

A Survivor's Guide to Sexualized Violence Prosecutions

**Nova Scotia
Public Prosecution
Service**



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CONTACT INFORMATION

Department of Justice Victim Service Centres

Victim Services has 4 regional offices:

Dartmouth Centre

Serving Halifax, Dartmouth, and Halifax County
Phone (902) 424-3307

Kentville Centre

Serving Annapolis, Kings, Hants, Lunenburg, Queens, Shelburne, Yarmouth, and Digby counties
Phone (902) 679-6201
Toll-free 1-800-565-1805

New Glasgow Centre

Serving Pictou, Guysborough, Antigonish, Colchester, and Cumberland counties
Phone (902) 755-7110
Toll-free 1-800-565-7912

Sydney Centre

Serving Cape Breton, Richmond, Inverness, and Victoria counties
Phone (902) 563-3655
Toll-free 1-800-565-0071

Victim Services offers 4 main programs:

- [Provincial Victim Services Program](#)
- [Child Victim/Witness Program](#)
- [Criminal Injuries Counselling Program](#)
- [Victim Impact Statement Program](#)

To find out more, visit the [Victim Services website](#).

To find support and counselling services near you, visit the [Break the Silence website](#). Click the Find Help tab.

What is sexualized violence?

The term “sexualized violence” includes any sexual act done to you without your consent. It can be physical, but it doesn’t have to be. What was going on at that time and how you felt are important.

These are some examples of sexualized violence:

- someone forcing you to take part in a sexual act without your consent
- someone touching you in a sexual way without your consent
- someone taking or sharing intimate images of you without your consent

The phrase “without your consent” means “against your will.” If you go along with an act because you feel you have no choice, or you are bullied or pressured into it, that is **not** consent.

The word “violence” includes physical, emotional, and psychological harm.

Sexual violence affects all genders. You may know the person, or they may be a stranger.

Someone committed a sexually violent act against you. You have made the difficult choice to report it to police. The police have investigated. They have charged the person or people they think are responsible.

What happens next?

The police should refer you to Victim Services at the Nova Scotia Department of Justice. If they don't, you should contact them yourself. Victim Services is there to help you as the case moves through the criminal justice system. You can expect them to do these things:

- give you general information about the police, prosecution, courts, and corrections
- give you information about the case
- help you contact the Crown Attorney
- help you prepare to testify in court
- help you prepare your Victim Impact Statement
- help you apply for Criminal Injuries Counselling if you think that's something that you want
- refer you to other agencies that may help you

Where is the person or people police have charged?

Where the accused is depends on 2 things:

- the seriousness of the charge
- whether a judge thinks they will come to court

They may be home or in jail. If they are home, they must stay away from you or face going to jail.

How long will the whole process take?

The process should take between 18 and 30 months. The length of the court case mostly depends on 2 things:

- how complicated your case is
- whether the case takes place in Provincial Court or Supreme Court

Sometimes unexpected issues come up that make the case take longer.

ACCUSED – the person or people the police have charged.

DEFINITION

Realistic prospect of conviction

Throughout the case, the Crown Attorney checks to make sure that there is a realistic prospect of conviction. They need to know if there is enough evidence for a judge or jury to find the accused guilty. They will end the case if they find that there is **not** enough evidence. They can do this at any time during the prosecution process. They will explain this to you before it happens. This does **not** mean that the Crown Attorney does **not** believe you. Nor does it mean that they think the sexualized violence did **not** happen. It means that they do not think they have enough evidence to prove that the accused is guilty of the crime.

JURY – 12 members of the public chosen to decide the outcome of a criminal trial. The jurors must all agree on the same verdict.

DEFINITION

You can choose to stop participating in the case at any time.

If you do, the case could still continue if there is enough evidence. If there is not enough evidence for a realistic prospect of conviction, the case will end.

Generally, the Public Prosecution Service will **not** make you continue with the case. They may make an exception if it is in the public interest to continue.

Crown Attorneys are also known as Crown Prosecutors or prosecutors. They are lawyers who represent the public interest.

It is the Crown Attorney's job to present evidence fairly. They argue for a proper verdict based on the evidence.

A Crown Attorney may appeal a verdict or a sentence if they believe a judge made a legal error that led to that verdict or sentence.

VERDICT – the decision made by a judge or jury.

SENTENCE – the punishment given to a person found guilty of a crime.

DEFINITIONS

Provincial Court or Supreme Court?

Whether the case takes place in Provincial Court or Supreme Court depends on what the accused is charged with. For some charges, the accused can choose if they want the case to take place in Provincial Court or Supreme Court. For some charges, the case always takes place in Provincial Court.

