OCJCriminalGuide

ONTARIO COURT OF JUSTICE

GUIDE FOR ACCUSED PERSONS IN CRIMINAL TRIALS

This Guide provides accused persons with general information about criminal trials. This is not a full or complete review of the criminal process. It does not cover every circumstance that might arise in your case.

THINK ABOUT GETTING LEGAL REPRESENTATION

This Guide does not provide legal advice. It also does not replace the advice or assistance you would get if you have a lawyer or paralegal representing you in court. You are strongly urged to get advice from a lawyer or paralegal about your legal options and the possible penalties you could face.

You can get referrals to a lawyer or paralegal as follows:

Law Society Referral Service: 1-800-268-8326 toll free or 416-947-3330. The Law Society Referral Service will give you the name of a lawyer or paralegal within or near your community, who will provide a free consultation of up to 30 minutes to help you determine your rights and options.

Lawyer and Paralegal Directory: You can search on-line for lawyers and paralegals by name, city or postal code at **http://www1.lsuc.on.ca/LawyerParalegalDirectory/index.jsp.**

You can also look for a lawyer or paralegal on the Internet or in the telephone directory.

You may be eligible for legal aid if there is a likelihood of jail if you are convicted. For more information, contact Legal Aid Ontario at 1-800-668-8258 toll free or at 416-979-1446.

You may be able to get free legal advice or representation at your local community legal aid clinic, or from law students at a university-based student legal aid services society (SLASS). Each clinic and SLASS has its own guidelines and financial eligibility for accepting clients, so you should contact them directly. For a list of community or SLASS clinics near you, visit: **http://www.legalaid.on.ca/en/contact/default.asp** or call Legal Aid Ontario at 1-800-668-8258 toll free or at 416-979-1446.

BEFORE YOUR TRIAL DATE

- **Accessibility accommodation for persons with disabilities**

If you have any questions about a courthouse's accessibility features, or if you or one of your witnesses needs accessible court services, contact the Accessibility Coordinator at the courthouse. You can obtain more information about courthouse accessibility on the Ministry of the Attorney General's website at:

http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

- **Disclosure**

The Crown is obliged to give anyone charged with an offence, free of charge, information in the Crown's possession or control that is not clearly irrelevant or privileged. This could include: police notes, witness statements, diagrams, and photographs. This information is called "disclosure". If you think anything is missing from the disclosure materials you receive from the Crown, mention this to the Crown in court or write to the Crown Attorney's office.

- **Interpreter**

If you or one of your witnesses requires an interpreter for a scheduled court date, immediately advise the court office where your case is scheduled to be heard. The court office provides interpreter services for court hearings free of charge.

- **French trial**

A person charged with a criminal offence whose language is French is entitled to a French trial. Notify the court as soon as possible about your intention to have a French trial.

- **Summons to Witness (also known as a "subpoena")**

A Summons to Witness is a court order requiring a witness to come to court. The Crown is not required to subpoena or call anybody as a witness on your behalf. It is up to you to subpoena any witnesses you want for your defence so they are obligated to attend the trial. Contact the court office where your case is scheduled to be heard well ahead of time to find out how to apply for a Summons to Witness.

- ***Charter* notice**

If any of your rights under the *Charter of Rights and Freedoms* (the "*Charter*") were breached, such as your right to be tried within a reasonable time, the trial judge might "stay" the charge against you (which means the case ends) or might refuse to allow evidence obtained as a result of the breach of your *Charter* rights to be used in your trial. If you want to argue that your rights and freedoms under the *Charter* have been breached, you must provide written Notice of Application and constitutional issue to the local Crown Attorney's office that is prosecuting the case. You must comply with the criminal rules of the Ontario Court of Justice when making court applications, including *Charter* applications. These rules can be found on the Court's website at: http://www.ontariocourts.ca/ocj/criminal-rules/. If you do not comply with these criminal rules, you can ask the judge to still allow you to proceed with your application.

If you want to argue that the law under which you have been charged is unconstitutional, you must provide a written Notice of Application and constitutional issue to the local Crown Attorney's office that is prosecuting the case, as well as to the Attorney General of Canada and the Attorney General of Ontario at least 15 days before your trial date. The addresses and fax numbers for the Attorney General of Ontario and the Attorney General of Canada are:

The Attorney General of Ontario
Constitutional Law Branch
4th floor, 720 Bay Street
Toronto, Ontario M5G 2K1
Fax: (416) 326-4015

The Attorney General of Canada
Suite 3400, Exchange Tower
Box 36, First Canadian Place
Toronto, Ontario M5X 1K6
Fax: (416) 952-0298

OR
Justice Building
234 Wellington Street
Ottawa, Ontario K1A 0H8
Fax: (613) 954-1920

WHAT SHOULD I DO IF I CAN'T ATTEND COURT ON A SCHEDULED DATE?

