

Representing Yourself in a Criminal Trial

Provincial Court



This booklet explains what can happen when you plead not guilty to a summary offence. It does not try to cover every trial situation. For detailed information, speak to a lawyer about your case.



Legal
Services
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Representing Yourself in a Criminal Trial is also available in PDF on the LSS website at www.lss.bc.ca.

This publication explains the law and court procedures in general. It is not intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help. This publication was up to date as of May 2009.

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Contents

Introduction	1
Who is this booklet for?	1
Who is this booklet <i>not</i> for?	2
What other information will I need?	2
Language rights	2
Before your trial	3
What am I charged with?	3
Summary offences	3
Indictable offences	3
What are my rights?	4
Where can I get legal help?	4
What can a lawyer do?	5
How can I get information about my case?	5
When should I go to court?	6
Who are the people in court and what do they do?	7
Judge	7
Justice of the peace	7
Prosecutor	7
Court clerk	7
Sheriff	8
The accused	8
Witnesses	8
Public	8
What will happen when I go to court?	8
A: First appearance	9
B: Arraignment hearing	13
C: Trial confirmation hearing	14

Checklist: Before your trial	17
At your trial	19
What will happen at my trial?	19
1. The case is called	19
2. The trial begins	20
3. The exclusion order is made	20
4. The Crown’s case is presented	20
5. You present your defence	23
6. Submissions are made	25
7. The judge makes a decision	26
Checklist: At your trial	27
Appendix 1: Court process — Before your trial	28
Appendix 2: Court process — At your trial	29
Appendix 3: Sample letter	30

Introduction

This booklet has two sections. The first section tells you what will happen *before* your trial. It explains:

- the court procedures that will take place before your trial (such as your first appearance, arraignment hearing, and trial confirmation hearing), and
- how to get the information that you will need for your trial.

Use the checklist on page 17 to make sure that you are ready for trial. Use the chart on page 28 to help you understand the court procedures that will take place before your trial.

The second section of this booklet tells you what will happen at your trial. It explains:

- who the people in the courtroom are and what they do, and
- what you need to do during your trial.

Use the checklist on page 27 to make sure that you do everything you need to do at your trial. Also use this checklist to see whether the prosecutor has proven all the necessary parts of the charge against you. Use the chart on page 29 to help you understand the steps that will happen during your trial.

Who is this booklet for?

This booklet can help you if:

- you are an adult facing a criminal charge,
- you have been denied legal aid,
- you are not likely to go to jail if convicted,
- you cannot afford to pay for a lawyer, and
- you decide to represent yourself in court.

Remember that a conviction on any criminal charge is a serious matter. If you are found guilty, you may have to pay a fine or go to jail. In addition, some offences carry minimum mandatory sentences. If you are convicted of one of these types of offences, the judge cannot give you a lighter sentence.

A conviction on a criminal charge may lead to a criminal record, which can limit the kinds of jobs you can get and where you can travel. A criminal conviction can also affect your ability to support yourself and your family. If you are found guilty of certain offences, you can have your fishing, hunting, or driver's licence taken away for months or years — or even for the rest of your life.

Before deciding to plead guilty, think over what you did — and what you are charged with. Are they the same? Can you explain why the offence happened? Do not plead guilty just because you want to get things over with. Plead guilty only if you are sure that you want to say, "Yes, I did it, and I intended to do it."

If you will probably go to jail if you are convicted, and your income is very low, you may be able to get legal aid. Look in the phone book under "Legal Aid" for the office nearest you.

who should use this booklet

*talk to a lawyer if
you might go to jail*

If you find yourself saying, “Yes, I did it ... but,” get some legal advice. If you cannot afford a lawyer, you can talk to **duty counsel**. Duty counsel are lawyers who provide free legal help to in- and out-of-custody accused people in Provincial Court. Ask for duty counsel at the courthouse. See “Where can I get legal help?” on page 4 for more information.

Who is this booklet *not* for?

If you have been charged with a serious offence and denied legal aid because of your income level, you need legal help. (A “serious” offence is one for which you are likely to go to jail if convicted.) See “Where can I get legal help?” on page 4.

What other information will I need?

Take the time and make the effort to get as much information as you can so that you will be able to represent yourself in the best way possible. For more information about the law, you can go to the library, or look online. The website www.clicklaw.bc.ca is a great place to start. This website will take you to information all over the Web on legal topics, including criminal law, family, and housing.

You can also get separate information sheets from LSS on what to do if you are charged with one of the following:

- Assault
- Breach of a court order
- Drinking and driving offences
- Mischief
- Possession of an illegal drug
- Possession of property under \$5,000 obtained by crime
- Theft under \$5,000

These sheets describe in detail how you can defend yourself against these specific charges. Contact your local legal aid office and ask for the sheet that deals with your particular charge. See the back cover for more information about these guides.

Language rights

At any stage, you can ask for an interpreter to assist you, in any language.

You can also ask to have your trial conducted in French, and for the important documents related to your case to be translated into French. You should make this request as early as possible, preferably at your first appearance (see page 9 for more information on what happens at your first appearance).

*other helpful
information*

right to an interpreter

*right to have your
trial in French*

Before your trial

There are several stages in the criminal court process before your actual trial. You need to get as much information as possible during this time so that you can defend yourself as effectively as possible.

This section contains general information about different types of offences and the importance of seeking legal advice. It also explains the court procedures that will take place *before* your trial, and outlines how to get information about the charge against you.

what this section contains

What am I charged with?

What you are charged with is called an **offence**. A document called the **information** will say what you are charged with, as well as the date and time the offence allegedly happened. The offence you are charged with may be different from what the police told you when you were arrested. In criminal cases, the prosecutor (Crown counsel) decides what you are charged with.

Make sure you understand what kind of offence you are charged with, and what the likely sentence will be (see page 5 for how to get this information).

Summary offences

A **summary offence** is a less serious offence. You can sometimes be considered for alternative measures (see page 12) for these types of crimes. The maximum penalty for a summary offence is usually a \$2,000 fine and/or 6 months in jail. However, some summary offences, such as breach of a probation order or assault causing bodily harm, have a maximum penalty of 18 months in jail.

less serious offences

Indictable offences

An **indictable offence** is a more serious type of offence. Indictable offences range from theft of more than \$5,000 and break-and-enter to robbery, aggravated sexual assault, and murder.

If you are convicted of theft of more than \$5,000, you could be sentenced to 10 years in prison. Robbery or aggravated sexual assault could mean life imprisonment. The minimum penalty for certain offences involving the use of a firearm, even for the first offence, may be up to 5 years in jail in some cases. A conviction on a first-degree murder charge carries a minimum mandatory sentence of life in prison with no chance of parole for at least 25 years.

more serious offences

Note: **Mixed offences** can be dealt with as either summary or indictable offences. If you have been charged with a mixed offence and you hear that the prosecutor is planning to treat your crime as an indictable offence, get legal help immediately.

know your rights

What are my rights?

You have legal rights. If you are arrested, the police must:

- tell you the charge you are being arrested for,
- tell you that you have the right to talk to a lawyer as soon as possible, and
- give you the chance to speak to a lawyer on the phone. A free lawyer is available 24 hours a day for this purpose.

