
AN INTRODUCTION

TO

COURT

**Victim Services
Department of Justice**

1. INTRODUCTION

This package has been developed to provide you, as a victim/witness, with information to help you prepare for and better understand the Court process. Court may first appear to be very complicated and somewhat frightening. As you learn more about Court you may become less anxious and more confident in your ability to actively participate as a victim/witness.

When a crime has been committed, the police often rely on the person harmed to tell them about the offence. Depending on the nature of the crime, it can take a great deal of strength and courage to tell someone when you have been hurt because it may be difficult and/or embarrassing to talk about what happened. It is important to recognize your strengths and to have taken the first step in doing so by talking to the police.

2. FILING A POLICE REPORT

When you tell the police what happened to you they take a **statement**. A statement contains detailed information about what happened which becomes the basis for the police investigation. Investigations may take some time depending on the number of people the police have to contact. You may call the police at any time to ask where the investigation stands.

Once an investigation is completed, the police have two options:

- to lay a charge if there is enough evidence
- to not lay a charge if there is not enough evidence to go to Court (This does not mean the police do not believe a crime took place; it means they do not have enough evidence to *prove* a crime took place).

If charges are laid, either of the following can happen:

- (a) The accused may be charged and released until a scheduled Court appearance at a later date.

Or

- (b) The accused may be charged and taken into custody and not released unless granted bail at a *Bail Hearing* (Territorial Court). If there is a bail hearing you may be required to testify

Once a person is charged with an offence, he or she may be placed on conditions by the Court, to be followed by the accused until the court case is fully completed. One possible condition is not to have contact with the victim.

3. COURT PROCESS

Offenses:

There are three (3) types of offenses:

- (a) Summary - an offence where charges must be laid within six (6) months and carries a maximum sentence of either six months or eighteen months in prison and/or a maximum fine of \$2,000.00;
- (b) Indictable - an offence which can carry higher maximum sentences and is generally of a very serious nature.
- (c) Hybrid - an offence which can be classified as either summary or indictable.

Summary Offenses (See Summary Offenses Diagram):

- ☞ always heard in Territorial Court by Judge alone
- ☞ if the accused pleads guilty, you will not be required to testify and the case will go to sentencing (See Sentencing Options Diagram)
- ☞ if the accused pleads not guilty, you will be required to testify at the trial
- ☞ normally you do not have to attend Court for entering of pleas/sentencing but you may attend if you wish
- ☞ if you are required to attend Court, you will receive a subpoena from the police

Indictable Offenses (See Indictable Offenses Diagram):

- ☞ the accused may choose to have case heard in Territorial or Supreme Court
- ☞ if Territorial Court, trial is heard by Judge alone and you testify at the trial
- ☞ if Supreme Court, preliminary inquiry is held in Territorial Court first to determine if there is enough evidence to proceed to trial in Supreme Court. You will be required to testify at the preliminary inquiry in all likelihood
- ☞ if Supreme Court, the accused chooses whether the trial will be in front of a Judge alone or Judge

and Jury

- ☞ if the Territorial Court Judge determines there is enough evidence to proceed to trial, the accused will be arraigned (enter a plea) in Supreme Court
- ☞ if the accused pleads not guilty, a trial date is set. You will be required to testify
- ☞ if the accused pleads guilty, see Sentencing Options Diagram
- ☞ you are normally only required to attend Court when you have to testify. You will receive a subpoena from the police indicating when you are to attend.

Youth Court

Person(s) between the ages of 12-17 years who are charged with an offence(s) are dealt within the Territorial Court system, regardless of whether the offence is summary or indictable. Therefore, persons charged under the *Young Offenders Act* do not have the option of electing to have a trial in Supreme Court. However, in cases involving very serious offenses, the Crown Attorney may apply to the Territorial Court to have the youth(s) tried in Adult Court.

Victim Impact Statements

As a victim of crime, you have the right to complete a Victim Impact Statement. This statement is submitted to the court for the judge to consider when sentencing the offender. You may wish to discuss this with Victim Services staff. (See Victim Impact Statement Guidelines).

Pre-Sentence Reports

Following the finding of guilt of an accused person, the Court may request a Pre-Sentence Report before sentencing the accused. This is a report for the Court, completed by an Adult Probation Officer, which includes a description of the accused's family life and personal situation.

