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# Community Legal Information Association of Prince Edward Island, Inc.

## Sentencing

This pamphlet is published by Community Legal Information Association of P.E.I., Inc., Room 158, the Sullivan Building, Fitzroy Street, Charlottetown. Telephone: 892-0853 or toll-free 1-800-240-9798

**This pamphlet gives you some information about sentencing in criminal court. If you are charged with a criminal offence, talk to a lawyer as soon as possible.** If you are unable to pay for a private lawyer, contact legal aid to see if you are eligible to have one of their staff lawyers help you. One of the things a lawyer will tell you about is the sentence you are likely to get if you either plead guilty to an offence or are found guilty of an offence after a trial in criminal court.

At the end of the pamphlet we tell you how you can get more information.

## Legal words used in this pamphlet

***Criminal Code*** - a federal law that sets out most criminal offences in Canada. It also gives the penalties (or punishments) and procedures for dealing with persons accused of committing an offence. An offence is another word for a crime.

**Crown Attorney** - the lawyer who presents the case against you if you are accused of committing an offence. Criminal offences are prosecuted by the Office of the Attorney General (which is called the "Crown"), a branch of the government.

**Indictable offence** - a more serious offence. The penalties for indictable offences are greater than those for summary conviction offences. The court procedures are also different.

**Probation officer** - An officer of the court who prepares pre-sentence reports to assist the judge in passing sentence and supervises persons placed on probation by the court.

**Summary conviction offence** - a less serious offence where the maximum penalty is usually, but not always, a \$2000 fine and/or six months in jail.

## Q. What is sentencing?

If you plead guilty or are found guilty of a criminal offence, the judge will decide what punishment you receive. This is called sentencing.

**Q. What guidelines does the judge follow?**

The purposes of sentencing are to protect the public, to punish the behaviour in order to discourage future offenders, and to rehabilitate the particular offender. Therefore, the judge considers several factors before deciding what sentence to give you, including:

- The kind of offence and its seriousness. The *Criminal Code* usually provides a maximum punishment for each offence. For some offences, such as drinking and driving, the *Criminal Code* sets minimum penalties that may be imposed if asked for by the Crown.
- The circumstances surrounding the offence. How you committed the offence: Did you plan it? Did you use force or a weapon? And how actively involved were you (if there were others involved)?
- Your previous criminal record (if any).
- Your age, family history, health problems, education, and work record.
- Your attitude towards the offence. For example, are you sorry? Are you concerned about the victim?
- The number of similar offences happening in the community.
- Sentences that have been given for similar offences.
- Any pre-sentence or probation officer's report.
- A victim impact statement, if one has been filed with the court.

**Q. When are you sentenced?**

For less serious offences, the judge will often sentence you when you plead guilty or are found guilty. For more serious offences, the judge will usually set a date for sentencing and ask for a pre-sentence report. If you were in custody before your trial, the judge will decide whether you should remain in custody until the sentencing hearing. The judge may also place you in custody after you are found guilty and while you wait for sentencing, if necessary.

The pre-sentence report is prepared by a probation officer. It contains information on your character, education, family history, work experience, your attitude etc. The judge, the Crown attorney and your lawyer get a copy of the report. If you don't have a lawyer, you should get a copy of the report. Make sure you read the report carefully. If you do not agree with the information in the report you should tell your lawyer or the judge.

**Q. What happens at the sentencing hearing?**

At the hearing the Crown attorney tells the judge:

- about the offence
- how it was committed
- how much damage was done and/or property taken
- your involvement and
- your previous criminal record.

The Crown attorney may suggest what sentence you should get and refer to comments in the pre-sentence report or victim impact statement, if one has been filed.

You or your lawyer have a chance to speak after the Crown attorney. You can bring witnesses to give evidence about your character although it is not usual to do this. You

and your lawyer may also suggest a sentence. If you don't have a lawyer, someone else such as a friend, relative, or minister can speak on your behalf during the sentencing hearing.

This is called "speaking to sentence".

### **Q. What should I say when I'm speaking to sentence?**

There are three main areas that you or your lawyer should cover.

**1. Your background** The judge wants to know about you, and wants to see that you are honest about yourself. The judge has heard hundreds of stories and excuses and will not be taken in by a "snow job".

Emphasize the special things about you, good and bad. For example, if you have been found guilty of impaired driving and you are undergoing treatment to help you stop drinking, tell the judge. The things to mention are:

- your age
- where you live
- whether you have children and their ages
- whether other family members depend on you, such as parents
- whether you have any health problems
- your educational level
- your employment record and
- your involvement in the community (for example do you do volunteer work or belong to a club or church?)
- your current employment status

**2. Your criminal record** In most cases, the Crown attorney will tell the judge if you have a criminal record. Listen carefully when your record is brought up so that you can correct any mistakes.