You also have the right:

- to be presumed innocent until proven guilty in court,
- to get a fair trial, and
- to remain silent.

Remember: It is up to the prosecutor to prove your guilt.

Where can I get legal help?

It is a good idea to talk to a lawyer before you decide how you will plead. A lawyer can explain your options and help you understand what your legal documents say.

If you do not have your own lawyer, see when duty counsel (a legal aid lawyer who can give you advice) will be at the courthouse. When duty counsel are available, they can give you advice about the charges against you, court procedures, and your legal rights. Duty counsel can also speak on your behalf the first time you appear in court (but this person will not be your permanent lawyer). Because duty counsel lawyers are paid by legal aid, there is no cost to you.

contact a lawyer

You can also contact a lawyer in private practice for specific advice on how to handle your own case. Find out if the lawyer is willing to help and what it will cost. Two meetings with a private lawyer will cost a lot less than hiring a lawyer to run your entire trial.

If you do not know a lawyer who handles criminal cases, contact the **Lawyer Referral Service**. For a \$25 fee plus tax, you can talk to a lawyer about your case for half an hour, and find out what he or she would charge to help you. You can reach the Lawyer Referral Service at 1-800-663-1919 (call no charge) or 604-687-3221 in the Lower Mainland.

law student clinics

If you live in the Lower Mainland, you may be able to get help from the University of British Columbia's **Law Students Legal Advice Program** (LSLAP). You can get legal advice or assistance from LSLAP if you are charged with a summary offence and are not likely to receive a jail sentence if convicted. Call 604-822-5791 to find the location of the LSLAP clinic nearest you.

In Victoria, the **Law Centre** may be able to help you. Call 250-385-1221 for more information.

What can a lawyer do?

A lawyer can give you specific advice on:

- what evidence the prosecutor plans to use and what he or she has to prove;
- whether plea discussions with the prosecutor will get you a better result than a trial;
- whether you can object to the use of any of the prosecutor's evidence (see page 20);
- whether any of your rights under the Charter of Rights and Freedoms have been violated, and if so, how this might affect your trial (see page 20);
- how to present your evidence or gather further evidence, including expert evidence;
- legal arguments;
- options to consider regarding possible sentencing by the judge; and
- whether you should testify.

A lawyer can also explain the disclosure and the information (see below), tell you about alternative measures (see page 12), help you get a stay of proceedings (see page 12), or help you speak to sentence (see page 26).

If you have questions about any of these matters, write them down as you prepare for your meeting with the lawyer.

To get the most benefit from your meeting, here are some other things you can do to prepare:

- Get a copy of the information and the disclosure (see below) and read them carefully before you go to the lawyer.
- Prepare a rough outline of your defence.
- Read the rest of this booklet.

How can I get information about my case?

For each criminal case, the prosecutor puts together the information that will be used in the trial. This includes a summary of what the Crown witnesses will probably say, and a copy of any statements made to the police (either spoken or written). All of this information makes up the **disclosure**.

The prosecutor puts the disclosure into a package and gives you a copy when you go to court. If you do not get the disclosure at your first appearance, ask the prosecutor how to get it.

If you want to try to get the disclosure before your first appearance, call the prosecutor's office and tell the receptionist that you would like "the disclosure, including any statements." Make sure to mention that you are going to court without a lawyer.

*how a lawyer
can help*

*how to prepare for
your meeting*

*information that you
need*

going to court

You can also ask for the disclosure by writing a letter like the sample on page 30. If you do this, be sure to ask for a copy of the **information** (the official court form listing the date, time, place, and type of offence) and the prosecutor's **initial sentencing position** (a form outlining what sentence the prosecutor will suggest if you plead guilty at an early stage).

If you have asked for your trial to take place in French or you plan to do so, you can write to the prosecutor's office in French and ask for a translation of the disclosure. You may have to ask the judge to order the prosecutor to give you a translation.

When should I go to court?

You will receive a notice that tells you what you have been charged with and what kind of offence it is, as well as the date, time, and place of your first court appearance.

If you are charged with a crime but not arrested, you will get a letter called a **summons**. If you are arrested, the police will give you a notice called a **promise to appear** or an **undertaking to appear**. Or the justice of the peace will give you an undertaking to appear or **recognizance** after you make bail.

If you are scheduled to appear in court and you do not show up, you may be charged with another offence called **failure to appear**. The court may also issue a **warrant** for your arrest.

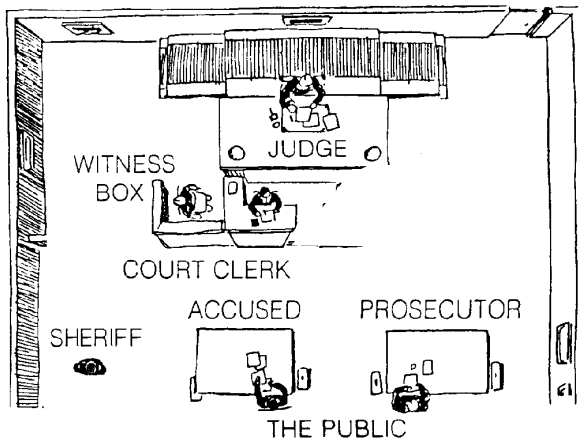
If you miss your court date, go to the registry as soon as you get to the courthouse. Explain to the staff there that you missed your court date, and they will tell you what to do. If there is a warrant for your arrest because you missed your court date, dealing with this could take some time.

how to act in court

Judges and other court staff expect you to be prepared for your court appearance. Here are some tips on how to act in court:

- Be quiet (and tell your witnesses to be quiet too).
- Arrive on time.
- Do not chew gum.
- Dress as though you are going to an important job interview.
- Speak clearly and loudly enough to be heard.
- Stay calm.
- Be polite.
- Call the judge "Your Honour."
- Always stand when you speak to the judge or when the judge speaks to you.

Who are the people in court and what do they do?



This drawing shows an average courtroom. The people involved may be different each time you go to court, but their jobs stay the same.

Judge

The judge sits at the front of the room at a raised desk. He or she usually wears a black legal robe and faces you. Always call the judge “Your Honour.”

The judge decides if you are guilty or not. If you plead guilty or are found guilty after a trial, the judge also decides your sentence.

Justice of the peace

The justice of the peace sits at the front of the courtroom. A justice of the peace might be in charge at your first appearance, your arraignment, and/or your trial confirmation hearing. While he or she does not have the same powers as a judge, the justice of the peace can issue warrants and hear bail hearings.

Prosecutor

The prosecutor presents the case against you for the government, or the state, which is often called the Crown. He or she usually sits at a table at the right-hand side of the courtroom, facing the judge or justice of the peace. The prosecutor may be called the Crown, Crown counsel, or by his or her own name. The case he or she presents is often called the Crown’s case. You may encounter different prosecutors at different stages of your case.

Court clerk

The court clerk sits in front of the judge or justice of the peace and performs tasks such as calling the court to order, handing **exhibits** (physical evidence, such as papers) to the judge or justice of the peace, calling the witnesses, and writing down orders.

what the different people in the courtroom do

what the different people in the courtroom do

Sheriff

Sheriffs make sure courtrooms are safe. At your first appearance, a sheriff will probably call your name and let you know when it is your turn to come forward.