Sentencing

Once an accused person is found guilty of an offence, the Court is responsible for imposing sentence. This may be done right away or another date may be set depending on the factors to be considered. You may attend sentencing hearings but you are not required to unless subpoenaed.

4. TESTIFYING IN COURT

Giving evidence in Court may be very difficult. Some helpful hints in preparing to give evidence include the

following:

- arrange for a person(s) you trust to attend Court with you
- meet with the Crown Attorney before Court to become familiar with the Crown and Court. You may want to write down any questions/concerns you want to address with the Crown when you meet so you do not forget or miss anything important to you.
- visit the courtroom before Court to familiarize yourself with the Courtroom, who will be present, and what their roles are - you may wish to attend a trial to see how Court is conducted before your court case
- practise relaxing through deep breathing
- practise listening skills, as it will be very important to really listen to the questions asked in Court
- become familiar with rules of Court
- try to get a good night's sleep before Court
- ask questions if you do not understand something said - **All** your questions are important. .
- there are no rules about what you should wear. Dress appropriately and with respect for the serious nature of court proceedings.

5. COMMONLY ASKED QUESTIONS

1. Will the accused be in Court while I testify?

Yes, the accused will be present and in fact, in most cases, is required by the Court to be present.

2. Is the courtroom open to the public?

Yes Courts are open to the public. There are special circumstances outlined in the Criminal Code of Canada for which a Court may close to the public. This would have to be requested by the Crown and the Court would have to be satisfied the criteria outlined in the Code were met. It is best to prepare to testify in open court as in all likelihood this will be required.

3. Will my name be published?

Courts are generally understanding of victim's needs for privacy. The Crown Attorney may

request the Court to order a publication ban, preventing your name and/or information which may identify you from being published in any document or broadcast in any manner. If you do not want your name published, you should speak to the Crown Attorney about this. You may also apply on your own behalf for a publication ban.

4. *What should I do if the accused tries to contact me?*

If the accused is on a Court order not to have contact with you and he/she does try to contact you, you can let the police know. They will direct you from there. The police are there to help keep you safe.

5. *What should I call the Judge?*

In Territorial Court, the Judge is referred to as “Your Honour.” In Supreme Court Judges are referred to as “My Lord” or “My Lady.” If you cannot remember the proper title it would be appropriate to refer to the Judge as “Sir” or “Madam.”

6. *What if I cannot go to Court on the date set in the subpoena?*

If you have a **valid** reason for not going to court, such as major surgery, call the Crown Attorney in advance to make them aware. If you do not show up, a warrant might be issued for your arrest.

7. *Is the Crown Attorney (Crown Counsel, Crown Prosecutor) representing me?*

No. The Crown Attorney presents the evidence against the accused. He/she represents the State or the Queen, as the crime that took place is seen to be a crime against society. But the Crown is not your personal lawyer.

8. *Can I withdraw the charge(s)?*

No. Only the Crown Attorney has the authority to withdraw charges, and this is rarely done.

