

YOU'VE been
CHARGED
with a **CRIME**

What **YOU**
NEED to **KNOW**

This booklet is intended to provide general information only. If you require specific legal advice, please consult the appropriate legislation or contact a lawyer.

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YOU'VE BEEN CHARGED

NOW WHAT?

If you are charged and are not kept in custody, you will be given a document (appearance notice, promise to appear, summons to attend or recognizance). This document will tell you when and where you have to appear in court. In addition, you may be required to go to the police station to be photographed and fingerprinted. If you do not appear in court or report to the police station when you are supposed to, you can be charged with the Criminal Code offence of "failing to appear" and a warrant may be issued for your arrest.

KINDS OF OFFENCES

Criminal charges are handled in one of three ways:

- a) summary conviction offences
- b) indictable offences
- c) dual or hybrid offences

Summary conviction offences are sometimes considered to be less serious than indictable offences and carry a lesser penalty. Trials for summary offences are heard in the Provincial Court.

Indictable offences are usually the most serious offences and have greater penalties. A **dual or hybrid offence** means that the Crown prosecutor can choose whether to prosecute by way of summary conviction or indictment depending on the circumstances of the case. You may be able to have someone else appear for you if you are charged with a summary conviction offence, but you must appear in court if you are charged with an indictable offence.

YOUR FIRST COURT APPEARANCE

All criminal charges start out in the Provincial Court in front of a Provincial Court judge. This is known as the "first appearance." You should arrive at the proper courtroom at least 15 minutes before the scheduled time. It will likely be a docket court which means that there are a number of matters that the court will be dealing with on that day.

When you get to the courtroom, look at the docket list (which is usually posted outside of the courtroom) to see whether your name is correct and the charges are properly set out. If your name is missing, go to the Provincial Court Criminal Division and speak to a clerk.

Once in the courtroom and when the clerk calls your name, go to the front and stand in front of the judge. The charge against you will be read out.

If you are charged with an indictable offence you have the right to have your trial either before a Provincial Court judge or a Court of Queen's Bench justice with or without a jury unless it is an offence for which the Provincial Court has absolute jurisdiction. When you decide which court will hear your trial, you are

“making an election.” If you elect to have the trial in the Court of Queen’s Bench, there will be a preliminary hearing scheduled.

A preliminary hearing takes place in front of a Provincial Court judge. It is held to see whether there is enough evidence to justify sending the case to trial. If there is not enough evidence, the judge discharges you. If there is enough evidence, the judge will order you to stand trial in the Court of Queen’s Bench and a trial date is set.

If you are not charged with an offence where you may make an election, the judge may ask if you understand the charge. Then you will be asked if you plead guilty or not guilty. You may also ask the judge if you can “reserve” your plea. If you do not have a lawyer, reserving your plea will give you

time to talk to one. If the judge allows you to reserve your plea, you will be given another date to return to court. You may also be able to reserve your election if you don’t have a lawyer.

If you plead not guilty, a trial will be scheduled. If you plead guilty, several things will happen next. Please see section eight for information on pleading guilty.

If you speak French, you are entitled to be tried before a French speaking judge. If you would like your trial in French, you must apply to the court before:

- a) your trial date is set (if you do not have an election),
- b) your election (if you elect trial in the Provincial Court), or
- c) your committal for trial (if you elect, or are deemed to elect, trial in the Court of Queen’s Bench).

2 DUTY COUNSEL

If you don’t already have a lawyer to help you, a lawyer known as duty counsel is available to help in docket court free of charge. Duty counsel can speak to the Crown prosecutor for you, set a trial date, reserve (postpone) your plea for a later date, enter a guilty plea,

and speak to sentence and speak to your release. Duty counsel cannot represent you at trial. If your matter is set for trial, it is up to you to find a lawyer.