The accused

In the courtroom you may be called **the accused** instead of by your name. When your case is called, you sit at a table facing the judge or justice of the peace. Usually, the table is on the left-hand side of the courtroom.

Witnesses

The first time you go to court (your first appearance) there will not be any witnesses. Later, if there is a trial, there will be witnesses brought to court by the prosecutor (Crown witnesses), and defence witnesses that you bring to court. Witnesses for both the Crown and defence are brought to court to tell what they know about the offence. What they say under oath is called their **evidence**.

During a trial, witnesses are usually asked to leave the courtroom until it is time for them to give evidence. As the accused, you have the right to be in the courtroom at all times, even if you are going to be a witness yourself.

All the other witnesses sit in a waiting area until they are called into the courtroom. Witnesses give evidence from the witness box at the front of the courtroom. The witnesses can sit in the public seats when they have finished. If you give evidence, you also use the witness box.

Public

Members of the public are allowed to come and watch trials. There are rows of seats for them at the back of the courtroom. Before your case comes up, you can go to a courtroom and watch so that you will have an idea of what to expect when it is your turn to go to court.

What will happen when I go to court?

There are three main steps in the Provincial Court criminal process *before* the trial itself:

- A: First (or initial) appearance
- B: Arraignment hearing
- C: Trial confirmation hearing

See page 28 for a chart outlining these steps.

three steps before the trial

A: First appearance

Your first appearance is not a trial — it is a starting point for dealing with the charge against you.

Your first appearance will usually take place in front of a justice of the peace in an **initial appearance room**. The prosecutor will also be present. At this stage, one of two things can happen:

- You can tell the justice of the peace what you plan to do about the charge against you.

OR

- You or the prosecutor can ask for more time (this is called an **adjournment**).

What should I do at my first appearance?

1. Go to the room listed on your appearance notice. There may be a line of other people waiting outside the room for their first appearances. Give your name to the sheriff or clerk and wait for your case to be called. In some courthouses, you may be able to go right into the courtroom to wait for your name to be called.
2. When your name is called, go into the room. If you need an interpreter, say so right away. The justice of the peace will ask you if you understand the charge against you, and if you have talked to legal aid or plan to get a lawyer. If you are not sure what you want to do and want more time to try to get a lawyer or talk to a legal adviser, ask for an adjournment (see page 10).
3. Ask the prosecutor to give you the disclosure and the information if you do not have a copy already (see page 5). The prosecutor has a legal duty to give you any information that the Crown has relating to your case.

If you get the disclosure at your first appearance, check if the prosecutor is proceeding **summarily** (which means that you are being charged with a summary offence) or **by indictment** (which means that you are being charged with an indictable offence). If the prosecutor is proceeding by indictment, ask for an adjournment so that you can apply for legal aid. Make sure you tell the staff at the legal aid office that the prosecutor is proceeding by indictment.

The prosecutor should also tell you what sentence he or she will ask for if you decide to plead guilty. This information will be on a form called Crown counsel's initial sentencing position (see page 6). When you get this piece of paper, ask the justice of the peace to explain anything in it that you do not understand.

4. The justice of the peace may ask if you intend to plead guilty. You do not have to make a decision at this stage.

If you are sure you want to plead guilty and deal with sentencing right away, tell the justice of the peace and your case will be transferred to a courtroom that day if a judge is available.

at your first appearance

getting an adjournment

documents that you need

possible sentences if you plead guilty

if you want to plead guilty

*if you want to plead
not guilty*

If a judge is not available, or if you want more time to prepare for sentencing, the justice of the peace will set another court date for you to enter your guilty plea and receive your sentence from the judge. For more information on pleading guilty and sentencing, see page 11.

5. If you plan to plead not guilty, tell the justice of the peace that you want to set a date for an **arraignment hearing** (where you will plan a date for your trial). Before this can happen, the prosecutor has to file an **arraignment report** (a form that explains the status of the Crown's case) and give you a copy of this.

If the prosecutor has the arraignment report ready at your first appearance, you can go ahead and set a date for the arraignment hearing. You might do this in the initial appearance room, or you might be asked to go to the **judicial case manager's** office to find a time when you and the prosecutor are free to come back to court.

If the prosecutor has not filed the arraignment report before your first appearance, the justice of the peace will adjourn the hearing. Once you have received the arraignment report, you will have to return to court to set a date for your arraignment hearing.

trial in French

6. Tell the justice of the peace if you want your trial to be conducted in French instead of English. He or she should tell you at your first appearance that you have this option.

Can I ask for an adjournment?

*getting an
adjournment*

If you want more time to get legal advice or information, ask the justice of the peace for an adjournment at your first appearance. The justice of the peace can adjourn your hearing for a few minutes or a few days to give you time to see legal aid or talk to a lawyer.

If the justice of the peace orders an adjournment, your next court date could be up to a week or two later. You must come back to court at the date and time set for your next appearance.

You can also ask for an adjournment at a later court appearance, but this may be harder to get. Usually a justice of the peace or judge will only grant you an adjournment at a later stage in the court process if:

- you want to discuss your case with a lawyer, or if you think that you will get a lawyer, or
- you have found out that the prosecutor is proceeding by indictment (which means that you will likely go to jail if convicted). If this happens, ask for an adjournment to have legal aid reconsider your application.

Ask the court clerk for a record of the fact that the prosecutor is proceeding by indictment. Take that information back to legal aid.

What if I want to plead guilty?

Usually you should not plead guilty before you have a chance to review the Crown's case against you. A guilty plea means that:

- you accept responsibility for the offence you are charged with,
- you agree with the prosecutor's summary of the facts of the offence, and
- you understand the consequences of pleading guilty.

Also, be sure you understand the different penalties you may face. If you have any questions about the charge or the potential penalties, speak to a lawyer.

To help you decide on a plea, you can ask the prosecutor what sentence the Crown will ask for if you plead guilty. This information will be in Crown counsel's initial sentencing position (see page 6).

Sometimes the prosecutor will change the Crown's position on sentencing if you can give good reasons why you should get a different sentence.

For instance, if you need to look after your family and you have a job, the prosecutor might agree to a sentence that would not interfere with your work. Or if you are charged with more than one offence, the prosecutor may agree to drop some of the charges if you plead guilty to other charges.

You can ask about these things by contacting the prosecutor's office or by speaking to the prosecutor in person before your next court appearance. However, keep in mind that the judge makes the final decision about what sentence you receive, and it may be different from the prosecutor's recommendation.

If you are going to plead guilty, be prepared to **speak to sentence**. This is your chance to tell the judge anything about yourself that might help you get a lighter sentence. Ask your local legal aid office for a free copy of the brochure called *Speaking to the Judge Before You Are Sentenced* to help you with this process.

Here is what you need to do when you plead guilty:

1. Go to the courtroom you were told to go to.
2. When your case is called, go to the accused's table.
3. When the judge asks if you are prepared to plead, say that you are ready.
4. Plead guilty.

(Note: the prosecutor will tell the judge about the facts of the case, and say whether you have a previous history of criminal offences.)