Once the court sets a trial date, you are expected to proceed with your trial with or without legal representation. Adjournments (which are postponements of your court date) will be granted only in exceptional circumstances. Applications for adjournments should be made well ahead of the trial date.

If on a scheduled court date you cannot attend or go ahead with your case, you or someone else on your behalf will have to go to the court to explain why, and to ask for an adjournment. If it is a trial date, and the judge does not adjourn the case, your trial might go ahead and you might be found guilty.

If you do not attend court as required, a warrant for your immediate arrest may be issued. You may also be charged with the criminal offence of "failing to appear" in court.

WHAT SHOULD I DO IF I DECIDE I WANT TO PLEAD GUILTY AFTER MY TRIAL DATE IS SET?

You always have the right to plead not guilty and to have a trial. You also have the right to give up your right to have a trial and to plead guilty at any time. If you have a trial date and decide ahead of time that you want to plead guilty, notify the Crown Attorney's Office as soon as possible.

OVERVIEW OF CRIMINAL CHARGE AND PROOF ISSUES

- **Charge(s) against you**

The formal document setting out the criminal offence(s) that you have been charged with is the "Information". Contact the court office to see the Information or to get a copy of it.

- **Essential elements of the offence**

You can be convicted only if the Crown proves each essential element of the charge(s) against you beyond a reasonable doubt. Most of the essential elements of the offence you are charged with should be set out in the Information. Generally, one of the essential elements of the offence is that you intentionally and/or knowingly committed the offence. Before your trial starts, you may ask the judge to review the essential elements of the charge against you so that you will understand what the Crown must prove.

- **Presumption of innocence, reasonable doubt and burden of proof**

Everyone charged with an offence is presumed to be innocent. That is why you cannot be convicted unless the Crown proves each essential element of the charge against you beyond a reasonable doubt. The phrase "reasonable doubt" does not require proof to an absolute certainty or beyond any doubt nor is it an imaginary or frivolous doubt; but it does involve a significant level of proof far beyond the "balance of probabilities" standard of proof in civil cases.

WHAT TO EXPECT ON THE DAY OF YOUR TRIAL

- **Time**

Typically many cases are scheduled to be heard in one courtroom at the same time. You and your witnesses must arrive at the courtroom on time and be ready to start your trial right away. However, be prepared to wait in the likely event that other cases start before yours.

- **What to bring**

(i) A pen and paper to take notes during the trial.
(ii) The originals and two copies of any documents or photographs you want to use or file during your trial.
(iii) The disclosure material you received from the Crown.
(iv) Print copies of any electronic (e.g. cell phone, video camera) photographs you want to use at trial.
(v) Copies of any Summons to Witness (subpoena) that you have served.

- **Role of the trial judge and others in the courtroom**

i) Trial judge: The trial judge is an independent and impartial judicial officer who will hear your trial and decide if you are not guilty or guilty. The trial judge will know nothing about the case at the start of your trial. You should call the trial judge "Your Honour", or "Sir" or "Madam". The trial judge is required to ensure that you receive a fair trial. He or she should review the trial procedures with you, and you can ask for directions. The trial judge, however, is not allowed to give you legal advice.

ii) Trial Crown Attorney (also called "the Crown" or "the prosecutor"): The Crown is the person with the authority to prosecute the charges against you. It is the Crown's responsibility to prove all the essential elements of the offence with which you are charged beyond a reasonable doubt.

iii) Court clerk: The court clerk sits in front of the trial judge and assists him or her by: reading the charges out loud and asking you if you plead guilty or not guilty, swearing or affirming witnesses, and taking care of the exhibits during the trial.

iv) Court reporter or court monitor: The court reporter or court monitor is responsible for making a record of what is said during the trial, or for monitoring equipment that records everything that is said.

TRIAL OVERVIEW

- **Advising the trial judge of any problems**

You should tell the trial judge at the start of your case about any problems regarding your case, for example, the form of Information, a breach of your *Charter* rights, or a witness who could not come to court that day.

- **Arraignment and election**

Your trial will start with an "arraignment" in which you will be asked to confirm your name, the charges against you will be read out loud, and you will be asked how you plead.