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IF YOU DON'T HAVE A LAWYER

If you would like to have a lawyer for the trial or preliminary inquiry, you should make sure that you arrange for one well before the day of the trial or preliminary inquiry because a lawyer needs time to prepare your case. If your lawyer is not available on the day your matter is scheduled,

he or she will also need time to ask for an adjournment. If you do not have a lawyer on the day that is set, the judge may not grant you an adjournment to get one and will expect you to represent yourself.

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HOW DO YOU GET A LAWYER?

Search the internet and call a lawyer who practices criminal law. Or, call the Lawyer Referral Service (www.lawsociety.ab.ca/public/lawyer_referral.aspx) and ask for the name of a lawyer who practices criminal law. The phone number for the Lawyer Referral Service is 1-800-661-1095. You will be given the names of up to three lawyers

who deal with criminal law. You can meet with each lawyer to receive 30 minutes of free advice and discuss your situation. If you want that lawyer to represent you, it will cost more. Discuss fees. You may also want to talk to other people to see if they can recommend someone or check for advertisements in local newspapers or other publications.

Call Legal Aid or visit www.legalaid.ab.ca (see section five) if you cannot afford a lawyer.

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LEGAL AID

If you cannot afford a lawyer, call the nearest Legal Aid office (call the toll free RITE line at 310-0000 to ask for the nearest Legal Aid office) to see if they can help you. They will set up an interview. If you are being held in a remand facility, a correctional institute or a hospital, contact Legal Aid by phone or ask the facility to set up an interview. Legal Aid staff make regular visits to these facilities.

Legal Aid is not free. You will be asked to pay back the cost when you are able to.

When you apply to Legal Aid, you must give financial information so that they can determine whether you are eligible. Your eligibility depends both on your financial situation and on the type of legal problem that you have.

If Legal Aid cannot assist you, they can suggest other agencies or services that may be able to help.

STUDENT LEGAL SERVICES OF EDMONTON

www.slsedmonton.com

Student Legal Services of Edmonton can give legal information and may assist low-income people in Provincial Court with a number of criminal charges: breach of probation, common assault, certain driving offences including impaired driving and more. Their hours of operation change during the school term. **You can phone them at (780) 492-2226 for further information.**

STUDENT LEGAL ASSISTANCE OF CALGARY

<http://slacalgary.ca/>

Student Legal Assistance is an association of law students at the University of Calgary. They provide year round legal assistance and representation in Provincial Court to people charged with less serious criminal offences who are unable to afford legal services. If Student Legal Assistance agrees to help, you will be charged a \$30 fee. **Their phone number is (403) 220-6637.**

CALGARY LEGAL GUIDANCE

<http://clg.ab.ca/>

Calgary Legal Guidance is a non-profit organization. Staff lawyers and law students help people who are charged with less serious offences. Staff accept or reject applications for assistance on a case-by-case basis. **You can call them at (403) 234-9266.**

DIAL-A-LAW

www.clg.ab.ca/programs-services/dial-a-law

Dial-a-Law is a service you phone to listen to pre-recorded tapes containing general legal information including information about criminal matters. Written copies of the tapes can also be mailed on request. **The phone number is 1-800-332-1091 or in Calgary, (403) 234-9022.**

ELIZABETH FRY SOCIETIES

Elizabeth Fry societies work with, and on behalf of, women involved with the justice system, particularly women in conflict with the law. The Edmonton and Calgary Elizabeth Fry societies have court workers who provide information to both men and women on court procedure, plea options and directions. They also provide referrals to duty counsel and other community and legal resources. **They can be reached at (780) 422-4775 in Edmonton and at (403) 294-0737 in Calgary.**

NATIVE COUNSELLING SERVICES OF ALBERTA

www.ncsa.ca/programs/help-with-court

Native Counselling works to ensure that Native people receive fair and equitable treatment in the justice system. Their Native Court worker Program provides Aboriginal people with information about court procedures, their rights and responsibilities under the law, and advocacy, support and referrals to Legal Aid and other resources. Court workers also may attend court with their clients.

