

# Legal Information Society of Nova Scotia

## Going to Provincial Court

You have been charged with a criminal offence. You have never been to court before. You cannot get a Legal Aid lawyer and cannot afford a private lawyer. This pamphlet provides information on

- when you have to be in court
- who will be in court
- how to prepare for trial
- what happens in court

### Legal Advice

Being accused of a crime is a serious matter. It is worth talking with a lawyer to get advice on your situation, even if you cannot afford a lawyer to represent you in court.

*This pamphlet deals with Provincial Court only. If you are charged with a very serious offence, your trial may be in Supreme Court. If you have to go to Supreme Court, you should get a lawyer.*

There is information at the back of the pamphlet on how to find a lawyer.

This pamphlet provides information only. It is not meant to replace legal advice from a lawyer.

### Legal Rights

The Canadian Charter of Rights and Freedoms protects the rights of Canadians including those suspected or accused of a crime.

You have a right to have court hearings in English or French. Also, if you do not understand or speak the language in which hearings are conducted, or you are deaf, you have the right to the assistance of an interpreter.

You should tell the judge as soon as possible if you need the help of an interpreter or you want the hearings in French, or have a friend explain this to the judge.

Here are some of the rights of an accused person.

1. If you are arrested you

- have a right to know the reason for the arrest
- have a right to speak with a lawyer and the police must tell you of this right
- have a right to be brought before a judge within 24 hours of your arrest.

Other rights include

- the right to remain silent
- the right to be presumed innocent until proven guilty in court
- the right to be tried within a reasonable time
- the right to a trial by judge and jury if the maximum sentence for the offence is five or more years in prison.

In the pamphlet, you will find more information about some of these rights but it is not possible to go into them in detail. If you have questions about how these rights affect

your situation you should talk with a lawyer.

What am I charged with?

What you are charged with is called an offence. There are offences under federal laws such as the Criminal Code. These are called criminal offences. There are offences under provincial laws such as the Motor Vehicle Act. These are NOT criminal offences, but can carry serious consequences.

No matter what type of offence you are charged with, you will receive a written notice (paper) describing the offence, the date of the offence and the law you allegedly have broken. For example, if you are charged with shoplifting, the notice may say "theft under \$5000 contrary to section 334(b) of the Criminal Code of Canada".

The notice may be called a Summary Offence Ticket, a Summons, an Appearance Notice, a Promise to Appear, an Undertaking or a Recognizance. It will also give the date and time that you have to go to court to answer the charge.

If you are not sure what you have been charged with, you should talk with a lawyer.

Do I need a lawyer?

It is wise to have a lawyer represent you. Lawyers know the law and legal procedures. They are used to presenting cases and speaking in court. They know what types of questions to ask and how to prepare evidence. However, if you are unable or do not wish to hire a lawyer, you can represent yourself in court. You should still get some legal advice on your situation before you go to court.

Are all offences treated the same?

No. There are two procedures for dealing with a criminal offence depending on how serious it is.

a) Indictable offences (pronounced in-dite-able) are the most serious. Murder, aggravated sexual assault, robbery, break and enter and theft over \$5000 are examples of some indictable offences.

b) Summary offences are less serious. Unless otherwise provided, they carry a maximum penalty of a fine of \$2000 or six months in prison or both.

Impersonating a police officer and causing unnecessary suffering to an animal are examples of summary offences.

Sometimes, the Crown Attorney can decide whether the offence will be treated as summary or indictable. These are sometimes called hybrid offences. Examples are theft under \$5000 and impaired driving. The Crown Attorney decides which procedure to use and tells the judge on the first date that you are in court. The Crown Attorney is the lawyer who presents the case against you.

The police are permitted to assume that a hybrid offence will be treated as indictable. This allows them to demand that the accused provide photographs and fingerprints before the trial.

All offences under provincial laws such as the Motor Vehicle Act and the Liquor Control Act are dealt with by summary procedure.