6. VICTIM SERVICES

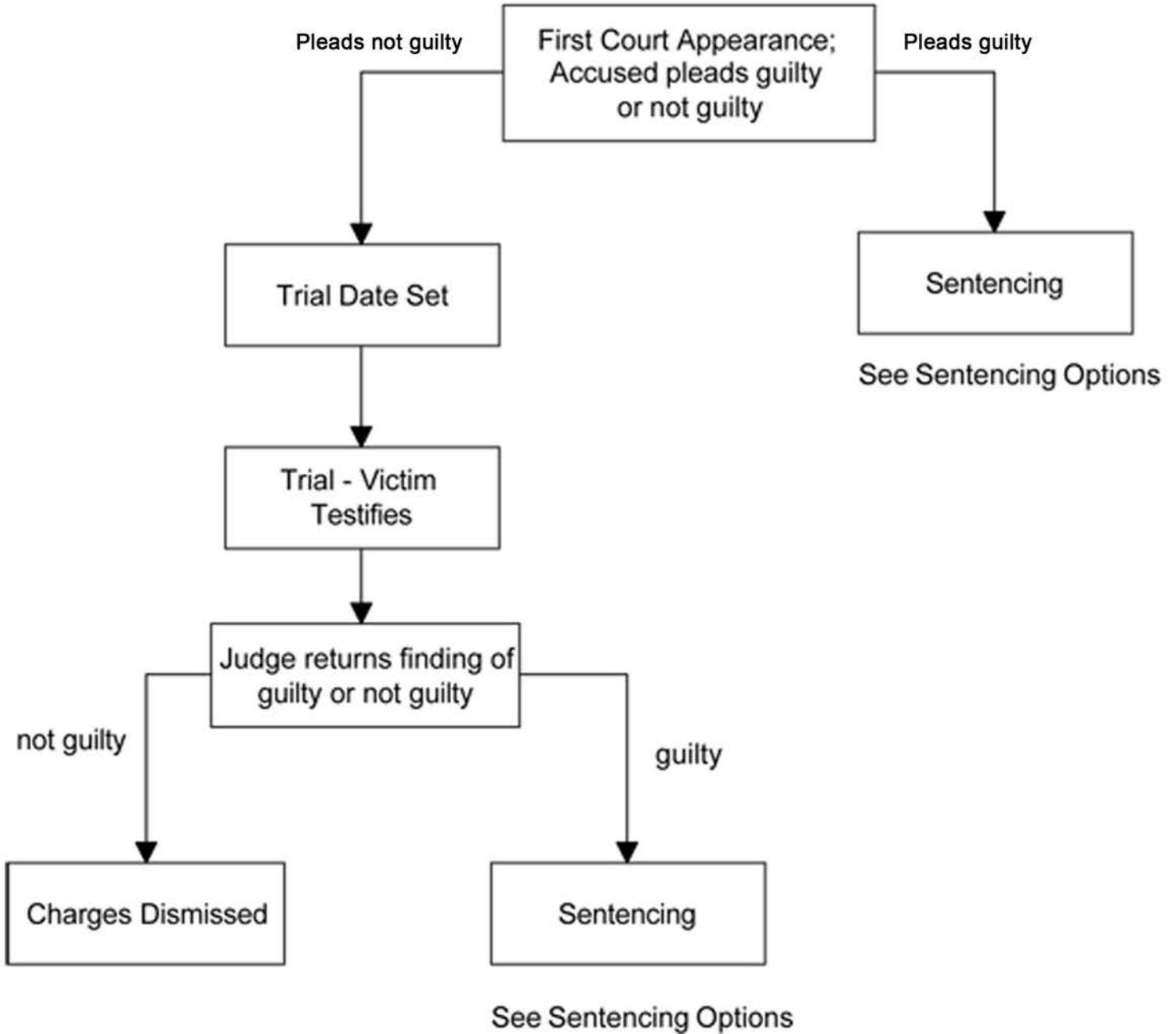
The Department of Justice delivers a Victim Services Program which assists victims through the criminal justice process. Services available include:

- General information on the criminal justice system
- Specific updates on your case
- Help with Victim Impact Statements
- Court orientation
- Counselling