5. Speak to sentence.

After you have pleaded guilty and been given the chance to speak to sentence, the judge will sentence you.

what a guilty plea means

think about sentencing

changing your mind

What if I change my mind?

Remember that it is always possible to change your plea from not guilty to guilty. However, once you plead guilty, you may not be able to change your plea.

If you have entered a guilty plea but have not been sentenced, you can ask the judge to let you withdraw your guilty plea, but your request may be refused. After sentencing, the only way to change your guilty plea is through an appeal, and it may be hard to do.

At any point in the court process you can decide to plead guilty or ask for an adjournment. When you first find out that you have been charged with an offence, you may also be able to get a stay of proceedings or alternative measures (see below). If the prosecutor agrees to a stay of proceedings or alternative measures, your case will not proceed to trial.

stopping the case from going ahead

Can I get a stay of proceedings?

In rare instances, you may be able to get a **stay of proceedings** (which means that the judge or the prosecutor stops the case from going ahead).

This can only happen for a serious reason — for instance, if the police somehow violated your Charter rights or the prosecutor decides that prosecution is not in the public interest. Talk to a lawyer for more information about getting a stay of proceedings.

alternative to the court system

Do I qualify for alternative measures?

Sometimes cases are dealt with through **alternative measures** (also known as diversion). Alternative measures programs are managed by a **probation office**.

qualifying for alternative measures

You may be eligible for alternative measures if:

- the charge against you is minor (especially if it is your first offence),
- you take responsibility for your actions and do not deny your role in the offence,
- you are aware of your rights and willingly agree to participate in the alternative measures, and
- you do not want to deal with the charges in court.

If the prosecutor agrees to recommend you for alternative measures and the probation office accepts you, you will need to successfully carry out the conditions of an alternative measures contract. This may include community service work or counselling. In return, you will not face criminal penalties or get a criminal record.

If you do not successfully finish your alternative measures program, the prosecutor can restart the case against you.

B: Arraignment hearing

The prosecutor must file an **arraignment report** before your arraignment hearing can be scheduled. The arraignment report includes details about your case and confirms things like:

- whether the prosecutor is proceeding summarily or by indictment;
- whether the prosecutor expects you to plead guilty;
- whether the prosecutor has made full disclosure (given you all of the information you need, like witnesses' statements);
- the number of police, expert, and other witnesses that the prosecutor plans to call;
- the time estimate for the prosecutor's case; and
- whether an interpreter is needed.

Even though you are representing yourself, try to get some legal help when you are reviewing the arraignment report. A lawyer can help you understand what your options are. See page 4 for more information about getting legal help.

The arraignment hearing might be your first appearance before a judge — or it could also be handled by a justice of the peace. At the arraignment hearing, you will have to tell the court what you intend to do. At this point, you have three options. You can:

- set a date for your trial confirmation hearing and trial,
- plead guilty, or
- ask for an adjournment.

What should I do at my arraignment hearing?

1. Go to the courtroom listed on the slip you received at your first appearance. Tell the sheriff that you are present. When your name is called and you are told that your case is next, go to the accused's table (see the drawing on page 7).
2. The judge or justice of the peace will ask you if you understand the charge. If you do not understand, ask for an explanation. If you need an interpreter, ask for one now. The judge/justice may ask if you have a lawyer or if you plan to get one. The judge/justice can adjourn the hearing to give you more time to talk to a lawyer.
3. The judge/justice will ask the prosecutor for information about the case. The judge/justice may ask questions about the arraignment report. You may want to make notes about what the prosecutor says. If you have any questions about the arraignment report, or what the prosecutor says, ask the judge/justice. For example, if you think the prosecutor has not given you all of the information about the case, you can tell the judge/justice that you want further disclosure.

*understanding the
arraignment report*

*at your arraignment
hearing*

*ask about anything
you do not understand*

entering a plea

trial in French

making admissions

4. The judge/justice of the peace may ask you questions about what you plan to do. This may or may not include your plea. If you are asked for your plea and you are still not sure what you want to do, ask for an adjournment so you can speak to a lawyer.
5. If you want to plead guilty, a judge may take your plea and deal with sentencing right away. Or the judge/justice may tell you to come back another day for sentencing. For more information on pleading guilty and sentencing, see page 11.
6. If you want to plead not guilty (and have your case proceed to trial), the judge/justice may ask you some questions about your case, such as whether you plan to call witnesses, and if so, how many. If you want your trial to take place in French, tell the judge/justice at this time. The judge/justice may also ask if you are willing to admit any of the points the prosecutor must prove as part of the Crown's case. If you admit one of these points (called admissions), the prosecutor does not need to call evidence to prove it.

You should not make any admissions without talking to a lawyer. Remember that you have the right to remain silent and the right to consult a lawyer in confidence.

7. If the judge/justice of the peace thinks the case is ready for trial, you will set dates for your trial confirmation hearing and trial. You may do this in court, or you may be told to go to the judicial case manager's office to get a date when a judge/justice and a prosecutor are available. You have to agree to the dates as well. Your trial confirmation hearing and trial may be a few months away, so be sure to write the dates down.

C: Trial confirmation hearing

*at your trial
confirmation hearing*

You must appear in court on the date set for your trial confirmation hearing. This is usually about one month before your trial.

The purpose of the trial confirmation hearing is to make sure that you and the prosecutor are ready for the trial. The judge or justice of the peace will also try to make sure that the time estimates for the trial are reasonable.

If you want to plead guilty, say so. A judge may take your plea and go ahead with sentencing or you might have to come back on another day for this. For more information on pleading guilty and sentencing, see page 11.

*the trial readiness
report*

At the trial confirmation hearing, the prosecutor will give you and the judge/justice copies of a form called a **trial readiness report**. This form is similar to the arraignment report, and indicates the status of the Crown's case. It confirms things like:

- whether the prosecutor expects you to plead guilty at the trial confirmation hearing,

- whether the prosecutor will be ready to proceed on the trial date or wants an adjournment,
- the number of police, expert, and other witnesses the prosecutor plans to call,
- whether the prosecutor has taken the necessary steps to make sure Crown witnesses will attend the trial,
- any changes in the time estimate for the prosecutor's case,
- whether the prosecutor has given you all the information you need,
- whether the prosecutor has given you all notices and certificates within proper time limits, and
- whether an interpreter has been requested (if needed for the Crown witnesses).

What should I do at my trial confirmation hearing?

1. Go to the courtroom indicated on the slip that you got from the judicial case manager when you set your trial date. When your name is called and you are told your case is next, go to the accused's table.
2. When you get the trial readiness report, read it carefully. If you have any questions, ask the judge/justice to explain.
3. If you need an interpreter, ask for one at this time. If you have asked to have your trial take place in French, confirm that a French-speaking judge and prosecutor have been assigned.
4. The judge/justice may ask you some questions about the case at the trial confirmation hearing. The judge/justice may ask if the time estimate is still adequate, and if you have taken steps to make sure that any defence witnesses will come to the trial.

If you are not ready to proceed to trial, you can ask for an adjournment. You will have to give the judge/justice a good reason for this request. For instance, there may be new information in the trial readiness report or you may need advice from a lawyer. The judge/justice does not have to give you an adjournment at this point in the court process.