WHERE WILL THE TRIAL BE?

Your appearance notice (the document that you receive indicating your first appearance) contains the address for the courthouse. The written notice you receive when your trial date is set contains the time and location of the trial. Arrive at least 15 minutes early and, if you are not represented by a lawyer, let the Crown prosecutor know you are there.

The Crown prosecutor can usually be found sitting at one of the tables in the front of the courtroom. If you are late or do not attend, the court may issue a warrant for your arrest and you can be charged with the criminal offence of failing to appear.

PLEADING GUILTY

If you entered a plea of not guilty at your first appearance and you want to change it to guilty at the trial date, you must ask the judge if you can change your plea to guilty. If you know before the trial date that you want to plead guilty, you should call the Crown prosecutor as soon as possible. Telling the Crown prosecutor before the trial date gives time to cancel the witnesses and saves everyone inconvenience.

Once the guilty plea is entered, the Crown prosecutor will tell the judge about the offence, often reading from the police report. Make sure the facts the Crown prosecutor presents are correct since you will have to agree to these facts. If you do not agree with something that is said, you will have a chance to tell the judge why you disagree. You cannot plead guilty unless you agree that you committed the offence. If you disagree with many of the facts, you should think about pleading not guilty and taking the matter to trial.

If you have a criminal record, the Crown prosecutor should show you a copy of the record before showing it to the judge. Make sure it is your criminal record and that there aren't any mistakes in it. If there are, tell the judge.

Before the judge sentences you, you will be given a chance to tell the judge something about yourself, the offence and any special circumstances that might affect the sentence. The judge may ask you questions such as how old you are, whether you are married, whether you have a job, how many children you have and whether they live with you. You may want the judge to know how much income you have and your plans for the future. Remember, always be absolutely honest with the judge and all those involved in the criminal justice system.

For sentencing, skip to section 11.

GETTING READY FOR TRIAL

WHEN YOU HAVE PLED NOT GUILTY

WHAT IF YOU OR YOUR WITNESSES DO NOT SPEAK ENGLISH?

You should indicate to the judge that you need an interpreter at the time the trial date is set, or if you are making an election, at the time the election is made. The court will provide an interpreter.

As indicated earlier, if you speak French, you can ask to be tried before a judge who also speaks French. Remember, you must make the application before:

- your trial date is set (if you do not have an election),
- your election (if you elect trial in the Provincial Court), or
- your committal for trial (if you elect or are deemed to elect trial in the Court of Queen's Bench).

FIND OUT WHAT EVIDENCE THERE IS AGAINST YOU

You can ask the Crown prosecutor's office for "disclosure." Disclosure means you can have copies of all the evidence in your case, such as witness statements, police reports and the police officer's notes. The process to get this information may vary across the province. In most cases, you will be asked to fill out a form which asks for your name, date of birth, the charges against you, the court date, courtroom and your signature. The Crown prosecutor's office will have this information ready for you in about seven to ten days. You will be contacted when it is ready and you can go to the Crown Prosecutor's office with picture identification to pick it up.

PREPARING YOUR DEFENCE

You are innocent until proven guilty beyond a reasonable doubt. It is up to the Crown to prove your guilt. The Crown prosecutor must prove:

- the offence was committed,
- the offence was intended,
- that you are the guilty party, and
- the time, date and place of the offence.

During the trial, the Crown will present evidence to the judge to establish these things. You have a right to remain silent. You will be given a chance to ask questions of the Crown's witnesses. You will also have a chance to call your own witnesses to give evidence. You may want to get some assistance from a lawyer to help you prepare your legal argument.

BRING YOUR WITNESSES TO COURT

Your witnesses must be physically present in court. You can subpoena (compel) a witness to come to court if they are unwilling or if they need a subpoena to get time off work. You may pick up copies of subpoena forms at the clerk's office. Fill out one subpoena for each witness and ask the clerk to have it authorized by a justice of the peace. The justice of the peace may ask you questions about the subpoena. Once it has been authorized, have the police or a private document service company serve the subpoena. You should allow enough time for the subpoena to be served (at least two weeks) and there will be a fee for service.