Will I get a criminal record?

You will get a criminal record if you are convicted (found guilty) of a criminal offence

(summary or indictable). However, if your sentence is an absolute or conditional discharge, you will not have a criminal record.

You will not have a criminal record if you are found guilty of an offence under provincial law.

When do I have to go to court?

The written notice that tells you what you have been charged with will also set out the date that you first have to go to court.

You must go to court on the date and at the time indicated. If you do not turn up, the judge may issue a warrant for your arrest. A warrant is an order of the court that allows the police to arrest you and hold you in custody (lock up) until they can bring you before a judge.

If you have a good reason for not being in court, you should call the court office and let them know. You may also ask a friend or relative to go to court and explain why you are not there. A good reason might be if you are ill. You will need to provide the court with written notice from your doctor that you are too ill to attend court. Failing to show up because you are on holiday or at work is usually not a good reason.

You may want to visit the court before your court date so that you can watch what happens there. You will see where everyone sits and what they do and how the court operates. This may help you be more relaxed and less nervous when your court date comes up.

On the day you have to go to court, you should arrive 10 or 15 minutes before you have to. If there is more than one courtroom you can ask at the information desk which court you should be in. You can go into the courtroom and sit in the seats for the public which are towards the back of the court room.

How many times do I have to go to court?

In many cases, if you plead guilty, there is one court appearance. In most cases where you plead not guilty, there are at least two court appearances.

There may be more than one court date:

- a) If you or the Crown Attorney ask for adjournments (delays). For example, you might ask for an adjournment to give you time to get legal advice.
- b) If you plead "not guilty" the judge will set a date for trial.
- c) If you plead guilty, the judge may deal with the sentencing right away or set a date for sentencing.
- d) If you are found guilty at your trial, the judge may want time to consider what sentence to give you and set a date for sentencing.

What happens on my first court appearance?

This is often called the arraignment date. The first appearance usually lasts no more than five to ten minutes. There will be a number of cases being dealt with by the court on the same day. Listen carefully so that you can hear when the court clerk calls your case. Cases where the accused has a lawyer are usually called first. The remaining matters are then called in alphabetical order.

The court clerk will read out your name. You should walk to the front of the court where

the judge can see you (see "X" on the drawing of the courtroom layout). The court clerk will read the "information", which contains the charge against you.

The judge will ask you if you understand the charge. Tell the judge if you do not understand and he or she will explain it to you. If you do understand say so. When you have told the judge that you understand the charge, he or she will ask you if you plead guilty or not guilty and how you elect to be tried. The judge will say "Are you prepared to plead?" Pleading guilty means that you admit that you committed the offence you are charged with.

Your choices are:

1. You can plead not guilty. The judge will then set a trial date.
2. You can ask for a delay (called an adjournment) if you need time to speak with a lawyer.
3. You can plead guilty.

If you are not sure how to plead, the judge may adjourn the matter and give you time to speak with a lawyer, or enter a not guilty plea and set a date for trial.

It is your decision how you plead. Even if you decide not to hire a lawyer to represent you in court, you should get some legal advice on your situation before you decide how to plead.

If you plead guilty the judge may sentence you then or set a date for sentencing.

You or the Crown Attorney may ask the judge to order a background report be prepared on you. This is called a pre-sentence report and is prepared by a probation officer.

The Legal Information Society has a pamphlet on sentencing.

## Election

With some indictable offences, you may elect (choose) how to be tried. This means you elect whether to be tried in Provincial Court by a judge alone, in Supreme Court by a judge alone, or in Supreme Court by a judge and jury.

## What happens at the next court appearance?

If your case is adjourned to allow you to get legal advice, the judge will set a date for another hearing. It will follow much the same procedure as that for a first appearance. Be sure that you arrange to see a lawyer as soon as possible. Do not leave it until the day before your next court date.

If you plead guilty and the judge sets a date for sentencing, the next court date will deal with sentencing.