5. If the judge/justice thinks that the trial will finish within the time set at the arraignment hearing, the trial date will be confirmed. You must return to court for your trial on that day. If the judge/justice thinks that the trial will take longer, the trial date may have to be changed. The judge/justice will set a new trial date or send you to the judicial case manager to set a new trial date.

your language rights

*talk to the judge
about how ready you
are for trial*

trial date confirmed

Checklist: Before your trial

There will only be a trial if you want to plead not guilty. If you want to plead guilty, see page 11. Use this checklist to prepare for each of the court appearances *before* your trial.

At your first appearance

- Get the following documents from the prosecutor and read them carefully:
 - the disclosure,
 - the information, and
 - the Crown’s initial sentencing position.
- Tell the court that you want to plead not guilty.
- Ask the judge or justice of the peace to set a date for the arraignment hearing (you may need to come back to court to do this).
- Ask for an interpreter — or tell the court that you want your trial to be conducted in French instead of English — if this applies to you.

Before your arraignment hearing

- Get the arraignment report from the prosecutor and read it carefully.
- Ask for a list of the prosecutor’s witnesses.
- Contact a lawyer to help you understand the arraignment report.
- Start to think about what evidence you will use to support your side of the story.
- Decide if you have witnesses that can help you.

At your arraignment hearing

- Take notes when the prosecutor presents information about your case.
- Answer the judge/justice’s questions about what you plan to do at your trial.
- Tell the judge/justice you want to set a date for your trial confirmation hearing.

Before your trial confirmation hearing

- Keep working on your defence.
- Think about what questions you will ask your witnesses.
- Make plans to get your witnesses to come to trial.

You can ask for an adjournment at any court appearance — but the judge will only grant this if you have a good reason for the request. The closer you are to trial, the harder it will be to get an adjournment.

check off each item as you complete it

At your trial confirmation hearing

- Get the trial readiness report and read it carefully.
- Answer the judge/justice's questions about your preparation for trial. (You do not need to tell the prosecutor which witnesses you will call.)
- Tell the judge/justice that you want to set a date for your trial.

Before your trial

- Talk to a lawyer to get advice about your case. Ask about the prosecutor's evidence and whether you can **object** to it (challenge it) before it is submitted (see page 20).
- Get advice about whether you should take the stand to give evidence (see page 23). Also discuss what written evidence might be useful in your case.
- Talk to your witnesses. Tell them what to expect at the trial. Make sure they know where to go and how to get there.

At your trial

After you have been to your first appearance, arraignment hearing, and trial confirmation hearing, and have contacted a lawyer for legal advice, your trial is the next step. This section explains what you need to do during your trial.

Before your trial date arrives, you can go to court and watch some other cases. You will see how the court works, where everybody sits, and what different people say and do. If you visit the court before you have to appear yourself, you will be less nervous when you go to court for your own case.

What will happen at my trial?

A trial is held if you say that you are not guilty. Remember that you are innocent until proven guilty beyond a reasonable doubt. It is up to the prosecutor to prove your guilt. If the prosecutor does not do this, the judge will **acquit** you (make a legal decision that you are not guilty).

The next section of this booklet outlines the different steps involved in Provincial Court trials. It also tells you how to prepare for each step.

There are seven steps in every criminal trial:

1. The case is called.
2. The trial begins.
3. The exclusion order is made, if requested.
4. The prosecutor presents the Crown's case.
5. You present your case. (You are called "the defence.")
6. Both you and the prosecutor **sum up** (make a conclusion about) your positions. This is called the **submissions**.
7. The judge makes a decision.

These steps always follow one right after the other in this order. See page 29 for a chart that shows these steps.

You have the right to a fair trial. Listen carefully and ask the judge to explain anything you do not understand. The judge has a duty to help you understand the process to ensure a fair trial.

1. The case is called

You sit in the public seating at the back of the courtroom, along with any witnesses that you bring. The prosecutor calls your name. You stand and go to the accused's table (see the drawing on page 7).

what this section contains

seven steps in a criminal trial

case is called

trial begins

2. The trial begins

The judge asks you if you are ready to begin the trial. You stand and say, “Yes, Your Honour.” The judge asks the prosecutor the same question. If you are both ready, the trial begins. You can sit down.

Sometimes the prosecutor is not ready to start the trial. For example, maybe a key Crown witness did not come to court. The prosecutor may ask the judge to adjourn the trial. If this happens, you should not agree to an adjournment. Instead, ask the judge to dismiss the charges.

witnesses leave the room

3. The exclusion order is made

The prosecutor usually reminds the judge to make an **exclusion order**. This means that all of the witnesses wait in a different room from the courtroom. This is to make sure that witnesses will not hear what other witnesses say as evidence.

You should tell your witnesses ahead of time about the exclusion order so that they will know what to expect. If you are going to be a witness, the exclusion order does not apply to you. As the accused, you have the right to remain in the courtroom to hear all the evidence.

If the prosecutor does not ask for the exclusion order, you can ask for one by saying, “Your Honour, I ask for an exclusion order.”

what the prosecutor must prove

4. The Crown’s case is presented

The prosecutor presents the Crown’s case. To convince the judge that you are guilty, the prosecutor must prove that:

- you are the person charged,
- you committed the offence,
- you intended to do it, and
- the offence took place within the court’s jurisdiction (for example, in the city of Vancouver).

Remember that the prosecutor is counting on the evidence of the Crown’s witnesses to try to prove that you are guilty.

The prosecutor might also use written evidence, such as a breathalyzer test certificate, or a drug analysis certificate. Before your trial, ask a lawyer if you can expect this kind of evidence and what, if anything, you should do about it.

objecting to the evidence

Sometimes, the police do not follow the rules and end up violating your Charter rights. For example, they might not have let you talk to a lawyer before they got your statement or collected a breath sample. Or they might have searched your house without a warrant. If this happens, you can object to the evidence that the police collected because they violated your rights. You will have to object *before* the prosecutor introduces that evidence. The judge may decide to hold a mini-trial within the trial to deal with the issue. This is called a **voir-dire**. You may need to call witnesses or testify

yourself at the voir-dire. It is important to talk to a lawyer before the trial if you plan to use this option, because you will have to tell the prosecutor about it ahead of time.

Each witness for the prosecutor stands in the witness box, swears to tell the truth, and is asked questions by the prosecutor. Often, the main Crown witness is the police officer who handled the investigation.

Write down the main points each witness makes. Note any statements that you want to question later.

Can I cross-examine the Crown's witnesses?

As each Crown witness finishes giving evidence, you have a chance to ask questions. This is called **cross-examination**.

Whether you should cross-examine each witness depends on what evidence the witness gives when questioned by the prosecutor. You do not have to cross-examine the Crown's witnesses. In fact, if you agree with the witness, it is best not to cross-examine. But if you think it is going to help your case, you can cross-examine any Crown witness.

Here are some examples of when you might want to cross-examine a witness:

- If the witness said something you do not agree with.
- If the witness did not mention something that would help your case.
- If the witness gave a different version of the events in a statement to a police officer or any other person.
- If you think the witness was not sure of the facts or that the evidence given was weak.
- If you think the witness may have made a mistake.
- If the witness said things that are different from the information you have in the disclosure.

