

Criminal Law

Glossary

Arrest	To seize a person under authority of the law. Police officers can make arrests
Charge	A formal accusation by the police that a person has committed a crime
Convicted	Found guilty of a crime
Court	The room or place where a trial is held before a judge or judge and jury
Crime/Offence	A wrongful contained in the <i>Criminal Code of Canada</i> or in some other federal statutes. There are two basic types of crimes/offences, a summary conviction offence (less serious) or an indictable offence (more serious).
Crown Attorney or Prosecutor	Represents the state in prosecutions and presents evidence with the purpose of convicting the defendant
Criminal	A person who has been found guilty of a crime
Custody	The state of being kept under guard by police
Guilty	Found to have committed a crime by a court of law
Illegal	Not legal. Against existing laws
Innocent	Not guilty of the crime for which a person has been accused
Lawyer	A person whose profession is to act and advocate for others in legal matters

Plea	The answer given by the accused to a charge or offence; guilty or not guilty
Sentence	The punishment imposed by a judge on someone who has been convicted of a crime
Trial	The process used in a court of law to determine whether an accused is guilty or not guilty of a crime
Weapon	Anything that a person intends to use to harm another person

What Is Criminal Law?

Criminal law covers crimes which are listed in the *Criminal Code of Canada* and some other laws such as the *Youth Criminal Justice Act*, the *Controlled Drugs and Substances Act* and the *Food and Drugs Act*. Criminal laws are made by the federal government in Ottawa. Crimes and the penalties for being found guilty of a crime are the same across the country. Provincial governments also make laws, some of which are called quasi-criminal, such as the *Highway Traffic Act* or the *Liquor Control Act* in Prince Edward Island. These laws are dealt with in court in the same way as criminal laws.

Children under the age of 12 cannot be charged with a crime in Canada. The *Youth Criminal Justice Act* (YCJA) is used if the accused person is a young person between the age of 12 and 17. The youth justice system deals with most youth crime outside the court system using either alternative measures or restorative justice. A young person might have to perform a number of hours of service to their community, or to the victim, or they might have to meet in a group, which includes the victim, to discuss how to repair the harm done by the crime. Youth court and time in a youth custody centre (jail) are saved for the most serious crimes. Very serious and violent crimes could result in an adult sentence for the young person. Once an individual has reached the age of 18, they are considered an adult and are subject to the provisions of the *Criminal Code*.

Everyone who is charged with a crime is considered innocent until they are proven guilty in court or until they admit to the crime.

What is a Crime?

Crimes are prohibited actions listed in the *Criminal Code* of Canada and in some other federal and provincial laws. The former Law Reform Commission of Canada said that in order for an action to be included as a crime in the *Criminal Code*. It must be:

- considered wrong;
- cause harm to other people, to society, or to those who need protection (such as minors);
- serious; and
- best dealt with through the mechanism of criminal law.¹

How Do I Deal with the Police?

Police in Canada protect people, their rights, and their property. They are employed by government and may be federal, provincial, or municipal governments.

In Prince Edward Island, the Royal Canadian Mounted Police (RCMP) acts as the provincial police. Cities such as Charlottetown and Summerside have their own police departments. The police have many responsibilities. They investigate crimes, catch criminals, help victims, patrol the highways and teach Islanders about safer communities.

The *Canadian Charter of Rights and Freedoms* provides citizens, landed immigrants and refugees with legal rights. These rights include the right to security, the right not to be detained without reason, the right to legal representation and the right to fair and equal treatment before the law. However, the *Immigration and Refugee Protection Act* and the *Anti-Terrorism Act* allow the police to arrest and detain those individuals who are considered a threat to national security.

¹ Adapted from OUR CRIMINAL LAW, Federal Law Reform Commission of Canada, Ottawa, March 1976, reprinted 1979, 1981, 1983, 1984, 1985, ISBN-0-662-00739-5

When Can the Police Stop Me?

The police can stop and question you if they see you breaking a law or they suspect that you may have broken the law. For example, you may fit the description of someone suspected of a crime or you may have driven through a red traffic light or you may be driving your car faster than the speed limit allows. The police may also stop you to check that you are wearing your seat belt, or as a part of a safety campaign where they stop everyone driving on a particular stretch of road.

What if I am Stopped by the Police?