If the case takes place in Provincial Court, the procedure could take up to 18 months or more. If it takes place in Supreme Court, it could take up to 30 months or more. The Crown Attorney will explain to you why your case is proceeding in a particular court.

In Provincial Court, only a judge hears the case. There is no preliminary inquiry so you will only have to testify once.

In Supreme Court, the accused has 2 choices:

- for a judge to hear the case alone
- for a judge and jury to hear the case

In some cases, the accused can ask for a preliminary inquiry. If they do, you may have to testify twice, once at the preliminary inquiry and once at trial.

Read more about the preliminary inquiry in [Testify at the preliminary inquiry](#) and [STEP 4: Preliminary inquiry](#).

Do you need your own lawyer?

Most survivors of sexualized violence do **not** have their own lawyers. Still, you may choose to have a lawyer for 3 reasons:

- to give you legal advice
- to protect your private records
- to prevent improper use of other sexual activity

Free legal advice for survivors of sexualized violence

As a survivor of sexualized violence, you have the right to up to 4 hours of free legal advice through the Nova Scotia Department of Justice. Call 211 and say that you were the victim of sexualized violence in Nova Scotia and you want to talk to a lawyer. This service is for survivors of sexualized violence who meet these 2 criteria:

- they are 16 years old or older
- the event took place in Nova Scotia

To find out more, see [Independent legal advice for adult survivors of sexual assault](#).

PRIVATE RECORDS – materials that you expect to keep private such as these:

- adoption, child welfare, and social media records
- medical, psychiatric, therapeutic, and counselling records
- personal journals and diary entries
- some text messages, emails, or social media messages
- any record that another Canadian law protects

DEFENCE LAWYER – the lawyer who works for the accused in a criminal trial.

DEFINITIONS

Right to a lawyer to protect private records

The defence lawyer must get permission from the judge to put your private records into evidence. The judge will only allow this if they think the information is relevant to the case. This happens in a separate and private hearing. If this becomes an issue in the case, the Crown Attorney will discuss it with you.

You have the right to argue against putting your private records into evidence. You can hire your own lawyer to represent you and argue that this information is **not** relevant to the case. In some cases, the government may pay for this lawyer.

The Crown Attorney will take part in this hearing but they do **not** represent you. They represent the public.

Right to a lawyer to protect other sexual activity

A defence lawyer must get permission from the judge to ask you about your other sexual activity. The judge will only allow this if they think the information is relevant to the case. This happens in a separate and private hearing. The Crown Attorney will take part in this hearing.

You have the right to argue against putting your other sexual activity into evidence. You can hire your own lawyer to argue that this information is **not** relevant to the case. The government may pay for this lawyer.

What will you have to pay for?

You may have to pay for your own lawyer should you choose to hire one. Other than that, there are no fees for you to pay and there are no court costs.

If you have to travel to take part in the case, the government will pay for your travel expenses.

What is your role?

You are the main witness. Your job is to testify at trial. You may also have to testify at a preliminary inquiry. To prepare for both of these events, you will have to meet with the Crown Attorney.

What if you're uncomfortable in English?

If you are uncomfortable in English, you can ask for a translator or interpreter. Ask the Crown Attorney or Victim Services.

Meet with the Crown Attorney

You should meet with the Crown Attorney so they can prepare you to testify in court. They will discuss the details of the crime the accused is charged with. This can prepare you for questions that may be embarrassing or difficult to answer. They may also prepare you for the strong emotions you may feel as you tell your story.

Crown Attorneys strive to do these things for you:

- treat you with compassion and respect
- explain the prosecution process to you
- prepare you for when you have to go to court
- tell you how the case is proceeding

The accused may need time to prepare their defence. This can delay the proceedings. If the delay does **not** affect your role in the proceedings, you may **not** be told about it.

Victim Services can also do these things for you:

- give you general information about the criminal justice system
- tell you the court dates
- help you prepare to testify in court

To find out more, visit the [Victim Services website](#).

Testify at the preliminary inquiry

We expect you to testify at the preliminary inquiry if there is one. We also expect you to testify at the trial. We understand that this may be difficult for you. The accused will be in court when you testify. The Sheriff guards the accused so they cannot harm you.

Most survivors of sexualized violence testify in open court. This is usually within view of the accused and the public. There are other ways to testify.

If you are under 18 or have a mental or physical disability

You **have the right** to ask to testify from behind a screen. Or, you may be in another room and testify using closed-circuit television, CCTV.

To find out more, see [Testimonial Aids under Victim's Rights in Canada](#).

