



Community Legal Information Association of Prince Edward Island, Inc.

Going to Court: Criminal Trial Procedure

If you've been charged with a crime and your case has not been diverted from the courts system, you will usually answer to the charge in a criminal court. This pamphlet explains the process that most people follow when they have to go to court.

Tips for when you go to court:

- Dress neatly and arrive early
- Ask for directions to the courtroom being used for your case at the front desk
- Wait inside the courtroom until the court clerk calls you to the front of the room
- Stand when the judge enters then watch and do what the court workers do
- Treat the judge with respect, even if you do not agree with what is being said
- Stand when you speak to the judge if you are not in the witness stand
- Address a Provincial Court judge as "Sir", "Ma'am" or "Your Honour"; a Supreme Court judge as "Your Honour", "My Lord" or "My Lady"
- Speak clearly into the microphone so that you can be recorded
- Speak loudly enough for the judge, lawyers, and other persons in the courtroom to hear you. The microphones do not amplify your voice.

Court Procedures

The *Criminal Code* sets out the procedure to decide which courts will try offences. There are three categories of offences:

- **summary conviction offences** (less serious offences),
- **indictable offences** (very serious offences), and
- **dual procedure offences** (this means the offence may be summary conviction or indictable depending on the circumstances and the seriousness).

In order to deal with these differences, the *Criminal Code* outlines different procedures for summary conviction and indictable offences. The so-called dual procedure offences are ones in which the Crown attorney, or prosecutor, can proceed either way – by summary conviction or indictment. **This decision is the Crown's.**

Your First Appearance

Your first appearance as "the accused" will be in Provincial Court before a Provincial Court judge. This is where you will be formally charged with the offence, even if your case will eventually be tried in Supreme Court.

You will be asked to stand as the clerk reads the charge. You will be asked if you understand the charge. Then the judge will address three things:

1. What court you will you be tried in? Whether you have a choice or not depends on the charge:

- Less serious *Criminal Code* summary conviction offences such as disturbing the peace and a few hybrid or mixed offences such as theft under \$5,000.00 are tried in Provincial Court. You have no say.
- More serious offences (dual procedure) may be tried in either court. You have a choice in these cases. You may choose Provincial Court, Supreme Court judge alone, or Supreme Court judge and jury. This choice is called an election.
- Very serious indictable offences such as murder are tried in Supreme Court. You have no say where these are tried.

2. If your case will be heard in Provincial Court, how will you plead to the charge? You can plead:

- guilty
- not guilty, or
- ask for an adjournment (a rescheduling of your appearance) to give you time to decide how to plead. If you want to be represented by a lawyer, which is your right, you should see a lawyer before your first appearance in court

3. If you are in custody, the police may decide to release you before your trial or they may decide to have the Provincial Court judge or a justice of the peace make the decision to release you from custody. Usually the Crown will be present to conduct a “show cause” hearing to say why you should be kept in custody or released on conditions. If you have a lawyer you should ask to have your lawyer present at this hearing.

If the judge orders your release, you will be released on an Undertaking or a Recognizance (a promise that you will appear in court for the trial). These may order you to report to the police or probation services at regular intervals, avoid contact with certain people, remain in the area, and keep the peace. A surety (an amount of money guaranteeing that you will show up in court) may also be required. You could be charged with a new offence if you do not keep these conditions.

If you are not released, custody continues until the matter is dealt with. Under these circumstances, the court and defence lawyer will try to get the earliest trial date possible in order to shorten your waiting period in jail. If you are found guilty and sentenced to time in custody, a period of time is normally deducted by the judge because you have already spent time in jail. If you change your mind while you are in custody and decide to plead guilty, you can try to have your case dealt with before the date set for trial.

If your case will not be heard in Provincial Court the judge will normally schedule a preliminary inquiry to see if there is enough evidence to send your case on to trial in the Supreme Court.

In Court

If you plead “guilty” the law requires the judge to ask you four questions:

- Is your plea voluntary?
- Do you understand that your plea is an admission of the essential elements of the offence?
- Do you understand the plea and its consequences?
- Do you understand that the judge does not have to agree to follow what the Crown and you have agreed is an appropriate sentence?

If you don’t understand any of these questions tell the judge and the judge will explain them to you.

After your guilty plea is accepted by the court the judge will ask the Crown attorney to tell him, or her, the facts of the charge and any previous criminal record you have. If you don’t agree with what the Crown says, tell the judge. You can also tell the judge other things about the facts that you think the judge should know.

After hearing the facts and your previous record the judge may:

- sentence you
- adjourn the matter to another date for sentencing
- ask for a report to be prepared by a probation officer and set a later date for sentencing

If you plead “not guilty”, the judge will set a future trial date. If you know that you are not available on that date, tell the judge.

This process is called making a plea. You can ask for an adjournment before making a plea and, if your reason for asking is reasonable, the judge will set another date in the near future for you to make your plea.

The election

Accused persons charged with most indictable offences have a choice of courts; this choice is known as an election. You have a choice of three court formats:

- trial by Provincial Court judge
- trial by Supreme Court judge alone
- trial by Supreme Court judge and jury

If you choose a trial by Provincial Court judge, the trial will be heard in Provincial Court.

If you choose either of the other options there will normally be a preliminary inquiry in Provincial Court to see if there is enough evidence to send your case on to the Supreme Court. If there is not enough evidence to send your case for trial, it will be dismissed and you are free to go. If there is enough evidence, a separate date will be set for you to appear before a Supreme Court judge to enter your plea. This is called an arraignment.

When you plead at an arraignment, the Supreme Court will follow the same procedure as Provincial Court

A not guilty plea

If you plead "not guilty," the judge will set a trial date. If you are not in custody and there are no conditions placed on you, you are free to go about your business until the trial.