If you are charged with certain offences, you also will be asked if you "elect" (or choose) to have a trial by a provincial court judge, by a superior court judge alone, or by a superior court judge and jury. If you elect to be tried by a provincial court judge, you may be tried that same day by the judge before whom you made your election. If you elect to be tried by a superior court judge (alone or with a jury) , or if you make no election, you will be entitled to have a preliminary hearing before a provincial court judge if you request one. The provincial court judge will order you to stand trial in front of a superior court judge (alone or with a jury) at a later date if there is sufficient evidence that you committed the offence with which you are charged.

- **Plea**

You may plead guilty or not guilty. If you plead not guilty (or if you refuse to plead), your trial will go ahead.

If you plead guilty, the judge may accept your guilty plea only if he or she is satisfied that:

a. You are making the plea voluntarily.
b. You understand that the plea is an admission of all the essential elements of the offence.
c. You understand the nature and consequences of the plea.
d. You understand that the judge is not bound by any agreement you made with the Crown, including what sentence should be imposed.

If the judge is not satisfied about any of the above issues, he or she may decide not to accept your guilty plea and may proceed with the trial that day if it is a trial date, or you might have to return to court on another day for your trial.

If the judge accepts your guilty plea, and you are found guilty, the judge may either sentence you immediately or adjourn sentencing to another date. (See "*Sentencing*" below for more information.)

- **Order excluding witnesses**

At the beginning of the trial, you or the Crown may ask the trial judge to order all witnesses in the case to remain outside the courtroom until they testify. This is to make sure that witnesses do not change their evidence based on what they hear other witnesses say in the courtroom. Accused persons are entitled to hear all of the evidence, and you will not have to leave the courtroom when other witnesses testify even if you intend to be a witness yourself. However, you must not tell any witnesses what evidence was given in the courtroom or the questions that were asked.

- **Case for the prosecution**

  i) Crown opening statement: The judge might ask the Crown to give an overview of the allegations against you and the evidence to be called. This "opening statement" is not evidence.

  ii) Examination-in-chief: The Crown calls his or her witnesses first. The Crown will ask his or her witnesses questions in order to bring out evidence that supports the Crown's case. This is called examination-in-chief. You have the right to object to questions asked by the Crown or evidence given by a witness that you believe are irrelevant or improper. It is generally improper to ask questions that suggest the answers (called "leading questions") in examination-in-chief. For example, it would be proper to ask a witness "What colour was the car?" It would be improper to ask "Was the car red?"

  iii) Cross-examination: Generally, you will be allowed to cross-examine each Crown witness after the Crown finishes the examination-in-chief of that witness. When you cross-examine the Crown's witnesses, you may ask them questions to test the reliability, accuracy or truth of what they have said. You may also ask the Crown's witnesses questions about things that you think might help your defence. The questions you ask of the witnesses in cross-examination will not be treated as evidence. It is only the answers of the witnesses that are considered evidence.

  You may use the prior statement of a witness to show inconsistencies between what a witness has said at the trial and what the same witness said at some other time. If you believe an inconsistency exists and that your defence would benefit by bringing the inconsistency to the judge's attention, you should ask the judge for direction about how to proceed.

You are not permitted to argue with witnesses. You are also not permitted at this stage of the trial to make statements about why you should be found not guilty. You are allowed to put your version of the events directly to the witness in cross-examination. Unlike in examination-in-chief, you are also allowed to suggest answers that will assist your case. For example, you may ask "Was the car red?" instead of asking "What colour was the car?" When you suggest facts to a witness, they can agree with all, part or none of your suggestions.

If you intend to call defence evidence that is different from what a Crown witness has told the court, you should suggest your version of the facts to that Crown witness during your cross-examination. This gives the witness a chance to agree or disagree with your version of the facts. If you don't suggest your version of the facts to Crown witnesses, the judge may give less weight to your version or the Crown may be allowed to call the witness again in "reply". (See below under "*Crown reply*".)

You are entitled to ask the judge to see the notes of any Crown witness, and to use those notes while cross-examining the witness. For example, you might want to cross-examine a witness about any inconsistencies between his or her notes and what he or she has said in the courtroom.