You may wish to give information about your record. For example, if your criminal record is five years old and you have not been convicted of an offence since, you should tell the judge. If your previous conviction(s) are for offences unrelated to the present offence you should tell the judge. For example, if your previous conviction was for possession of drugs and the present one is for shoplifting.

**3. The circumstances of the offence** The Crown attorney will tell the judge how the offence was committed. You might wish to explain some things such as:

- whether you were having personal or financial difficulties
- whether you committed the offence out of necessity (because you had no money to buy food, for example)
- whether you played a small part in the offence (if there were others involved)
- whether you were drunk or on drugs
- whether the conduct of the victim was to blame in any way (for example whether you were provoked into a fight)
- whether you are sorry for committing the offence

- whether you co-operated with the police
- whether you tried to help or repay the victim's losses
- whether you have suffered any loss because of the offence (such as losing your job)

You also have the right to dispute the circumstances of the offence as presented by the Crown if you disagree with them. Even if you entered a guilty plea admitting the offence you have the right to contest the version of facts presented by the Crown.

### **Q. How should I act in court?**

When you go to court be clean and neatly dressed. This shows that you have respect for the court.

When you are in court:

- be polite
- be honest
- call the judge 'Your Honour' in Provincial Court 'my Lord' or 'my Lady' in Supreme Court
- think carefully before you answer questions
- speak clearly so that the judge can hear and understand what you say.

### **Q. What types of sentences are there?**

#### **1. Absolute and conditional discharges**

A discharge means that you have been found guilty, but instead of entering a formal conviction against you, the judge discharges you. The effect of a discharge is that you have been found guilty but not convicted. If you receive a discharge and you are asked by a would-be employer whether you have ever been convicted of an offence, or have a criminal record, you can answer "no".

If you receive an absolute discharge you will not have to serve any sentence.

If you receive a conditional discharge, the judge sets conditions that you must meet. Conditions might include doing community service work or paying restitution. If you do not meet the conditions, the conditional discharge can be wiped out and the judge may impose a different sentence. You will then have a criminal record.

The judge can only give you a discharge if:

- the offence for which you are charged has no minimum penalty and a maximum penalty of less than fourteen years in prison;
- the judge is satisfied that a discharge is in your best interests; and
- it is not contrary to the public interest.

#### **2. Suspended sentence and probation**

A judge may put off or "suspend" the sentence and place you on probation instead for a specified time of up to three years. Certain conditions are then set out in a probation order. If you follow the conditions, you will not have to serve any other sentence. If you do not follow the conditions, you can be brought back to court and charged with breach

of probation. The judge may sentence you on the original offence and also give you an additional sentence for breaking the probation order.

A judge may also put you on probation in addition to another sentence such as a jail term or a fine.

If you are given probation you must stay out of trouble. The first condition in every probation order is, "To keep the peace and be of good behaviour". In addition, the probation order might require you to:

- report regularly to your probation officer
- follow treatment and counselling recommended by your probation officer
- stay away from alcohol or illegal drugs
- pay for the damage that you caused to the victim (called restitution)
- do work in the community (called community service work)
- stay within a particular area or stay away from a particular place
- stay away from the people with whom you got into trouble
- attend school regularly (if you are going to school)

When you are on probation you usually have to report to a probation officer who makes sure that you follow the conditions of the probation order.

### **3. Fine**

For most offences you may get a fine alone or a fine together with another penalty such as probation or a jail term.

Usually, the judge will consider your ability to pay a fine and allow you time to pay. There is also a **fine option program** through which you may be able to do community service work instead of paying your fine. To get more information or to register for this program, you can contact any probation office.

Federal and provincial laws require that persons convicted of an offence pay a surcharge called a **victim surcharge**. The surcharge goes towards providing services for victims. For a summary conviction offence, the minimum victim surcharge under federal law is \$50 (For an indictable offence the minimum is \$100). The provincial surcharge continues to be \$10 on any fine paid under provincial law. The judge can waive these surcharges on the basis of financial hardship.

### **4. Jail**

A jail term means that you have to serve your sentence in custody. Sentences of two years or more are served in a federal prison. Sentences of up to two years less a day are served in a provincial jail. There are no federal prisons on PEI so sentences of two years or more must be served in a prison in another province.

#### ***Consecutive, concurrent and intermittent terms***

If you are convicted of more than one offence and you receive jail sentences for each one, the judge decides whether you serve the sentences at the same time (concurrently) or one after the other (consecutively).