The rules around trial procedure are too complicated to explain in detail in this booklet. However, this is an outline of what happens.

The Crown prosecutor calls witnesses first. You or the Crown prosecutor can ask the judge for an order for exclusion of witnesses so that the other witnesses must leave the courtroom while one is testifying. This will reduce the chances that witnesses will be influenced by each other's evidence. After the Crown is finished asking a witness questions, you will have a chance to ask questions. This is called cross-examination.

The Crown prosecutor may also have documents, photographs or other items for the judge to see. This could include things like a breathalyzer test certificate. This is introduced by a witness and the Crown will ask the judge to have the item introduced as an exhibit.

After you have finished your cross-examination of a witness, the Crown is able to ask further questions that have come up for the first time through your questions. This is known as "redirect."

Once all of the evidence is entered and all witnesses have been called by the Crown prosecutor, you will have an opportunity to put forward a defence (something you do not have to do). If you choose to put forward a defence, you do it through your witnesses and your own testimony. Remember, you are not required to call any evidence or to testify yourself. Further, the Crown prosecutor will be given the chance to cross-examine you if you take the stand and can cross-examine any of your witnesses. If you do decide to testify and you have a criminal record, the Crown prosecutor can ask you about it. If you do not give evidence, the Crown can only mention your record if and when the judge finds you guilty.

After hearing each side's case, the judge will ask for argument. If you called witnesses, you will go first. If you did not call witnesses, the Crown prosecutor will go first. Argument gives both sides a chance to persuade the judge. The judge will then decide whether to find you guilty or not guilty. If you are found not guilty, you are free to go.

If you are found guilty, see section 11 on sentencing for details about what may happen to you.

Depending on the offence, your sentence could include a money fine, probation, imprisonment or a combination of these. In some situations, the judge will order you to pay restitution to the person who has suffered as a result of your acts. If you are sentenced to jail for less than two years, the judge has the option of letting you serve your time in the community. There will be conditions on this which must be followed carefully. In exceptional circumstances, if the judge is convinced that a criminal record will seriously and unfairly affect your future plans, you may be granted a discharge, either conditional or absolute. This means that technically you are not convicted, but a record is kept of your discharge. The conditions in a conditional discharge are contained in a probation order and if they are not followed, the discharge can be revoked and the conviction entered.

If you do not have enough money to pay a fine, tell the judge that you will need time to pay. The judge may give you a “fine order.” If you can’t pay your fine by the due date, you can go to the clerk’s office and apply for an extension. This must be done before the date the fine is due to be paid. You may also be able to work off your fine through community service.

The judge can also ask for a pre-sentence report to get more

information about you. If that happens, you will not be sentenced until the judge has had a chance to review the assessment. A probation officer prepares the pre-sentence report. The probation officer may interview you, your family, your employer or anyone else who can provide relevant information. This process usually takes a number of weeks.

If the offence is serious or your criminal record is lengthy, you should be prepared to be taken from the courtroom directly to jail.

VICTIM SURCHARGE ON OFFENDERS

If you are found guilty, you will be charged a victim surcharge. A victim surcharge is an additional penalty imposed at the time of sentencing. **It is collected by the provincial government and used to provide programs, services and assistance to victims of crime.**

The victim surcharge is automatic unless you can prove undue hardship. The surcharge amount is 30% of any fine imposed. If no fine is imposed, it is \$100 where the offence is punishable by summary conviction and \$200 where the offence is punishable by indictment. The judge has the discretion to increase the amount of the surcharge.

VICTIM IMPACT STATEMENTS

A victim impact statement is a written statement prepared by the victim and considered by the judge at the time of sentencing. It allows victims to participate in the proceedings by describing the impact of the crime on them and their families.