

VICTIM SERVICES

INITIATIVES

Criminal Justice System

Information for Victims of Crime

Criminal Justice System Information

This information sheet provides information about the criminal justice process for victims of crime.

More information and assistance is available from the Provincial Victim Services Program, Nova Scotia Department of Justice. This is a no-cost service. Locations and telephone numbers for the regional offices of the Provincial Victim Services Offices are listed on the last page of this handout

Investigation and Laying a Charge

When a crime is reported to the police, they do an investigation to decide if there is enough evidence to be able to charge any person with the offence.

Once a criminal charge is laid at the court by the police, the person who is accused of the crime is referred to as the **accused** or the **defendant**. The person who reported the crime is referred to as the **complainant**. Sometimes the complainant is not the same as the victim who suffered injury or harm as a result of the crime.

Although individual citizens have the right to lay a criminal charge, this is unusual as she/he would be personally responsible to collect evidence and to present this **private prosecution** case in court.

Will the Accused be Arrested?

The police may arrest the accused at the time of the incident or when they decide to charge him/her, or they may give him/her a **summons** which is an order to appear in court at a certain time to answer the charge.

Usually the accused person will be released from custody within 24 hours after arrest unless there is enough evidence for a judge to decide that releasing him/her would threaten the safety of the victim or others or there is reason to believe that she/he will not turn up for the trial.

Sometimes the accused will be released on an **undertaking** or **recognizance** with conditions such as to stay in a particular area, have no contact with the victim or others, or not to use alcohol or firearms. If

the accused breaks any of the conditions, she/he can be charged with a **breach** and may be taken into custody.

Can Charges Laid by Police Be Dropped or Changed?

Only the **Crown attorney** can withdraw charges. This may happen for a number of reasons but is usually because the Crown attorney determines that there is not enough evidence for the accused to be **convicted** (found guilty) of the charge. The Crown attorney may also reduce the charge by accepting a guilty plea by the accused to a less serious charge rather than proceeding with a trial on the more serious charge.

What Are the Steps in the Court Process?

The number of steps in the process depends on the seriousness of the crime and whether the accused person pleads guilty or not guilty. The entire process may be completed in a number of days if the accused pleads guilty, or it can take several months, or even years. There are often lengthy periods between each court hearing.

Arraignment, Plea, and Election

The charge is formally read to the accused in court. The judge asks the accused if she/he understands the charge. If the accused does not have a lawyer (**defence counsel**), the judge may **adjourn** (postpone) the arraignment to another date to allow the accused time to get legal advice.

If the charge is less serious (**summary conviction**), the accused will be asked whether she/he pleads guilty or not guilty. If the charge is very serious (**indictable**), the accused can **elect** (choose) that the case be heard in Provincial Court and then enter a plea. The accused also has the choice for very serious charges to have the case heard in Supreme Court. If the accused chooses Supreme Court, she/he may have a **preliminary hearing**.

If the accused pleads guilty at the arraignment, or any other court appearance, the judge may sentence the accused immediately or set a date for a **sentencing hearing**.

Preliminary hearing

The Crown attorney outlines the case to the judge who decides whether there is enough evidence to send the case to trial. The Crown may call witnesses, including the victim, to give evidence. The **defence** does not have to present any evidence.

Trial

All of the evidence is presented to a judge alone or a judge and jury to determine the guilt or innocence of the accused. The judge or jury may take hours, days or much longer to reach a **verdict** (decision of guilt or innocence).

Sentencing hearing

The judge determines an appropriate sentence for the **offender** (accused who has been found guilty). The overall purpose of the sentence is the protection of society, not revenge. The sentence is intended

to **deter** (discourage) the offender and others from committing crimes and to **rehabilitate** (reform) the offender.

Appeal hearing

The defence or the Crown may **appeal** (challenge) the verdict or the sentence. The appeal hearing involves judges, defence counsel and the Crown and is usually limited to a review of the law and written documents, including **transcripts** (written records) of the court proceedings. It is unusual for witnesses to be called to give evidence at an appeal hearing.

What is the Role of the Crown Attorney?

As a criminal offence is viewed as an offence against the State or society as a whole, the **Crown Attorney** (also referred to as the **Crown** or the **Prosecutor**):

- represents the interests of society, not just the victim;
- is not the victim's lawyer;
- seeks the truth by presenting all of the evidence, even evidence that may support the accused;
- has the responsibility to prove the guilt of the accused beyond a reasonable doubt.

What is meant by guilt “beyond a reasonable doubt?”

Reasonable doubt refers to the level of proof that the judge or jury needs in order to find a person guilty. Although absolute certainty is not required, **probable** (likely) guilt is not enough to **convict** (find guilty). If the judge or jury has any reasonable doubt that the accused is guilty, based on the evidence presented in court, they must **acquit** (find innocent) the accused. Criminal courts demand the highest standard of proof because they can take away a person's freedom.

What Does “Disclosure” Mean?

The Crown must **disclose** (share) with the accused all relevant information gathered in the investigation so that the accused can fully defend him/herself against the charges.

What is the Role of Defence?

The defence ensures that the rights of the accused are protected. The accused has the right to:

- **full answer** and **defence** against criminal charges;
- full **disclosure** of the Crown case;
- cross-examination of Crown witnesses.

The accused may represent him/herself in the proceedings or have a lawyer. The accused is:

- **presumed innocent** unless proven guilty by the Crown;
- not required to testify or to prove his/her innocence.