If the police stop you:

- be polite and respectful. You do not need to be afraid of the police.
- do not run away. If you do run away the police may think that you have a reason for not wanting to talk to them, and you may find yourself in more trouble
- tell them if you have difficulty speaking or understanding English or French. You may ask for a translator
- tell them your name and your address and give them your driving license if you are stopped while driving your car
- You do not have to answer any other questions. You have a right to remain silent.

Before the police stop and question you they must have a reason to think that you have broken the law or may be about to do so.

Can I be Searched?

You can be searched if you are under arrest, or if you agree to be searched.

The police may also have the right to search you if they believe you have alcohol,

weapons, or illegal drugs on you or in your car.

Can the Police Force Me to Go to the Police Station with Them?

You do not have to go to the police station unless you are under arrest or you are asked to go to take a breathalyzer test. A breathalyzer is a test to see if you have alcohol in your blood. It is used when police suspect you of driving after you have been drinking. You have the right to refuse the breathalyzer, but you could be charged and your refusal can be used against you in court.

If you go to the police station voluntarily, you may leave at any time unless you are under arrest. The police can use reasonable force against you to stop you from committing a crime or if they think you are trying to escape arrest.

The police cannot use force to make you answer their questions.

You have the right to speak to a lawyer before answering questions. **You also have the right to ask for an interpreter** if you do not understand the questions that the police are asking.

What Happens if I am Arrested?

The police must tell you that you are under arrest and why. If they do not give you an explanation, ask them to do so. The police must explain your rights to you. If you do not understand, make sure you tell them. You have a right to:

- remain silent;
- know what the charges are;
- talk to a lawyer; and
- have a translator or interpreter present if you can not understand the language.

Anything that you say to the police is a statement and can be used as evidence in court.

The police are not allowed to threaten you, or to physically or psychologically mistreat you, or deny you food or water or medical attention, while you are in their custody.

If you have been arrested and charged with a crime, you will most likely be released from police custody unless you have committed a serious offence like murder or a violent assault. You will be given a written notice that shows what you have been charged with and the date you are to appear in court. You may want to call a lawyer.

However, if the police have not been able to establish your identity, are concerned that you will destroy evidence, believe that you will continue or repeat the offence or commit other offences, or have reason to believe that you will not show up for court, they will keep you in police custody.

If you are kept in police custody, a bail hearing must be held within 24 hours. This means you are to appear before a justice of the peace or judge who will make a decision as to whether you are to remain in police custody or released under certain conditions. Conditions might include:

- remaining within a certain area (city, municipality, province);
- surrendering your passport;
- notifying police of a change in address or employment;
- not drinking; and
- restricting your contact with certain people.

How Can I Get Legal Help?

Going to court is a serious matter and it is important to have legal advice. Your lawyer will advise you about what to say in court and what to ask for. Your lawyer will also explain the process to you and will speak for you in court. You can find a lawyer in the yellow pages of the telephone directory. If you cannot afford to pay for the services of a private lawyer you may be eligible for legal aid and you can also call Community Legal Information Association for a lawyer referral.

Legal Aid

Legal aid is a free service provided by the government. According to Canadian law, everyone is innocent of a crime until they are proven guilty in court or admit that they are guilty of the crime. Everyone also has the right to be represented in court by a lawyer. If you have been charged with a crime and you cannot afford to pay for a private lawyer, telephone legal aid and ask for help. The telephone numbers for Legal Aid are 368-6043 in Charlottetown or 888-8219 in Summerside.

The Lawyer Referral Service

If you have applied for legal aid and you have been turned down, your next step may be to call the Lawyer Referral Service. This service is operated by Community Legal Information Association on behalf of the Law Society. You will be given the names, addresses and telephone numbers of two lawyers and you may see one of them for one half-hour at a cost of not more than \$10 plus tax. The telephone number for the lawyer referral service is 892-0853 in the Charlottetown area and 1-800-240-9798 long distance.

What Happens if I have to go to Court?

The first court that you will go to is the Provincial Court of Prince Edward Island. The court operates in English or French. If you do not speak either of these

languages, ask for an interpreter. Tell your lawyer before you go to court that you will need an interpreter.

You should be neat and cleanly dressed when you go to court. Do not chew gum, smoke, or comb your hair in the courtroom. Speak only when you are spoken to, and be respectful to the judge. When you speak to the Provincial Court judge, call him or her "your honour." When you speak to a Supreme Court judge, call him or her "my lord" or "my lady." If you have a lawyer with you, the lawyer will speak for you in court.