You will be allowed to cross-examine the Crown witnesses about whether they have a criminal record.

iv) Re-examination: When you finish your cross-examination of a witness, the Crown might be allowed to re-examine that witness about anything new brought out in your cross-examination.

v) Notes of police and other Crown witnesses: The Crown might ask the judge whether a police officer or other witness may use his or her notes to refresh his or her memory while testifying. You are entitled to see the notes, and you may agree that the witness be allowed to use the notes, or you can ask the judge to make a ruling about this issue. If you do not agree that the witness should be allowed to use the notes, the judge will hold a mini-hearing during the trial (called a *voir dire*) to determine the issue. You will be allowed to ask questions to show the witness should not be allowed to refer to his or her notes by exploring when and how the notes were made, and the witness's reasons for needing the notes. You will also be allowed to make submissions explaining why the witness should not be permitted to refer to the notes.

vi) Statements you might have made to a police officer or other person in authority: Sometimes the Crown will want to introduce evidence of a statement that you are alleged to have made to a police officer or other person in authority. The judge must be satisfied that you made the statement and the Crown must prove beyond a reasonable doubt that you did so voluntarily. These issues will be determined during a mini-hearing during the trial called a "*voir dire*". You may ask the trial judge to explain the "*voir dire*" process to you before it starts.

vii) Hearsay: A witness usually is not permitted to give evidence about what someone else said: this is "hearsay". There are some exceptions to the rule against hearsay. For example, evidence about what someone else said usually is allowed to explain later conduct of a witness or to describe background events. Another, and important, exception is that the Crown can ask witnesses about statements they say you made. You, however, may not ask witnesses what you said unless the Crown has asked them about it first (because doing so is considered self-serving). There are also special rules to follow when the statement was made to a police officer or other person in authority (see above).

- **Close of Crown's case**

After the Crown has finished calling all of his or her evidence and has "closed" the case for the Crown, you will have the following options:

(i) You may move for a "directed verdict" of acquittal. This means that you are asking the judge to dismiss some or all of the charges at this stage because there is no evidence in relation to at least one of the essential elements of the offence that the Crown must prove. If you move for a directed verdict and the judge rules against you, you will then be allowed to decide whether or not to call a defence. If the judge rules for you, you will be acquitted.

(ii) You may decide not to call evidence in defence and not to testify in your own defence. If you choose not to testify and not to call any witnesses, the judge will decide the case based only on the evidence presented during the Crown's case. At this point, you will be convicted only if the judge finds that every essential element of the offence has been proven beyond a reasonable doubt.

(iii) You may decide to call evidence in defence.

- **Calling a defence**

You have the right to remain silent: you do not have to testify or call defence witnesses. If you choose to call a defence, your defence evidence may be your testimony or testimony from your witnesses or both. As well, you may wish to file evidence such as documents, diagrams, or photographs. If you call defence witnesses, the examination-in-chief, cross-examination and re-examination processes described above also apply to your defence witnesses. The Crown will be allowed to cross-examine your witnesses, not just about their evidence but also about whether they have a criminal record. These rules apply to you as well if you choose to testify.

- **Crown reply (also known as "rebuttal")**

If you call defence evidence, the Crown might be allowed to call reply evidence if your evidence has raised some new matter or defence that the Crown had no opportunity to deal with earlier in the trial and could not reasonably have anticipated.

- **Closing submissions**

After all the evidence is presented, the judge will give you and the Crown an opportunity to make closing submissions about why you should be found not guilty or guilty. Closing submissions must be based on evidence that the trial judge heard during the trial from either a Crown or defence witness (including you if you chose to testify), and inferences that can be drawn from this evidence. You will not be permitted to give evidence as part of your submissions: If you want to testify about your version of the events, you must do so during the defence part of the trial (see above "*Calling a defence*").

- **Judgment**

The judge will find you not guilty or guilty, either immediately or after an adjournment to later in the same day or even to another day. The judge has an obligation in every case to provide clear and meaningful reasons for judgment, explaining the basis upon which the case was decided either for or against you.

- **Sentencing**

If you are found guilty, the judge may sentence you immediately or adjourn sentencing to another date. The sentence for a criminal offence can include a discharge, a fine, probation, jail, and other orders. It is up to the judge to decide what sentence to impose and he or she may impose a sentence different than what you or the Crown suggest independently or as a joint submission, and can also order a jail sentence even if the Crown has not asked for this.

Before you are sentenced, the judge will hold a sentence hearing at which you and the Crown will have the opportunity to tell the judge what you think the appropriate sentence should be and why. You are entitled to call evidence and make submissions at your sentencing hearing. A judge must take into account the circumstances of aboriginal offenders when considering the appropriate sentence. The judge may order a Pre-Sentence Report before passing sentence. These reports usually take about six weeks to complete and your sentencing may be delayed for this time. The Crown may also file a Victim Impact Statement at your sentencing.

APPEALS

You have the right to appeal a conviction or sentence or both within the time fixed by law.

FURTHER INFORMATION

You can obtain more information about criminal trials on the Ministry of the Attorney General's website at: **http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/criminal_law.asp.**