You also **have the right** to ask to have a support person at your side as you testify.

If you are 18 years old or older and you do not have a disability

You may be able to testify from behind a screen. Or, you may ask to testify using closed-circuit television, CCTV. You may also have a support person by your side as you testify. You may want to testify this way if you feel it will help you to testify honestly, leaving nothing out. Ask the Crown Attorney about these options as you prepare to testify.

The Crown Attorney must ask the permission of the judge. The judge decides if this is appropriate.

To find out more, see [Testimonial Aids under Victim's Rights in Canada](#).

You can have a family member or support person sit in the courtroom with you as long as that person is **not** a witness.

Tell the truth; leave nothing out

When you testify, we expect you to tell the truth. This may sound obvious but you may be asked questions that embarrass you. You must answer them clearly and truthfully. Do **not** leave anything out. The judge (and jury if there is one) needs to understand exactly what happened. You may be asked if you consented to some sexual activity. Answer those questions truthfully. These activities do **not** excuse sexualized violence.

Do not be afraid to tell the court that you were doing something illegal when the violence happened. The case is **not** about what you have done. It is about what the accused has done to you.

If you do **not** understand a question, tell the person asking it that you do **not** understand. Do **not** try to answer a question that you do **not** understand.

Testify at trial

You have to testify at trial. Remember to tell the truth and leave nothing out.

Who will be in court?

The courtroom is open to the public. These people may be there:

- your friends and family if you want them to be
- family and friends of the accused
- members of the media such as television, radio, and newspaper reporters

Will your name be in the news or made public?

Only if you want it to be. At the first step in the prosecution process, the Crown Attorney will ask the judge to ban the publication of any information that could identify you. They may also ask to ban publication of the name of the accused if that person is related to you. This is to protect your identity, **not** to protect the identity of the accused. If the Crown asks for the ban, the judge must order it. This way, no one is allowed to publish your name or anything else that would let people know who you are. If you do **not** want a publication ban, discuss this with the Crown Attorney.

PROSECUTION PROCESS

1

Arraignment

2

Bail hearing

only if the accused is in jail

3

Election

depends on the seriousness of the charge

4

Preliminary inquiry

depends on the charge and whether the accused has elected to Supreme Court

5

Trial

only if there is a realistic prospect of conviction

6

Verdict

only if there is a trial

7

Sentencing

only if the accused pleads guilty or is found guilty

8

Appeal

only if the Crown Attorney or defence lawyer decides to appeal the verdict or sentence

These are the steps you are expected to participate in.

The steps listed here may not always occur in every case.

A step-by-step guide to the prosecution process

The steps in the prosecution process happen in this order. But one step does not immediately follow the other. It can take several months between steps.

The time between steps gives the Crown Attorney and defence lawyer time to prepare for the next step.

The first 3 steps in the process concern only the accused. These are: arraignment, bail hearing, and election. **You may attend these hearings but you do not have to.** You may have to ask someone from Victim Services when these hearings take place.

STEPS 1, 2, and 3: Arraignment, bail hearing, and election

Arraignment: the clerk of the court reads the charge aloud to the accused. The accused can do one of 2 things:

- plead guilty or **not** guilty
- decline to enter a plea at that time

Bail hearing: There is only a bail hearing if the accused was put in jail when they were arrested. At the bail hearing, the Crown Attorney may tell the judge why they think the accused should stay in jail. The defence lawyer will argue why the accused should be freed. The judge decides whether the accused will stay in jail or be released with conditions. One of the conditions will be that the accused stay away from you.

Sometimes, depending on the facts of the case, the Crown will agree to release the accused with conditions. These are 2 examples of conditions:

- The accused may not have any contact with you.
- The accused must stay away from where you live, where you work, and where you study.

Election: Depending on the charge, the accused may choose a trial by a judge alone or by a judge and jury. This is called electing a court. (See: [Provincial Court or Supreme Court?](#))

The accused may need time to prepare for these hearings. This may delay the process. Because you do **not** need to attend these hearings, you may **not** be told about the delays.

STEP 4: Preliminary inquiry

This is the first time you may have to testify in court. This happens only if the accused has chosen to have a preliminary inquiry. As mentioned earlier, the Crown Attorney will prepare you to testify. (See: [Meet with the Crown Attorney](#))

The goal of the preliminary inquiry is for the judge to decide if there is enough evidence to take the case to trial. The Crown Attorney presents the evidence. Your testimony is part of that evidence. The defence does **not** have to present evidence at this step.

STEP 5: Trial

If there is no preliminary inquiry, this is the only time you will have to testify in court.