The Preliminary Inquiry

A preliminary inquiry happens when an accused person charged with an indictable offence chooses a trial in Supreme Court. The preliminary inquiry is the first presentation of the Crown's case in court.

The preliminary inquiry is similar to a trial because the Crown attorney presents the basic case against you. Because you are considered innocent until proven guilty, the Crown must show that there is enough evidence to justify a trial in Supreme Court. You do not have to enter a plea, and the judge does not have to decide whether you are guilty or not guilty at this stage. The defence does not usually call witnesses or present evidence at a preliminary inquiry.

The preliminary inquiry is a useful opportunity for you and your lawyer to find out the strengths and weaknesses of the Crown's case, even if it is clear that the Crown will be able to prove the basic case against you. You can decide to waive or give up your right to a preliminary inquiry or you can hear part of the Crown's evidence and then ask that the judge commit you to stand trial. If the Crown agrees, you will go to trial in Supreme Court without hearing all of the evidence. When there is not enough evidence for trial, the judge will discharge you and you are free to go.

Proving the Charge

At the trial, the Crown attorney must prove your guilt beyond reasonable doubt. If the Crown fails to present enough evidence or if the defence raises reasonable doubt about your guilt, a judge or jury cannot convict. "Beyond reasonable doubt" means that the evidence must be so complete and convincing that no reasonable doubts about the accused person's guilt exist in the minds of the judge or jury.

A finding of not guilty may be based on the facts (e.g. conflicting evidence), or on a legal defence. A basic concept underlying our criminal law tradition is the principle that a guilty act must be accompanied by a guilty mind. A common legal defence, therefore, is the argument that illness or extreme intoxication meant that you were not responsible for your actions. For example, in first-degree murder trials the Crown must prove that the accused planned and intended to murder the victim. The defence lawyer may argue that the accused was so impaired that he or she was unable to form an intention or plan to commit murder. Such a defence may result in a finding of second-degree murder or manslaughter, with a lesser sentence.

The Trial Procedure

1. The Crown attorney calls witnesses to prove the case against you. After each witness has given their evidence, you or your defence lawyer may cross-examine the witnesses to bring out evidence in your favour. After the cross examination, the Crown attorney has the right to ask the witness more questions.

The Crown introduces evidence to make its case. Certain types of evidence are always excluded; other types are excluded under particular circumstances. The judge will exclude evidence that is not relevant to the charges and may also exclude hearsay. ("Hearsay" is the repeating of a statement made by someone other than the accused outside of the court.)

Sometimes the judge may hold a *voir dire* (a special hearing within the trial) to decide whether to admit certain evidence. This is usually done to decide if a statement is voluntary, to determine if there is a breach of *the Charter of Rights and Freedoms* or to decide if expert evidence will be heard. In a jury trial, the jury will be sent out of the room during the *voir dire* and will only hear evidence the judge finds acceptable.

Both the Crown and the defence must follow rules of evidence when questioning witnesses. Neither the Crown nor the defence can ask leading questions of witnesses for its own side. A leading question is one that suggests its own answer. Instead they must ask the kind of question that allows witnesses to use their own words. Leading questions are allowed when they are part of a cross-examination. The defence can ask leading questions of Crown witnesses and the Crown can ask leading questions of defence witnesses.

2. After the Crown and defence have finished presenting their case, the judge will hear closing arguments about which facts are true and what law applies to the case. If you have entered a defence by calling witnesses or testifying, the closing arguments for the defence must be presented first and the Crown has the last word. If you have not presented evidence, the Crown's argument is first and the defence follows. Whichever side goes first has a right to rebut (explain why it disagrees with) the closing argument of the other side.

3. Finally, it is time for the verdict. In a trial by judge alone, the judge, after taking time to look over the evidence, must decide whether you are not guilty or guilty as charged or guilty of a lesser offence. In a jury trial, the judge gives a summary of the case and instructs the jury on the law. Then the jury retires to decide the verdict.

If you are found guilty, the judge must decide what sentence to give you. In serious cases this does not happen immediately. You will probably have to return to Court for a sentencing hearing.

Sentencing

In Supreme Court trials, the judge will usually set the date for a sentencing hearing once you have been found guilty. Broad guidelines for sentencing are set out in the *Criminal Code*. The judge will also read other cases or precedents, which are sentences passed by other judges in similar cases. Within these guidelines, a judge can hand out a wide range of sentences.

Before deciding on the sentence, the judge will hear from both the Crown and you or your lawyer about what sentence is appropriate. The judge will also read or listen to the victim impact statement, if one has been filed, and may wait for a pre-sentence report or other assessment prepared by probation officers. More information about sentencing can be found in the CLIA pamphlet called *Sentencing*.

Appeal

If you believe that the judge was wrong in finding you guilty or that the sentence is not appropriate, you may be able to appeal. You should contact a lawyer or the court for information if you want to appeal.

This information has been prepared by the Community Legal Information Association of Prince Edward Island, Inc. It contains general information about criminal trials. If you are charged with a criminal offence, you need legal advice that this pamphlet cannot provide. To get legal advice, contact Legal Aid at 368-6043 in Charlottetown or 888-8219 in Summerside. If you are not eligible for legal aid, you can call the Lawyer Referral Service at 892-0853 in the Charlottetown area or 1-800-240-9798 toll-free. The Lawyer Referral Service provides you with one half-hour appointment with a lawyer for \$10 plus tax.

Community Legal Information Association of Prince Edward Island is a charitable association funded by the Department of Justice, Canada; the Office of the Attorney General, Prince Edward Island; and the Law Foundation of Prince Edward Island. Our mandate is to provide Islanders with useful, understandable information about the law and the justice system. You may support the Association by volunteering, becoming a member or by making a donation.

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