There are two important things to remember when you cross-examine:

- Take the time to do it right.
- Do not argue — losing your temper or saying a witness is lying will not help your case.

When you cross-examine a witness, how you word your questions is very important. When the prosecutor questions his or her witness, the question cannot suggest what kind of answer the prosecutor would like. For example, the prosecutor must say, "At what time did you see the offence occur?" and not "You saw the offence take place at 9 a.m., didn't you?"

However, when you cross-examine, you can express your question to try to get the answer you want. For example, you could say, "It was

*when to cross-examine
the Crown's witnesses*

*try to get the answer
you want*

dark at 10 p.m. on August 19, wasn't it?" These are called **leading questions** and they are always used in cross-examination.

But be careful to use your cross-examination only to point out weak spots. You do not want to get witnesses to repeat evidence that they are sure of. For example, if the witness claims to have seen something clearly at 10 p.m. on August 19, all you want to do is point out that it was dark at that time.

How do I prepare my cross-examination questions?

The disclosure tells you the basic facts that the prosecutor will use in court. Think about the offence you are charged with. Who was there? What could each person see or hear?

Review the prosecutor's list of witnesses or make a list of possible witnesses and write down what they each saw and did at the time of the offence. Do not forget police officers. If they were involved, the prosecutor will certainly use them as Crown witnesses.

Think about what each person/witness could say about the offence, and make notes. Now think of questions that you can ask to point out any weak areas in the evidence. Be careful. Lawyers often say that asking too many questions in cross-examination is dangerous.

The prosecutor must try to prove to the judge that you are guilty beyond a reasonable doubt. If the judge has a reasonable doubt, you will be found not guilty. You want to ask cross-examination questions that make the judge doubt the prosecutor's witnesses.

Remember: When you cross-examine the Crown witnesses, you can ask questions that suggest the answer you want.

Can I challenge the prosecutor's evidence?

At the end of the prosecutor's case (but before you present your case), check your notes and consider whether the Crown's witnesses have given evidence that proves all the things the prosecutor must prove. You can make a **no-evidence motion** if it was not proven that:

- you are the person charged,
- you committed the offence,
- you intended to do it, and
- the offence took place within the court's jurisdiction.

When the prosecutor finishes, stand up and say to the judge: "Reserving my right to call a defence, I wish to make a no-evidence motion." Tell the judge that you think evidence to prove the prosecution's case is missing.

If the judge agrees with you that there is not enough evidence to prove the important parts of the charge, the judge will acquit you right then, and you can leave.

take notes about weak areas in Crown's evidence

challenging the prosecutor's evidence

If the judge does not agree with your no-evidence motion (or if you do not make one), the trial will continue. No-evidence motions often do not work because the prosecutor usually has some evidence — so be ready to defend yourself.

5. You present your defence

So far in the trial, the judge has heard the prosecutor's side, and you have had a chance to cross-examine the Crown witnesses. Now you present the defence case with your own witnesses and with your own testimony (if you wish to give evidence), and the prosecutor has a chance to cross-examine your witnesses.

If you are going to give evidence, you usually go first, before your witnesses. This is so that the prosecutor cannot say to the judge later that you should not be believed because you could have changed your testimony to match what the other defence witnesses said.

Should I testify?

You have to decide whether to **testify** (give evidence yourself). You should make this decision with the help of a lawyer. Remember that you have a right to remain silent and cannot be made to testify — it is up to the prosecutor to try to prove that you are guilty. If the case against you is not strong, there may be no need for you to give evidence. Remember that you must give evidence under oath. You should discuss this with a lawyer.

What are the advantages of testifying?

- It is your only chance to explain what happened.
- You may be the only witness to what happened.
- You may have seen something no one else saw or could see.
- You may know facts no one else knows.
- You can explain why you said or did something.
- You can show that you could not have committed the offence you are charged with.
- What you say happened may be totally different from the version of events that the prosecutor's witnesses tell.
- It can help the judge decide whether he or she thinks you are a truthful, honest person.

What are the disadvantages of testifying?

- The prosecutor can cross-examine you.
- The prosecutor will point out any weak spots in your evidence.
- If you have a criminal record, the prosecutor can ask you questions about it. (If you do not give evidence, the prosecutor cannot mention your record during the trial.)
- The prosecutor may ask you about things you do not want to talk about, and you will have to answer.

presenting your case

*giving evidence
yourself*

reasons to testify

reasons not to testify

*be ready for
prosecutor's cross-
examination*

*questions you can
ask your witnesses*

*preparing your
witnesses*

*getting your
witnesses to come to
trial*

Remember: If you give evidence, the prosecutor can cross-examine you and try to show that your evidence is weak or untrue. The prosecutor can ask if you have a criminal record and you must answer. If you do not give evidence, the prosecutor cannot bring the matter up. Get legal advice about testifying if you have a criminal record.

Can I use other witnesses?

You may want to call your own witnesses. If you do, you must question them in a certain way. Your questions cannot suggest that you want a particular answer. For example, you can ask, "Were you with anyone on the night of August 19?" but you cannot ask, "We were together on August 19, weren't we?" You can ask, "How fast was I driving?" but not, "I wasn't driving over 50 kilometres per hour, was I?"

The prosecutor can cross-examine each witness after you have finished your questions. The prosecutor will try to show weak spots or points that your witnesses are not sure of, just as you did with the Crown witnesses.

How do I prepare my defence witnesses?

Before the trial date, talk to your witnesses separately about what happened and what you will ask in court. Explain that they must answer your questions and that you cannot suggest what they should say.

Remember: You cannot ask your own witnesses leading questions. Each witness must give his or her own version of what happened, and this should not be memorized.

Your witness must have actually seen or heard what happened. A witness cannot just say what other people said. The court is interested only in facts, not the beliefs or opinions of the witness. A witness must have witnessed something and be prepared to give evidence, under oath, in court.

If you have any doubt that your witnesses will show up on the trial day, go to the courthouse at least three weeks before the trial and ask for **subpoenas** (pronounced supEENaz) to give to your witnesses. A subpoena orders them to come to court at a specific time on the date of your trial. Many employers require their employees to have a subpoena before they are allowed to leave work to go to court.

Tell your witnesses that they will be cross-examined by the prosecutor. Warn them that the prosecutor may try to confuse them or make them angry. Make sure they understand that this is not personal, and that they should just stay calm, take their time, and answer truthfully. Remember to tell your witnesses about the exclusion order (see page 20).

Make a list of your defence witnesses (just as you did for the Crown witnesses). What does each of your witnesses know? What can each of them tell the judge? Plan how to ask your questions. Remember that you cannot suggest the answers that you want to hear.

Can I use documents as evidence?

You can also use documents as evidence. You may want to use a birth certificate, for example, or a receipt from a restaurant or store. You will not be allowed to use a letter or **affidavit** (statement that a person swears is true) from a witness who is not appearing in court. Ask a lawyer what written evidence might be useful and how you can use it in court.

using documents as evidence

6. Submissions are made

When you have finished your case, both you and the prosecutor have a chance to say some final things to the judge. These are called **submissions**. As the defence, if you decided to call witnesses in your case, you will give your submissions first. Here is what you need to do in your submissions:

summing up your case

- Sum up all the points in your favour.
- Keep it brief.
- Do not give any new evidence.
- Point out the weaknesses in the prosecutor's case. Remind the judge of any evidence the Crown witnesses seemed unsure about or if the Crown witnesses did not agree with each other or contradicted themselves.
- Tell the judge why your own witnesses gave more believable evidence.