If you plead not guilty, the next court hearing will likely be the trial or a preliminary hearing and that may be several months after the first court appearance. Again, you should be sure to get some legal advice before your trial or preliminary hearing.

Whatever the reason for the second court date, the judge will choose a date that is acceptable to you and the Crown Attorney and that fits in with the court schedule. Be sure you know if there are dates when you are not available so that you can tell the judge. Write down the date and time that you will need to be in court again. If you are unsure you can phone the court office and ask the court clerk to check it for you.

## Who will be in court?

### The judge

The judge decides, based on the evidence presented in court, whether the case has been proved against you beyond a reasonable doubt. If you are found guilty, the judge decides what sentence to give you. The judge sits at the front of the court room. He or she usually wears a black robe in court. In Provincial Court there are no juries.

### Crown Attorney

The Crown Attorney is a lawyer who presents the case against you. He or she usually sits at a table at the front of the courtroom facing the judge. The Crown Attorney is also called "the prosecutor", or "the Crown", or "Crown Counsel". The Crown Attorney's job is to prepare the case against you and present the evidence to prove that you committed the offence.

### Court Clerk

The court clerk sits at a table in front of the judge facing the public. He or she calls the court to order, receives physical evidence such as papers presented in court (these are called exhibits), calls and swears in witnesses, writes down any orders made by the judge, and ensures that what is said in court during a trial is recorded on audio tape.

### The Accused or Defendant

The person who is charged with the offence is called the "accused" or "defendant". You have a right to be in court at any time when your case is being dealt with. When your case is called, you should walk to the front of the courtroom and identify yourself. During a trial you should sit near the front of the court so that you can hear everything that is going on.

### Witnesses

Usually, during the first court appearance there are no witnesses. They will be needed later during the trial to give evidence of what they know about the case. Both you and the Crown Attorney may call witnesses and cross-examine each other's witnesses if you choose to.

### Courtworkers

In larger centres there may be community groups who provide courtworkers to help individuals through the court process. They cannot give you legal advice. They can help explain what will happen in court, provide support, and help you contact legal and community services. They will speak to anyone who may need help.

### Public and Media

Courts are generally open to the public and the media. Anyone can come in and watch what is going on. There are seats towards the back of the courtroom for the public.

### Will the media always be there?

Often there will be reporters from local newspapers. Other media usually only cover courts if there are serious cases or a well known person appearing in court.

Television and still cameras and tape recorders are allowed in the courthouse but they are not allowed in the courtroom unless the judge allows them.

### What should I wear?

There is no special way of dressing but you do want to make a good impression on the judge, so be neat and tidy.

### How should I behave?

You should show respect for the court. Show the judge that you are taking the matter seriously. Do not smoke, eat, chew gum, or take drinks into the court. Males are expected to remove their hat or cap. While you may want to bring a friend or relative with you for support, it is not a good idea to bring a crowd of people who joke around or are noisy or otherwise disrupt the court.

You should stand up when you speak to the judge or when the judge speaks to you. Speak clearly and loud enough for the judge to hear you. In Provincial Court, when you speak to the judge, you call him or her "Your Honour".

What happens at my trial?

In a criminal trial you are innocent until proven guilty beyond a reasonable doubt. The trial is the time when the Crown Attorney must present evidence to prove beyond a reasonable doubt that you committed the offence that you are charged with. If the Crown fails to do this, the judge must find you not guilty.

The basic steps in a criminal trial are:

1. The case is called by a court official. You should go to the front of the court. You will be allowed to sit at the front of the courtroom so that you can hear what is being said and see the witnesses.
2. The trial begins. The judge will ask you and the Crown Attorney if you are ready for the trial. If either of you is not ready, the judge will decide whether to continue or adjourn and set another date. There must be a good reason to ask for an adjournment. When you answer the judge you should address him or her as "Your Honour". When you have told the judge that you are ready you can sit down. The court clerk will show you where.
3. You or the Crown Attorney may ask the judge to make an exclusion order. This means that the judge excludes anyone who is to give evidence at the trial from the courtroom. You should tell your witnesses ahead of time that they will be asked to leave the courtroom when they are not actually testifying and make sure that they leave. However, although you may be a witness and give evidence at the trial, you have a right to remain in court for the whole trial.
4. The Crown Attorney presents the case against you. To prove the case against you, the Crown Attorney must present evidence that:
  - you are the person charged with the offence
  - you committed the offence
  - you intended to commit the offence.