7. SUMMARY

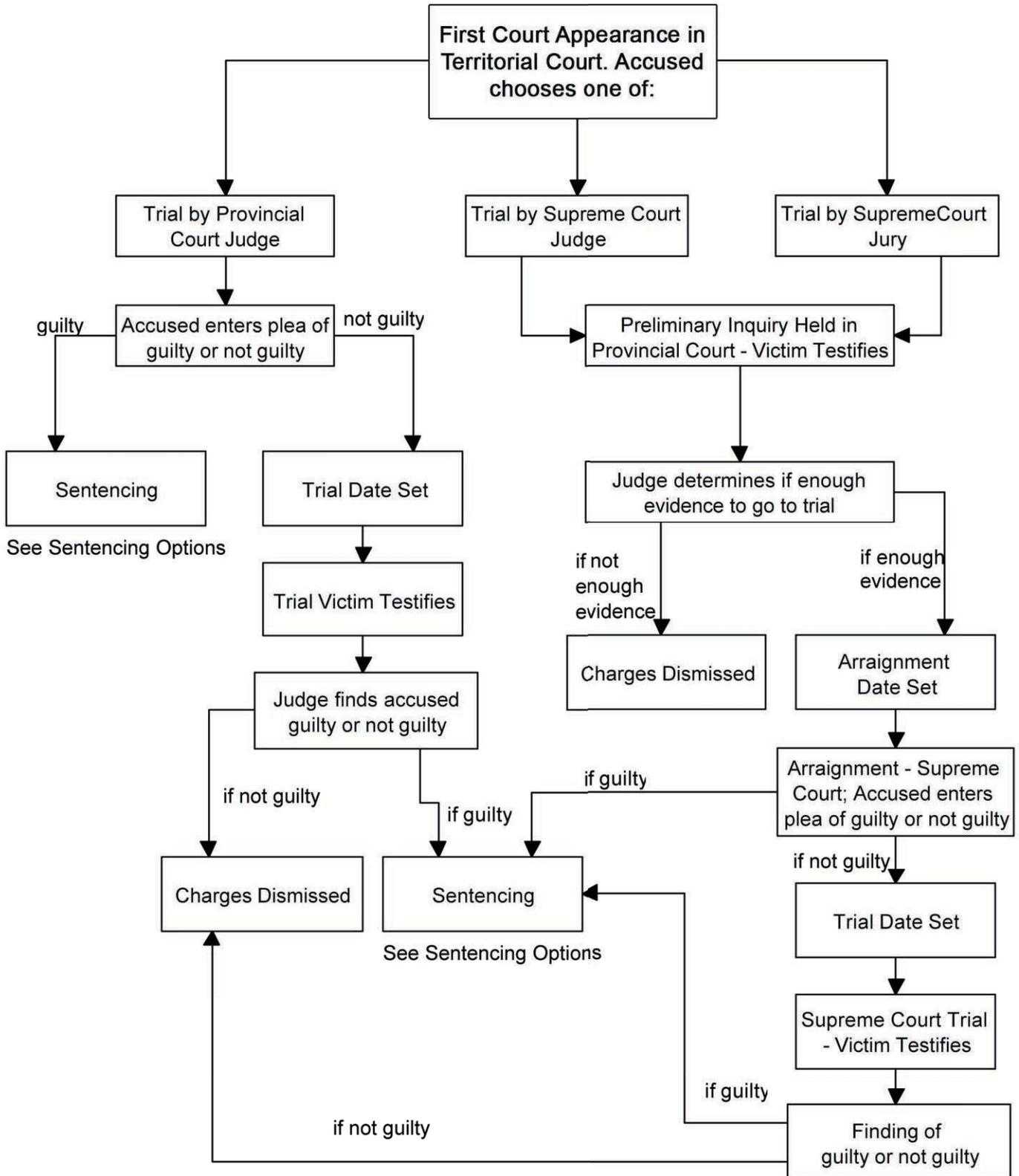
Making a decision as to whether to become involved in the criminal justice system is often not an easy one. Sometimes you do not have a choice. The purpose of this booklet is to provide you with information on what is involved, so that you can make a more informed decision or become better prepared for the process. Whatever your situation, be sure to take care of yourself and seek whatever assistance may be needed along the way.

