

# HANDOUT 2: Criminal Court Procedure

## Criminal Court Process

There are several ways in which an accused can be brought to court: on an arrest with warrant, an arrest without warrant, a promise to appear, an appearance notice or a summons to appear.



## Appearance Notice

An appearance notice is generally given by police to an accused who has not been arrested on a minor criminal offence. It compels the accused to appear before a court on a specific date. If the accused does not appear, the court can issue a warrant for his/her arrest.

## Promise to Appear

A promise to appear is sometimes given to an accused that has been arrested and released by the police. It is a personal guarantee to come to court on the date specified. If an arrested person is not released by the police, there must be a bail hearing before the court within 24 hours to determine whether the person will remain in custody pending his or her trial. A recognizance is one form of interim release and is completed by either promising to pay money or depositing money or other valuable security with the court. Then the defendant will be released pending a trial or appeal but has an order to appear. If the defendant does not appear, the money promised is due or the money or security deposited are subject to forfeiture, and an arrest warrant will be issued. When an accused is charged with a serious crime, or is considered a flight risk or is likely to re-offend, an order for secure custody will detain the accused in a correctional centre until trial.

## Police Report to Crown

The police prepare a report detailing all the evidence they have collected and based on that report, Crown counsel decides whether criminal charges are appropriate.

## Information or Indictment

An information or an indictment is used to charge the accused with the crime. An information is sworn and signed by a peace officer who knows the case and swears that there are reasonable grounds to believe an offence has been committed. An indictment is the charging document used in Supreme Court and is signed by Crown counsel.

In Canada there are three types of criminal offences: summary conviction, indictable and dual (hybrid) offences. An example of a summary conviction offence is trespassing by night. An example of an indictable offence is armed robbery. An example of a dual (hybrid) offence is assault. For hybrid offences, the Crown chooses whether to proceed summarily or by indictment and for the application of all further procedural rules, the offence is deemed to be the type of offence the Crown has chosen.

## Form of Trial

When an accused is charged with an indictable offence, in most cases they have a right to choose between three forms of trial: to be tried by a Provincial Court judge, or by a Supreme Court judge alone or by a Supreme Court judge with a jury. This is called an election. In some serious cases like murder, the trial must be by judge and jury, unless both the Crown and the accused consent to a trial by a Supreme Court judge alone.

## **First Appearance**

The first appearance is where an accused or his or her lawyer (counsel), makes their election (if required), enters a plea to the charge(s) and/or asks for time to retain counsel. The issue of whether or not an accused can be released on bail pending trial is often decided at the first appearance. It may take time for the accused and counsel to decide what to do about the charge so there may be a number of appearances. If the accused decides to plead guilty, sentencing may be done on a different date because a pre-sentence report may have to be prepared by a probation officer. If the accused pleads not guilty then a date for the trial or preliminary hearing is set depending on the type of offence.

## **Preliminary Hearing or Inquiry**

If an accused is charged with an indictable offence and has elected a trial by other than the Provincial Court, a preliminary hearing is held where the Crown must present sufficient evidence to commit the accused for trial. This allows the court an opportunity to determine whether the charges against the accused are valid. The preliminary inquiry is held in Provincial Court. The accused does not have to present evidence at this time because the burden is on the Crown to establish they can convict on the evidence.

## **The Trial**

The judge is the sole arbitrator of the law as it applies to each case and its facts but also provides a judgment in non-jury trials. The court clerk is in charge of all exhibits, physical evidence, court files and the recording of the proceedings during any type of court hearing. The sheriff manages courtroom security and escorts the accused to and from court if he or she is being held in jail during the trial. Not all persons accused of serious crimes are held in custody prior to trial.

Prosecutors in Canada represent the people through the "Crown" - a term we use because our Head of State is the Queen. The state charges the accused and is referred to as Crown Counsel/Prosecutor. Defence counsel is the lawyer for the accused in a criminal trial.

In a criminal matter, the onus is on the Crown to prove the case beyond a reasonable doubt. The judge or jurors must consider all the evidence to decide if it convinces them beyond a reasonable doubt of the guilt of the accused.

When a criminal case is brought to court and if the accused might go to jail for a term of five years or more then the accused has the opportunity to choose to have either a trial by judge alone or a trial by a judge and jury. The jury will consist of 12 members.

At the end of the trial, when both sides have stated their cases, a verdict will be reached. The verdict is the decision made about whether or not the accused person is guilty in a criminal trial. In a criminal trial with a jury this verdict must be unanimous. If the jury cannot reach a unanimous verdict it is called a "hung jury" and a new trial must be held.

## **Appeal**

In the BC Court of Appeal there are usually only three judges sitting on an appeal unless the court is being asked to overturn one of its own decisions. In that case five judges would hear the appeal.