What is “Presumption of Innocence?”

Accused persons are assumed to be innocent at all stages of the criminal justice process unless they admit guilt or are proven guilty by the Crown. This means that the accused has the same rights (for example, the right to freedom rather than being held in custody) as any other citizen until she/he is found guilty of the offence in court.

What is the Role of the Judge?

The **judge** has authority over the courtroom and ensures that the hearings proceed according to the law. In non-jury trials (and in some instances in jury trials), the judge determines the verdict. In a jury trial, the judge **instructs** (gives direction to) the jury on what they should consider in determining the guilt or the innocence of the accused. It is the judge who decides the appropriate sentence for offenders.

If There is a Jury, What is Their Role?

The **jury**, which consists of 12 members of the public, listens to the evidence, applies the law (as stated by the judge) to the facts of a case and makes a decision on the guilt or innocence of the accused.

What Happens During the Trial?

The Crown attorney presents his or her case first and calls all witnesses for the Crown. The Crown attorney will be the first to ask Crown witnesses questions. The defence lawyer can then **cross-examine** (question) the witness. The Crown attorney has the right to **redirect** (ask further questions to clarify). The defence may present its case after the Crown has presented all its evidence. The defence does not have to present any evidence and the accused does not have to testify. If the defence presents evidence, the Crown attorney may cross-examine witnesses called by the defence. The Crown and the defence will make an **opening statement** before they call witnesses, if it is a jury trial. Both the Crown and defence will give **closing arguments**.

What is the Role of the Victim in Court?

If you are a direct victim of the crime, the Crown attorney will usually call you as a witness against the accused, even though you have provided a written or video-taped statement to the police. If you receive a subpoena, you must testify in court even if the accused is your spouse.

If you are the victim of a sexual assault and the accused or defence counsel makes an **application for production** to see private records about you (for example, personal journals, counselling or medical records, social service or employment records), you must be informed of the application and are permitted to speak, or have a lawyer speak for you, at the application hearing.

Victims of crime have the right to have a **Victim Impact Statement** considered by the judge when deciding a sentence for the offender. It is a written statement, in your own words, describing how the crime has affected you. You can present it in writing or read it at the sentencing hearing. You can be questioned in court on any of the information in the statement.

Can the Victim Attend All Hearings?

If you are not a witness in the court proceedings, you can attend all court hearings. If you are expected to be called as a witness, usually you will be asked to stay outside of the courtroom until after you have completely finished giving your evidence. The accused and the witness for the defence may also be in the waiting area. If you are uncomfortable or feel unsafe, arrangements can be made for you to wait in a separate area.

Will Other People Be in the Courtroom?

The **court clerk** or **court reporter** makes sure that everything necessary for the trial is in place. She/he reads the charge and gives the **oath** or **affirmation** (promise or declaration to tell the truth) to witnesses before they testify.

The **sheriff** has the responsibility for the security of the courtroom. The sheriff may sit close to the accused during court proceedings and may bring the witnesses into the courtroom when it is their turn to **testify** (give evidence).

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). A witness who does not obey a subpoena may be arrested and held in custody.

Usually a witness is only permitted to be in the courtroom to hear the testimony of other witnesses once his or her own testimony has been completed. This is to ensure that one witness is not **influenced** (affected) by what another witness says in court.

Court hearings are rarely closed. They are open to public examination to ensure fairness. The **public** and **media** may sit quietly in the seats behind the rail that divides the public section from the court section.

Television, still cameras and tape recorders are allowed in the courthouse but they are not allowed in the courtroom unless the judge agrees. Sometimes the judge will order a **publication ban** which does not allow some of the information presented in court to be published in the media.

Can the Media Publish the Identity of Victims and Witnesses?

Yes, unless a ban on publication has been ordered by the judge. In sexual assault cases, victims and witnesses under the age of 18 have the right to a publication ban upon request. Although an application can be made to the judge for an order to ban publication of the identity of other victims or witnesses, these orders are rare. The judge must be satisfied that the order is necessary for the proper administration of justice.

How Can You Contact Us?

The Provincial Victim Services Program, Nova Scotia Department of Justice, provides information and assistance to victims of crime. This is a no-cost service.

For more information, contact the Provincial Victim Services Office in your area.

Dartmouth

Serving Halifax Regional Municipality
277 Pleasant Street, Suite 306
Dartmouth, Nova Scotia B2Y 4B7
(902) 424-3307

Kentville

Serving Annapolis, Kings, Hants, Lunenburg, Queens,
Shelburne, Yarmouth & Digby Counties
49 Cornwallis Street, Suite 204
Kentville, Nova Scotia B4N 2E3
(902) 679-6201
or toll free 1-800-565-1805

New Glasgow

Serving Pictou, Antigonish, Colchester
& Cumberland Counties
115 MacLean Street, 2nd Floor
New Glasgow, Nova Scotia B2H 4M5
(902) 755-7110
or toll free 1-800-565-7912

Sydney

Serving Cape Breton, Guysborough, Richmond, Inverness & Victoria Counties
136 Charlotte Street, 4th Floor, Suite #9
Sydney, Nova Scotia B1P 1C3
(902) 563-3655
or toll free 1-800-565-0071

Victim Services Head Office

Tel: (902) 424-3309
Fax: (902) 424-2056
Toll Free 1-888-470-0773
Web site address: http://novascotia.ca/just/victim_Services/

This Information is not meant to replace legal advice. If you have a specific legal problem, you should talk with a lawyer.