The Crown Attorney will call witnesses. For example, if you are charged with shoplifting, the Crown would likely have as witnesses, the store manager or security officer and the police officer who investigated the matter.

Each witness goes into the witness box, swears or affirms to tell the truth, and answers questions from the Crown Attorney. As the witness gives his or her answers, you should write down the main points and anything that you may want to question later.

Note any weak points, for example, where a witness contradicts him or herself or another witness. When the Crown has finished with a witness, you will have a chance to ask your questions. This is called cross-examination.

Cross-examining the Crown's witnesses

Cross-examination is an opportunity for you to ask the witness questions based on his

or her answers to the Crown.

It is not the time to tell your side of the story. You will have an opportunity to do this after the Crown has called all its witnesses.

You do not have to cross-examine every witness. You should only cross-examine a witness if you feel that it will help your case; if the witness made conflicting answers or there are weak spots in his or her evidence. For example, if the witness cannot clearly recall an event, or if you believe the witness knows other facts important to your case, you may wish to cross-examine him or her.

When you cross-examine you should ask questions that show that the witness is unsure of the facts or that the evidence is weak. For example, at the time of the offence, it was dark and raining and the witness, who says he saw you commit the offence, was standing 200 yards away and wears glasses. You might want to ask questions about the weather conditions, lighting and the witness's ability to see clearly.

Do not lose your temper, or say that the witness is lying. Do not argue with the witness. Ask only questions that you feel will help your case. Do not ask questions that allow the witness to repeat something that he or she is sure of. Ask questions you already know the answers to. For example, if the witness claims to have seen something clearly at 10pm on August 19, all you want to point out is that it was dark at the time and there was no street light nearby.

When you are cross-examining you can use questions that suggest the answer that you want. For example you can say, "It was raining hard at 10pm on August 19, wasn't it?" These are called leading questions.

Even if you do not cross-examine the witness, you can draw attention to contradictions and weaknesses in the evidence when you sum up at the end of the trial.

The Crown Attorney may also use written evidence such as a breathalyser test certificate or drug analysis certificate. Before your trial you should get legal advice on how to handle such evidence.

#### Making a motion for a directed verdict

When the Crown Attorney has presented the case against you, if you feel that he or she has failed to prove all the things that had to be proved, you can make a motion for a directed verdict. This means that you are asking the judge to dismiss the case, without hearing the defence evidence. You do this by standing up and saying to the judge:

"Reserving my right to call defence evidence, I wish to make a motion for a directed verdict." You should then tell the judge what you think has been missed from the Crown's case. For example, that none of the Crown's witnesses identified you in court as the person who was at the scene of the crime.

If the judge agrees with you, he or she will acquit you (that is find you not guilty) and dismiss the case. If the judge disagrees with you, he or she will refuse your motion and you may begin your defence.

#### 5. You present your case (called your defence)

This is your opportunity to tell your side of the story.

Until now, the judge has only heard the Crown's side. You can call witnesses and, if you choose, give evidence yourself. The Crown Attorney may cross-examine your witnesses and may cross-examine you if you decide to give evidence.

You do not have to give evidence yourself. You have a right to remain silent. You should

speak with a lawyer about what is best for your situation and how best to present your case.

If you call witnesses, you must not ask them leading questions. For example, you can ask "Were you with anyone on the evening of August 19? You cannot say "You were with me on the evening of August 19, weren't you?".