This is your last chance to show that the prosecutor has not proven that you are guilty beyond a reasonable doubt.

The prosecutor then makes his or her submissions. The prosecutor's aim is to try to show the judge that you are guilty beyond a reasonable doubt.

How do I prepare my submissions?

When you prepare your submissions, think about what you will tell the judge to show that you are not guilty. Write down the main points that you want to talk about in your submissions. In court, remember to add any points that come up during the prosecutor's case.

preparing your submissions

the outcome of your trial

7. The judge makes a decision

The judge considers all the evidence presented by both sides and then decides if you are guilty or not guilty. Sometimes the court adjourns for a few minutes before the judge gives the decision.

- If the judge says that you are not guilty, you are free to go.
- If the judge says that you are guilty, you have been **convicted**. The judge will then sentence you.

What can I do if I am sentenced?

speaking to sentence

Before you are sentenced, you have a chance to speak. This part of the trial is called **speaking to sentence**. When you speak to sentence, you tell the court anything about yourself and the offence that might convince the judge to give you a lighter sentence.

It makes sense to prepare to speak to sentence in case the judge decides that you are guilty. No matter how confident you are of winning your case, prepare what you would say if you were convicted and faced with sentencing.

If you are found guilty, you will probably be sentenced right after the trial. Be sure to read *Speaking to the Judge Before You Are Sentenced* so that you will know what to say if your trial reaches this point. (See the back cover for how to order this guide.)

If you are convicted, you can ask for an adjournment to have the sentencing later that day or on another day. The judge does not have to give you an adjournment — so be ready to speak to sentence on the day of your trial.

*

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Do not be discouraged, and do not plead guilty just to avoid a trial. Preparing your own trial is a lot of work, but you can do it and it is worth doing. The staff at the legal aid office will help you as much as they can.

Checklist: At your trial

Use this checklist to guide you through your trial.

When the case is called

- If the prosecutor is not ready to go to trial on the assigned date and requests an adjournment, ask the judge to dismiss the charges against you.

When the Crown presents its case

- Listen and take notes as the prosecutor presents the Crown's case.
- Write down any questions you may have about what the Crown's witnesses say.
- Cross-examine the Crown's witnesses (if you think that it will help your case).
- Check whether the prosecutor has proven that:
 - you are the person charged,
 - you committed the offence,
 - you intended to do it, and
 - the offence took place within the court's jurisdiction.

When you present your defence

- Make a no-evidence motion if you think that the prosecutor has not proven all of the things listed above.
- If your no-evidence motion fails (or if you do not make one), present your case.
- Testify (if you have decided to do this).
- Call your own witnesses for questioning.
- Use any documents that you have submitted as evidence.
- Present your submissions.

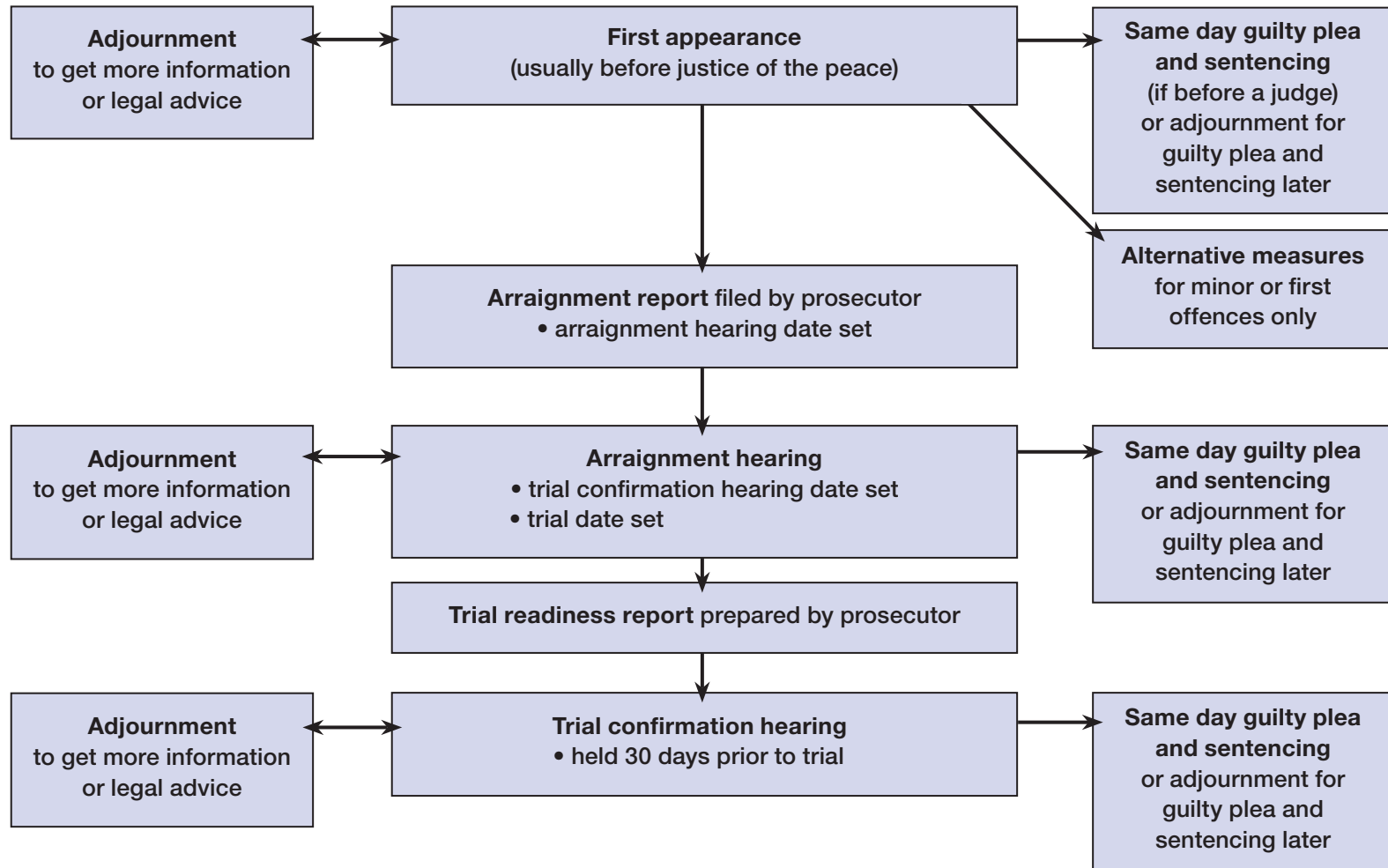
When the judge makes a decision

- If you are found guilty, speak to the judge before you are sentenced.