The general rule is that you will get concurrent sentences if the offences were committed together and were related to each other; otherwise you get consecutive sentences. However, it is up to the judge to decide.

If you get a prison sentence of 90 days or less, the judge may give you an intermittent sentence. This means that you can serve your sentence at intervals such as on weekends.

The judge will put you on probation until you have completed your sentence. A common probation condition imposed in intermittent sentences prohibits you from having alcohol or drugs in your system while serving your sentence in the correctional centre.

As with all sentences, the judge considers your age and character, the offence and the circumstances surrounding the offence before making a decision. In addition the judge looks at:

- whether you will lose your job if you have to serve a straight term
- whether you are attending school or are in a training program that should not be interrupted
- whether it will help your rehabilitation; and
- whether it will help you and your family avoid financial hardship.

Some judges do not give intermittent sentences for particular offences unless there are exceptional circumstances. If you receive another jail sentence while you are still serving an intermittent sentence, your intermittent sentence turns into straight time unless the court orders otherwise.

### ***Conditional sentences***

If you are sentenced to a period of custody that is two-years-less-a-day or less you can ask the judge if you may serve your sentence in the community under strict conditions.

### **Q. Can I appeal the sentence?**

Yes, in most cases the sentence can be appealed. You may wish to appeal if you think that the sentence is too harsh. The Crown can appeal if it thinks that the sentence is not severe enough. You have 30 days from the time that the judge sentences you to appeal. You should talk with a lawyer before you decide to appeal so that the procedures and consequences of an appeal can be explained to you.

On an appeal, the Court may confirm the sentence, increase it or decrease it.

### **Q. If I plead not guilty will I get a harsher sentence?**

The law says that you are innocent until proven guilty. However, a guilty plea is a factor that the judge may consider in deciding on sentence. A guilty plea tells the judge that you have accepted responsibility for your actions. The judge may also consider the savings to the Court, the victim and other witnesses if a trial is not needed.

### **Q. Will I have a criminal record?**

You will have a criminal record if you are convicted of breaking a federal criminal law, such as the *Criminal Code* or the *Controlled Drugs and Substances Act*. Examples of offences that result in a criminal record are theft, drinking and driving, or possession of drugs. You will not have a criminal record if you get an absolute discharge or fulfill the

conditions imposed in a conditional discharge. However a pardon is necessary to have the record kept separate from other criminal records.

If you have a criminal record but stay out of trouble for several years, you can apply for a pardon. The length of time you have to wait for a pardon depends on the charge for which you were found guilty. If you are given a pardon, your criminal record will be sealed and federal agencies such as the RCMP may not give out details.

If you are convicted of breaking a provincial law, such as the *Highway Traffic Act* you will not have a criminal record. Examples of such offences are speeding, having open liquor in a public place, driving while suspended, or hunting without a license.

**Q. How can I find a Lawyer?**

You can check in the Yellow Pages of the phone book. Both lawyers and firm names are listed in alphabetical order under "Lawyers". Another way to find a lawyer is through the **Lawyer Referral Service** run by Community Legal Information Association (CLIA). If you call this service you will be given the names of two lawyers who deal with criminal law. You may see one of the two named lawyers for a half hour interview. The cost is \$10.00 plus tax. During this half hour, the lawyer will tell you what legal services you may need and give you an estimate of what it may cost. You can reach the Lawyer Referral Service by phoning **892-0853 or toll-free 1-800-240-9798**.

Prince Edward Island has **Legal Aid** offices in **Charlottetown, telephone 368-6043** and **Summerside, telephone 888-8219**.

**Q. Where can I get more information?**

The Community Legal Information Association of PEI, Inc. (CLIA) has brochures on other criminal law matters such as *Guide for Witnesses; Women, Assault and the Law; You and Your Lawyer; Impaired Driving and the Law; and Sexual Assault*. CLIA provides information on the law through a toll-free telephone information line, booklets, pamphlets and workshops. **Telephone 892-0853 or 1-800-240-9798, toll-free in Prince Edward Island.**

For information about obtaining a pardon you can also contact the P.E.I. office of the **Correctional Service of Canada 566-7177**, any **Probation Office** in P.E.I., or the **National Parole Board, Atlantic Region office: Moncton 1-800-265-8644 or 8744**

*This pamphlet provides general legal information only. If you have a specific legal problem, talk with a lawyer.*

*We try to keep our material legally accurate and up-to-date. However laws do change. You can check with a lawyer, the Office of the Attorney General, or Community Legal Information Association of PEI, Inc. for changes to laws mentioned in the pamphlet.*

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*The Association's address is P.O. Box 1207, Charlottetown, PEI C1A 7M8. Telephone 892-0853 or toll-free 1-800-240-9798.*

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