When you have finished asking a witness questions, the Crown Attorney may cross-examine the witness.

If you decide to give evidence yourself, you will usually do this after you call any witnesses. The Crown Attorney may cross-examine you and ask if you have a criminal record. If you do not give evidence the Crown Attorney cannot mention your criminal record unless you are found guilty of the offence. He or she can then mention it during the sentencing process.

Generally you cannot use written evidence. You must get legal advice on what written evidence might be allowed in your case. If you are using written evidence, you will need an original for the court and a copy for yourself and for the Crown Attorney.

6. Submissions After all the evidence has been presented in court, both you and the Crown Attorney have an opportunity to sum up your case. If you presented evidence in your defence, you will make your submission first. If you did not present a defence, the Crown Attorney sums up first. Also, if you are not represented by a lawyer, the judge might ask the Crown to sum up first. You use the submission to sum up the points in your favour.

- Keep it short
- Do not present any new evidence
- Tell the judge why your witnesses are believable
- Draw attention to weaknesses in the prosecution's case and show that the Crown has not proved the case against you.

The Crown makes a submission to try to show the judge that the evidence proves that you are guilty.

7. The judge makes a decision as to whether the evidence against you is sufficient to prove that you are guilty beyond a reasonable doubt.

The judge takes into account all the evidence presented in court by you and the Crown Attorney. Sometimes the judge will adjourn the court briefly to allow time to reach a decision.

If the judge finds you not guilty you are free to go. You have been acquitted.

If the judge finds you guilty, the next step is for the judge to sentence you.

## Sentencing

Before deciding on the sentence the judge will allow you and the Crown Attorney an opportunity to speak. This is called speaking to sentence. It is an opportunity for you to tell the judge about yourself and any circumstances surrounding the offence. For example, you were depressed because you had lost your job. Be honest. The judge will have heard hundreds of stories and will not be impressed by a snow job. There is more information on speaking to sentence in the Legal Information Society's pamphlet Sentencing.

You or the Crown Attorney may ask the judge to order a pre-sentence report and set a

date, usually six to eight weeks ahead, for a sentencing hearing. This allows time for the report to be prepared. The pre-sentence report is prepared by a probation officer and provides information about you, your family, education, work and community involvement and criminal record if you have one. The information for the report will come from you, people you suggest as references and police.

How can I prepare for trial?

Do not leave it until a day or two before the trial date to prepare. You should make notes of what happened as soon as possible after the event. It may be several months before the trial, and you may forget important facts if you don't write them down. Think about

- who you might call as a witness
- whether you will give evidence yourself
- what are the strong and weak points of your case
- how you can best present the evidence
- what you will say when speaking to sentence, if you are convicted.

Sometimes people do not want to go to court to give evidence as a witness. If you have any doubt that a witness will show up at court, you should go to court one or two months before the trial date and ask for the witness to be subpoenaed (pronounced sub-peen-ed). A subpoena orders a witness to come to court on the date and at the time of trial. Many employers required that employees have a subpoena before they will let them have time off work to go to court.

You may want to get some legal advice on your case from a lawyer. Do not leave this until the last minute.

Full disclosure

The Crown Attorney must provide you with full disclosure of the case against you. This means that he or she must give you copies of all evidence relevant to the case including the Crown sheet, police reports, witness statements made to the police both written and verbal, and any other documents such as a breathalyser certificate.

You can find out from the court clerk the location of the Crown Attorney's office which will deal with your case. Go to the Crown Attorney's office and tell the secretary or receptionist who you are and ask for disclosure. This information can be picked up by you, or in some cases, it may be mailed to you. You will need to show identification. You should also say that you are going to court without a lawyer.

If you do not have a copy of the information (the paper that says what you are charged with), you can get a copy from the court clerk.

Be prepared

Prepare your cross examination questions

The disclosure will tell you the basic information that the Crown Attorney will use in court.