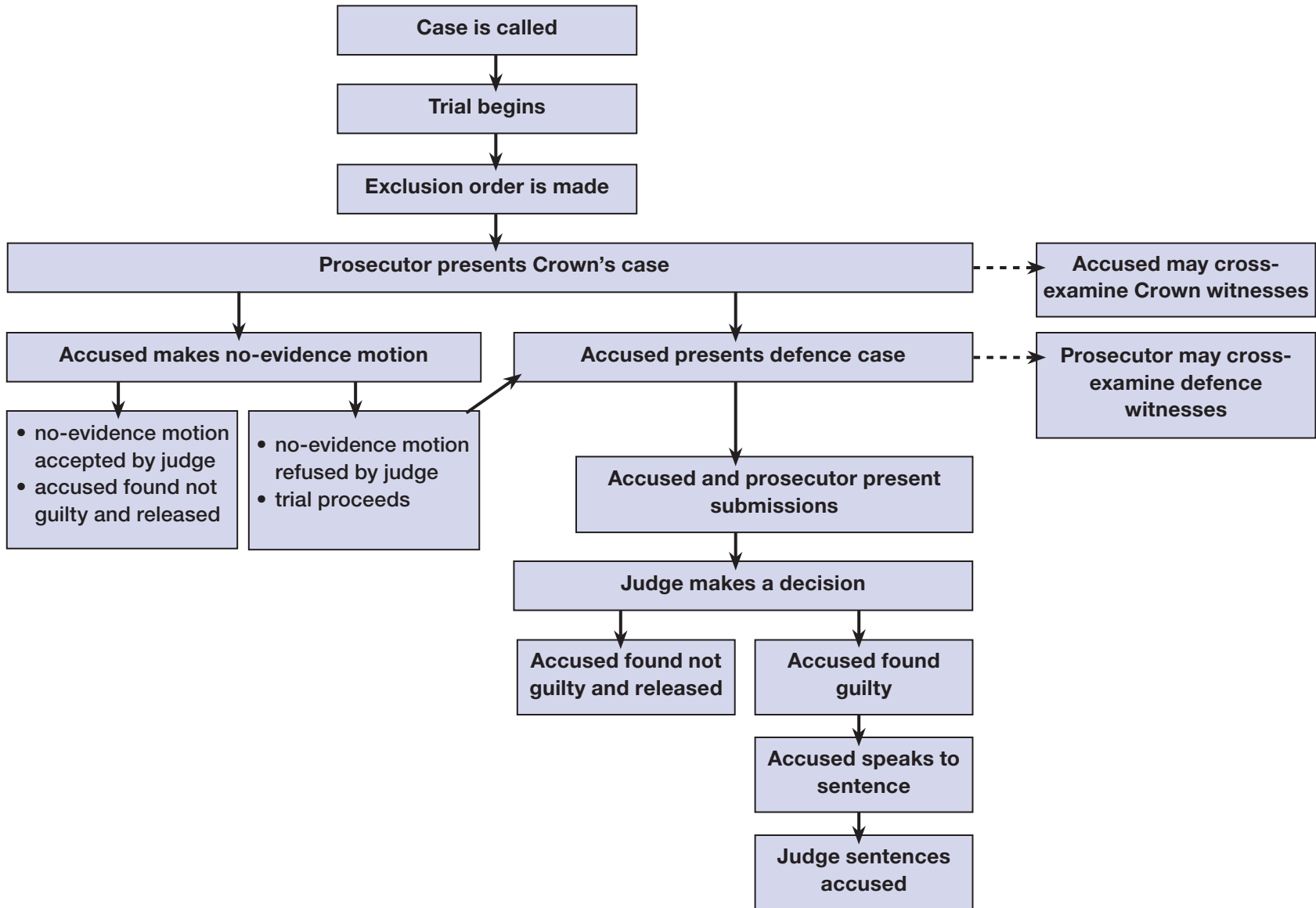
Remember that the prosecutor must prove all of the necessary parts of the charge against you. If you think that this has not happened, you can make a no-evidence motion (see page 22).

*check off each item
as you complete it*

Appendix 1 Court process — Before your trial



Appendix 2 Court process — At your trial



Appendix 3: Sample letter

[your name and address]

[Date]

Crown Counsel
[Add local courthouse address]

Dear Sir/Madam:

Re: Regina (the Crown) v. [your name]
Criminal charge: [write what you are charged with]

Court file #: [put in number from information form]

I am the person named above and I am representing myself. According to section 7 of the Charter of Rights and Freedoms, I am entitled to receive information about my case. Please send me the following:

- A copy of the information setting out the charge against me.
- A copy of any search warrant used in this matter, together with a copy of the information used to obtain the search warrant.
- A copy of any statement, confession, or admission allegedly made by me, whether written or oral, written down or summarized in police reports that the Crown has, has access to, knows about, or could find out about. This includes statements related to this case made to witnesses other than police officers at any time.
- Copies of written statements of anyone interviewed by the Crown or its agents in connection with this matter, whether or not the Crown intends to call them as witnesses in this case.
- The names of any witnesses the Crown intends to call in this case, including those who will be either paid to testify or will receive some other benefit from the Crown in exchange for their testimony, and what that benefit will be.
- A copy of any alleged criminal record of mine and the criminal records of anyone the Crown plans to call as witnesses in this case.
- A copy of the Crown's initial sentencing position.
- Any material the Crown now has or obtains in the future from any source that could contradict the testimony of Crown witnesses, be favourable to me, become the foundation of a Charter rights argument, or affect the punishment.

I would appreciate receiving this information as soon as possible so that I can prepare for the trial.

Yours truly,

[your signature]

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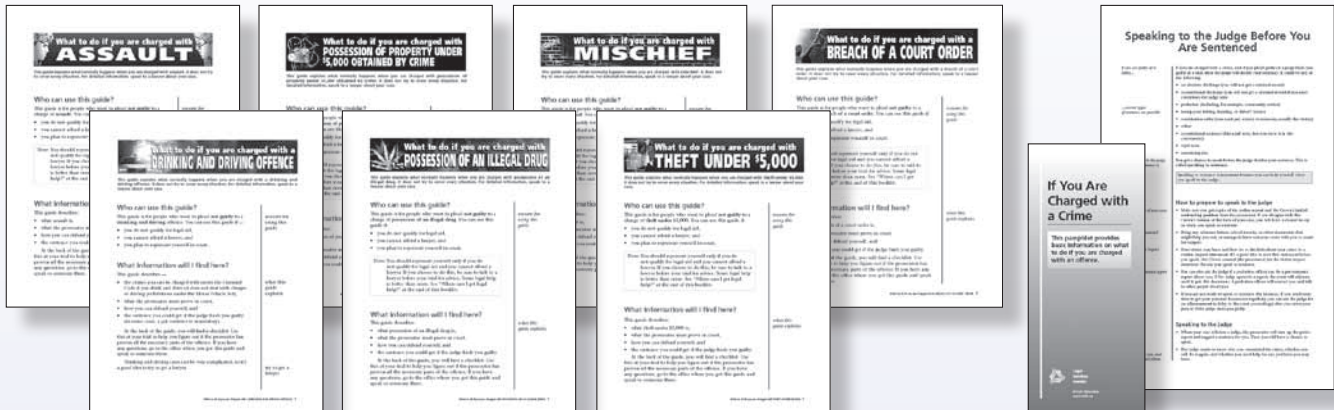
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