the date for trial is months away, so make detailed notes about what happened immediately (all your note pages should be dated and signed). These notes are to refresh your memory. You cannot read from them in court. It is a good idea to put any documents or evidence you may need for your trial in a safe place.

Your Witnesses

If there are any witnesses who can be helpful to your case, contact them now and ask them to be at your trial. Ask them to make notes of what they remember and to give the notes to you to keep. If you don't think they will come to court voluntarily or if they need to explain to their employer why they need time off from work, you can ask the court officials to issue a subpoena. A subpoena is a document from the Court ordering a person to come to the trial to give evidence. The Sheriff can serve (deliver) the subpoena and you will have to pay a fee for this. You may want to give your witnesses a pamphlet called “A Guide for Witnesses”, available from CLIA at 902-892-0853 or 1-800-240-9798 or at www.cliapei.ca.

Before the day of your trial, it's a good idea to go to court to watch other cases to see how the court system works.

The Trial

On the day of your trial, bring any documents or items that will help your case. You may also want to bring a pen and paper for making notes. Make sure your witnesses will be there. Be neatly dressed and on time. Sit inside the courtroom.

A Judge of the Provincial Court is called "Your Honour", "Sir" or "Madam". If your trial is in the Supreme Court, call the Judge "My Lord", "My Lady", "Sir" or "Madam". You must always treat the Judge with respect, even if you don't agree with what is said or done in court.

At the beginning of your trial, the clerk will call your name and will read the charge or charges against you. You will be

asked if you are ready to have your trial and you will be asked to sit at the table in front of the Court. If you wish to change your plea to guilty, tell the court at this time.

If you are not ready to go ahead with your trial (for example, an important witness is not present), you may ask the Judge for an adjournment to another day. The Crown Attorney may also ask for an adjournment. You can oppose the Crown's request by telling the Judge why you do not want an adjournment (for example, a witness will be unable to attend on another day). The Judge may or may not grant an adjournment so you should be prepared to proceed on that day.

Either you or the Crown Attorney may ask the Judge to have all the witnesses leave the Courtroom while they are waiting to give their evidence. This prevents one witness from hearing what is said by the other witnesses.

The Crown Attorney's Witnesses

First, the Crown Attorney calls the witnesses for the Crown. Listen carefully to the testimony and take notes. Do not interrupt even if you disagree with what a witness is saying.

When the Crown Attorney finishes with each witness for the Crown, it is your turn to ask questions. This is called cross-examination. The purpose of cross-examination is to help your case. If there is nothing to be gained by asking questions, then you should say, "No questions of this witness".

Cross-examination is your opportunity to test the strength of what has been said by the witness. The questions you ask should be designed to bring out answers that will help you. You may want to show that a witness is mistaken, or was not in a position to see all that he or she reported, or is interested in the case for personal reasons (for example, has a grudge against you, or is a friend of the other side).

Most often witnesses are truthful and tell things as they remember them. You are not permitted to argue with them. Cross-examination is not the time for you to give your own version of the facts. Your opportunity to present your case will come later in the trial.

If you bring out new information in cross-examination the crown can then ask some more questions about that new

information - this is called “redirect”. You will not be able to ask that witness any questions after the crown has done their redirect.

Your Witnesses

Once you and the Crown Attorney have finished questioning all the witnesses called by the Crown, the case for the Crown is closed. It is now your turn. It is important to know that you do not have to present any evidence to the court. You do not have to take the witness stand if you do not want to. It is up to the Crown Attorney to prove that you are guilty beyond a reasonable doubt, not for you to prove that you are innocent.

The Judge will ask you if you wish to call evidence. If you wish to tell your side of the story, or if you have witnesses, this is where you start. If you choose to give evidence yourself, you will have to take the witness stand and be sworn, or make a solemn affirmation, to tell the truth. You will be asked to tell your story. It is often best to start at a time just before the incident and tell your story in a logical and orderly manner. You may want to tell the court where you were, what you were doing, who you were with, whether you had anything to drink, etc. Then tell the Judge what you know about the charges. You may also tell the court about your dealings with the police, and whether you were given your rights under the *Charter of Rights and Freedoms* if this is important to your case.

If you give evidence yourself, the Crown Attorney has the right to cross-examine you and test the strength of your story. If you have a previous criminal record, the Crown is entitled to ask you about that record while you are on the witness stand.

When you call your witnesses, ask them questions that will help them tell the Judge what they know. Ask your questions in a logical way to help the witnesses tell their story clearly. Do not make statements and ask the witnesses if they agree or disagree. Once you are done, the Crown Attorney has a chance to cross-examine the witness. Again if there is anything new brought up in cross examination you have the right to ask questions about that new evidence only.

Summation

After all your witnesses are finished, or if you are not presenting any evidence at the end of the Crown's case, you and the Crown Attorney will have the opportunity to address the Judge from your tables. This is called the summation. If you presented evidence, you go first. If you did not call any witnesses or take the stand yourself, the Crown goes first. This is the time both you and the Crown Attorney will be able to speak to the Judge about the strengths or weaknesses of the case against you.

You cannot give new evidence in the summation. You may refer to evidence that has already been given under oath, say whether it should be believed, whether it proves any wrong-doing by you, and whether all the evidence together is strong enough to convict you. Whoever speaks first in the summation has the right to comment on what the other person has said after both summations.

Judge's Decision

Once you and the Crown Attorney are finished, the Judge, or the Jury if the trial is before a Judge and Jury, will consider the matter and decide whether you are guilty or not guilty of the charge.

Sometimes court is adjourned. If the Judge, or Jury think the charge against you has not been proven, you will be acquitted. That is usually the end of the matter. If the Judge, or Jury think the charge has been proven beyond a reasonable doubt, you will be found guilty.

Sentencing

If you are found guilty and convicted, the next thing that happens is that the Judge decides on an appropriate sentence. The Judge may sentence you after hearing some personal background information (such as your age, education, employment), or the Judge may adjourn to a later date to allow a pre-sentence report to be prepared by a probation officer. In some cases, the Judge may remand (put) you in custody until the day set for your sentencing.

Appeals

You cannot appeal because you do not like the decision. Appeals are based on errors in law, in procedures or in paperwork. If you are convicted and you believe a serious error was made, you can appeal either your sentence or the conviction and sentence to a higher court. This must be done within thirty days of the Judge's decision. If you wish to appeal, make sure you have good legal reasons on which to base your appeal. You need to talk to a lawyer for legal advice. This is a technical area of law with many complex rules and documents which have to be filed. Even if you have good reasons for an appeal, your appeal may never be heard if you don't follow the proper appeal procedures.

The information in this pamphlet is very brief and very general. It is not a substitute for legal advice. It does not cover everything that may arise during a trial. If problems arise at trial, or if something happens in Court that you don't understand or think is right, tell the Judge. The Judge is there to protect your rights as well as to make a decision in the case. However, the Judge is not your lawyer and cannot give you advice about what to do.

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For more information, you can visit our website at www.cliapei.ca, telephone CLIA at 902-892-0853 or 1-800-240-9798, or email us at clia@cliapei.ca . You can also find us at: www.facebook.com/CLIAPEI, www.twitter.com/CLIAPEI and www.youtube.com/CLIAPEI.

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