When you first appear in court, your name will be called. The clerk will read the charge to you and ask if you understand it. If you do not understand, ask the clerk to explain the charge. If the offence you are charged with is not a very serious one (a summary conviction offence), the judge will ask "How do you plead?" You answer the question by saying "guilty" or "not guilty." If you say "not guilty" a date will be set for your next appearance in court. If you say "guilty" the judge will ask if you have anything more to say and then give you a sentence (punishment).

If you have been charged with a serious crime (an indictable offence), the process is different. After the charge is read to you, the judge will ask how you want to be tried. The options will be read to you and you may choose the court in which your trial is held. These options include:

- trial before a provincial court judge
- trial before a supreme court judge, or
- trial before a supreme court judge and jury

A jury is made up of 12 Canadian citizens who have been selected to hear the case and determine whether you are guilty beyond a reasonable doubt.

Reasonable doubt is the "belief that there is a real possibility that the defendant is not guilty."

You do not have to enter a plea at this time, although you may enter a plea if you choose.

Once you have decided how you wish to be tried, a date will be set for your next appearance.

It is the duty of the Crown Prosecutor to prove you are guilty of a crime beyond a reasonable doubt. Evidence may include testimony from witnesses, documents or audio/visual recordings, blood or DNA samples, or a re-enactment of the crime.

You are entitled to know what evidence the Crown Prosecutor has before the trial begins. This is called disclosure. This is to allow you and your lawyer to prepare a defence. Your lawyer may choose to have you testify in court and give your version of events. A trial could last one afternoon or it could continue over many days depending on the complexity and seriousness of the crime. The judge or jury will make their decision about your guilt or innocence based on what they hear and see in court.

If you are found guilty or plead guilty to a crime, the judge will decide what sentence you receive. There are three different purposes for sentencing:

- to protect the public
- to discourage future offenders
- to rehabilitate the offender

Judges consider several factors before deciding what sentence to give. The *Criminal Code* gives guidelines and provides a maximum punishment for each criminal offence. Some offences also provide for the minimum punishment. Sentences can vary from probation or a suspended sentence, to a fine or a jail term, depending on the seriousness of the crime. For more information about sentencing you can read the *Sentencing* pamphlet published by Community Legal Information Association. You can reach Community Legal Information Association by phone at 892-0853 or 1-800-240-9798

The verdict can be appealed by either the prosecution or the defence, but there has to be a good reason. The fact that you do not like the verdict is not reason enough. If you are found guilty your lawyer will advise you about making an appeal.

Criminal Records

If you are 18 years old or older and found guilty of a crime, you will have a criminal record. A report of the trial, including your name, the guilty verdict, and details of the crime presented in court may be published in the local paper. Many people in the community will know about it. This information is considered to be in the “public interest.” A criminal record can cause problems for you in many ways. You will not be bondable (a condition required for some employment), you will not be eligible for some jobs, and your status as an immigrant may be affected.

In some cases the court will hold hearings that are closed to the public, or place a publication ban on who is involved or on evidence presented at the trial. A publication ban is usually done to protect the identity of the victim.

If you are involved with the police for any reason in the future, they will know about your criminal record.

Victims of Crime

If you are a victim of crime, you may have to go to court as a witness. You may also have suffered injuries or property losses. Victim Services offers services to victims of crimes to help prepare them for court, complete a Victim Impact Statement, or obtain compensation for injuries or losses.

Victim Services assists victims of crime throughout their involvement in the criminal justice system. Assistance is available to victims of crime anywhere on Prince Edward Island. Where a victim is seriously injured or has died as a result of a crime, family members may benefit from victim services.

Assistance is available to those who feel they have been victimized regardless of whether a complaint has been made to the police or a charge has been laid.

If you are a victim of crime, you may need one or more of the following services:

- information about the status of your case and the criminal justice system
- short term counselling and emotional support
- referrals
- court preparation
- help in preparing a victim impact statement
- assistance under the *Victims of Family Violence Act*
- *financial information*
- *coordination of services*

Victim Services staff are professionals with backgrounds in social work and criminal justice.

No fees are charged for this confidential service. You can reach victim services at 368-4582 in Charlottetown and 888-8217 in Summerside