Our justice system presumes that all accused are innocent until they are proven guilty. The goal of the trial is to find out if the evidence proves **beyond a reasonable doubt** that the accused is guilty of the charges.

Order of questioning

You are the main witness in the case. That means you have to testify. Testifying means you have to answer questions from both the Crown Attorney and the defence lawyer. Questioning always takes place in the following order:

1. **Direct examination** – the Crown Attorney asks you questions.
2. **Cross examination** – the defence lawyer asks you questions. They will try to raise doubts about your testimony. If they ask questions that are unfair or inappropriate, the Crown Attorney will object.
3. **Redirect examination** – the Crown Attorney asks you more questions.

If you need it, you can ask the judge for a break. (See: [Tell the truth; leave nothing out](#))

Your testimony may not be all the evidence the Crown Attorney presents. These are some of the other kinds of evidence that may be presented:

- witnesses other than yourself
- digital communications such as text messages, emails, and social media content
- objects such as these:

- clothing
- the results of a medical exam done after the sexualized violence
- items that belong to the accused

After the Crown Attorney has presented their evidence, it's the defence lawyer's turn. They may call other witnesses to testify. The accused may or may **not** testify. You will **not** know what this evidence is beforehand.

Once both sides have finished presenting their evidence, each takes a turn to sum up the case. This is called closing arguments. When they have finished, the trial is over. The judge or the jury go away to think about the evidence and decide on the verdict.

STEP 6: Verdict

Deciding on a verdict can take days, weeks, or even months.

Judges and juries decide if the accused is guilty or **not** guilty. A verdict of **not** guilty does **not** mean that the judge or jury believes that the sexualized violence did **not** take place. Nor does it mean that the judge or jury believed the accused and did **not** believe you. It means that the judge or jury had a reasonable doubt that the accused committed the crime for which they are charged. They may not be sure what happened. In this case, they must give the benefit of the doubt to the accused. The Crown Attorney will discuss the verdict and the judge's reasons with you. Juries do **not** give reasons.

Not guilty verdict

When a judge or jury finds the accused **not** guilty, they are free to go. They cannot be tried for the same crime again

unless there is a legal reason for the Crown to appeal the case. (See [STEP 8: Appeal](#)).

Guilty verdict

When a judge or jury finds an accused guilty, the judge sets a new date for sentencing.

STEP 7: Sentencing

A judge decides the sentence they will give to the accused. Before this happens, the Crown Attorney will explain to you what kind of sentence to expect and why.

The sentencing hearing may be weeks or months after the verdict. During this time, the Crown Attorney and the defence lawyer tell the judge the kind of sentence that they think is appropriate. Sometimes they agree on a sentence. Sometimes they disagree and each recommends a different sentence to the judge.

It is up to you whether you want to attend this hearing.

It is possible that the accused will **not** go to jail. Instead, the sentence may be served outside of jail. In this case, the accused will have to abide by certain conditions. They will be supervised by a probation officer.

To find out more about sentencing, see [How Sentences Are Imposed on the Government of Canada Department of Justice website](#).

Victim Impact Statement

At the sentencing hearing, you can tell the judge how the sexualized violence affected you. This is called a Victim Impact Statement. If you choose to make such a statement, you have to write it down and it will be given to the judge

before the sentencing hearing. Victim Services can help you with this. At the hearing, you have options:

- You may read your statement out loud to the court.
- You may have the Crown Attorney or someone else read it out loud for you.
- You may file it with the court without anyone reading it out loud.

No matter which option you choose, the judge will consider your statement.

STEP 8: Appeal

Both the Crown Attorney and the defence lawyer have the right to appeal a verdict or sentence. They can only do this if they think the judge made a legal mistake in their decision or sentence.

Lawyers must tell the court whether they intend to file an appeal within a certain period of time after the verdict or sentence.

APPEAL – request to a higher court to change a verdict, sentence, or other decision made by a lower court.

DEFINITION

Stay strong

It is not easy to report sexualized violence to police. It is also hard to take part in a criminal prosecution. But both are important. Your choice to come forward shows your courage. What is most important is that you do what is best for you.

We understand some outcomes can be disappointing. For example:

- The Crown Attorney ends the prosecution early.
- The judge or jury finds the accused **not** guilty.

This does **not** mean that the Crown Attorney, judge, or jury did **not** believe you. It does **not** mean that they think the sexualized violence did **not** happen.

Keep in mind the people that are there to help you:

- the Crown Attorney
- Victim Services at the Department of Justice
- [support and counselling services](#) referred to on page 2



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ISBN 978-1-77448-641-2