SUMMARY OFFENCE
TERRITORIAL COURT SYSTEM

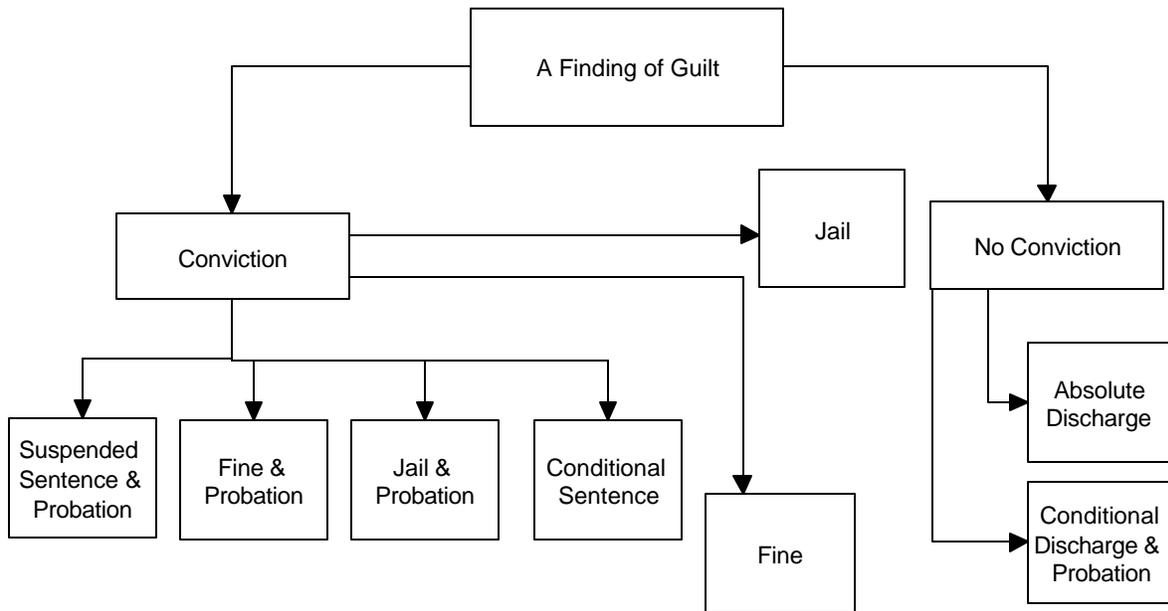


INDICTABLE OFFENCE

A category of more serious criminal offences which carry greater maximum sentences



SENTENCING OPTIONS



Appendix “B” Legal Terms Commonly Used

Absolute Discharge - The person is free to go and no conviction is registered against the person. This is the lightest sentence available to the Court.

Accused - The person charged with the offence

Acquittal - the accused is found not guilty of the charges by the court

Adjournment - the court case is temporarily set over to another time or date

Allege - to suggest that something happened or that a person committed a crime

Appeal - to have a trial decision reviewed by a higher Court. This is not a new trial and no witnesses are required to give evidence

Bail - money or property deposited with the court as a guarantee the accused will return to Court for a preliminary inquiry or trial

Beyond a Reasonable Doubt - the level of proof required by the Court to find an accused guilty of having committed an offence.

Charge - a formal accusation that someone committed a crime

Complainant - the person who states that a crime has been committed

Conditional Discharge - the person found guilty of committing an offence can be ordered to obey certain conditions for a specific period of time, no jail term or other punishment

Conditional Sentence - sentence served in the community with conditions similar to that of a probation order. If conditions are not adhered to, remainder of sentence may be served in prison.

Conviction - A judgement by the Court that the accused is guilty of the offense

Crown Attorney - the lawyer representing the state who prosecutes the criminal charge against the accused. The Crown Attorney presents the evidence against the accused.

Defence Counsel - the lawyer representing the accused

Defendant - a person against whom legal action has been taken

Evidence - witness testimony or objects identified by witnesses which are presented to the Court to help the Court reach a decision

Guilty - the decision by the Judge or Jury that the accused did commit the alleged crime. The accused may admit guilt by pleading guilty in Court

Judge - the person with the authority to hear a case in Court and render a decision regarding the guilt or innocence of the accused

No Contact Order - a Court order preventing the accused from seeing or speaking to someone - often the victim harmed.

Offence - a crime

Plea - the response given by the accused when charged with an offense (“guilty” or “not guilty”)

Plea Bargaining - negotiations between Crown and Defence Counsel regarding the charges against the accused and the plea to be entered

Preliminary Inquiry - a hearing to determine if there is enough evidence against an accused to justify holding a trial

Probation - a sentencing option available to the Court once an accused has been found guilty which enables the Court to order the accused to obey certain conditions for a certain period.

Restitution - the court may order the offender to pay financial costs directly associated with the offence to a victim.

Sentence - the punishment given to an accused found guilty of an offense

Sentencing Hearing - the presentation of evidence to the Court to help the Judge decide on the sentence to be given to an accused once found guilty

Statement - the person who states that a crime has been committed

Subpoena - an order of the Court telling a witness when and where he/she will be required to appear before the Court

Suspect - a person thought to have committed a crime

Testify - to make statements in Court under Oath

Trial - a hearing where Crown and Defence present evidence and the Court makes a decision

Verdict - the decision of the Court of an accused persons guilt or innocence

Victim - the person(s) against whom a crime(s) has been committed

Witness - a person who testifies in Court because they have some information about the case