Think about the offence you are charged with:

- who was there?
- what could each person see or hear?
- make a list of possible witnesses and write down what each saw or did. Do not forget to include police officers.

- are there possible witnesses that were not interviewed by police?

Think about what each person could say about the offence and make notes. Now think about what questions you could ask to point out any weaknesses.

#### Prepare your defence witnesses

Talk to your witnesses, one at a time, about what happened and what you will ask them in court. They must be able to say in court and in their own words what happened, and what they themselves saw or heard, or did. This is their testimony and must not be rehearsed.

The judge will not allow witnesses to give hearsay evidence. This means a witness is not allowed to say what another person told the witness he or she saw, heard or did. The witness should not say what he or she believed happened. He or she must have seen or heard what happened or what was said.

Make sure your witnesses know that they may be cross-examined by the Crown Attorney. Make sure they know about the witness exclusion order (page 10).

You should make a list of questions that you want to ask each witness.

#### Prepare your evidence

You must decide whether you are going to give evidence yourself. You should talk with a lawyer about this. Here are some points for and against giving evidence.

For:

- It is the only opportunity you have to tell the judge your version of what happened
- You may be the only defence witness who was present when the incident occurred
- You may have seen something that no one else saw
- You may know facts that no one else knows about the offence
- You can explain why you said or did something
- You can explain why you could not have committed the offence
- You can provide the judge with an opportunity to assess whether you are a truthful, honest person.

Against:

- You must give evidence under oath and the Crown Attorney may cross-examine you
- The Crown Attorney may point out weaknesses in your evidence
- If you have a criminal record, the Crown Attorney can ask you about it
- The Crown Attorney can ask you about other matters related to the case that you did not talk about in your testimony.

#### Prepare your submission

The Crown Attorney first presents the case against you, you then present your case. Then you both have an opportunity to make a submission. The submission is a summary of the important points of your case. It is a final opportunity for you to remind the judge of the weaknesses in the Crown Attorney's case and the strengths of your case. Write down the main points that you want to cover so that you do not forget anything.

#### Prepare to Speak to Sentence

If the judge finds you guilty, you will likely be sentenced immediately. Even if you feel certain that you will not be found guilty, you should be prepared to speak to sentence. The Legal Information Society's pamphlet Sentencing can help you prepare.

### Appeals

If you are found guilty you may appeal the verdict or the sentence. Usually, you must file the appeal within 30 days. You should talk to a lawyer before you decide whether to appeal. The Crown may also appeal the verdict or sentence.

Information in this pamphlet is not meant to replace legal advice from a lawyer. If you have a specific legal problem you should 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 or the Legal Information Society for information on changes to laws mentioned in this pamphlet.

### Where to get more information

The Legal Information Society provides Nova Scotians with information on the law through

- Booklets and pamphlets
- Speakers Bureau
- Legal Information Line and Lawyer Referral Service
- Dial-a-Law - information on tape
- Website

We are pleased to acknowledge the assistance of the Legal Services Society of British Columbia who gave permission to adapt their publication Representing Yourself in a Criminal Trial.

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To use the Legal Information Line or the Lawyer Referral Service call 455-3135 in the Halifax/Dartmouth Metro area or 1-800-665-9779 toll free in NS if you are calling outside Metro.

Through the Lawyer Referral Service callers are given the name of a lawyer who will give an interview of up to 30 minutes for \$20.

For the pamphlet on Sentencing and for information on Speakers Bureau, publications and other business call (902) 454-2198.

To use Dial-a-Law, a 24 hour taped information service call 420-1888 (not toll free)

You can visit our website at [www.legalinfo.org](http://www.legalinfo.org)

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For information in French as well as a list of French speaking lawyers in Nova Scotia, please contact l'Association des juristes d'expression française de la Nouvelle-Écosse (AJEFNE). L'AJEFNE is a non-profit organization founded in 1994 in order to promote access to legal services for the Acadian and Francophone population of Nova Scotia.  
Telephone: (902) 433-2085