

Criminal Procedure through Common Questions:

Who makes the decision about whether or not someone will be charged with a criminal offence?

- RCMP investigate and make the decision whether or not to charge someone with an offence.
- RCMP may decide to consult the Crown about a potential charge, but the Crown does not make the decision.

Can the RCMP stop the process after they have charged someone?

- After the RCMP charge you, they no longer have any control over the charges
- Responsibility for decision making about your charge transfers to the Crown

Can a victim withdraw a charge?

- No, a victim is a witness and does not decide if a charge proceeds. The Crown decides if a charge will proceed.
- The Crown will listen to a victim and why they do not want the charge to go ahead, but the victim does not get to make the decision. Charges often proceed even when a victim has asked the Crown to stop.

What happens to me when I am charged?

- The RCMP have options when they arrest you:
 - Release you with documents setting out your court date. You will be released by the RCMP and must appear in Court on the date provided to you. Failure to attend is a criminal offence; or
 - Release you with documents setting out your court date and also put you on conditions you have to follow until your matter is resolved in Court after trial or sentencing; or
 - They can keep you in custody and take you before a Judge within 24 hours for a bail hearing
- If the RCMP hold you in custody then you will have an opportunity to request your release at a bail hearing with a Judge. A Judge can:
 - Detain – means you must stay in jail after your trial or sentencing; or
 - Release you with a Court date and place you on conditions you have to follow until after your trial or sentencing.
- If the RCMP hold you in custody you will have access to a Legal Aid lawyer for your bail hearing, free of charge.

Can I change the conditions placed on me by the RCMP or the Judge?

- Yes, but you should talk to a lawyer first to get assistance with the process;
- If you do not have a lawyer to assist you, you should let the Judge know that you need your conditions changed at your first Court appearance, or as soon as you know you need them changed;
- You will have to explain to the Judge why the condition is not necessary or is causing you hardship. Common requests include:

- Changes to allow you to work or travel out of the Yukon for treatment'
- Contact with a victim who is your spouse/partner
- Change of residence or a move to another community

How do I talk to a lawyer?

-There is usually a Legal Aid lawyer in Court for appearances in Whitehorse to speak to people without a lawyer. They are called Duty Counsel.

-A Legal Aid lawyer will also be available to assist as Duty Counsel on every Circuit held in communities outside of Whitehorse.

-Indigenous Court Workers work closely with Legal Aid and can assist you in speaking to a lawyer.

-You should call Legal Aid as soon as possible after you are charged. Not everyone qualifies for Legal Aid assistance and you should find out right away if you do.

-You can also hire your own lawyer. The Law Society of Yukon has contact information for private lawyers that practice criminal law.

How do I find out about the evidence that the RCMP had to decide to charge me?

-The evidence collected by the RCMP during their investigation is given to the Crown

-The evidence is called "Disclosure" and you are entitled to a copy of the Disclosure so that you can learn about the allegations against you. This could include: police notes, witness statements, diagrams and photographs.

-Your lawyer will request the disclosure for you. If you do not have a lawyer then you can ask the Crown for the disclosure yourself or with the assistance of an Indigenous Court Worker.

-Disclosure is usually ready for your first appearance in Court. If it is not ready, then the Crown will give you some directions on when and how to get it.

-If you think that anything is missing from the Disclosure package then you should contact the Crown right away.

What if I have difficulty speaking English?

-When you first go to Court, the Judge will ask whether you want to proceed in English or in French. There are Canada's "official languages and you have the right to proceed in the language of your choice" You should choose the language that you understand the best.

-If you have difficulty understanding both English and French, you should raise this as soon as possible in Court. An interpreter may be provided to assist you in Court.

What happens when I go to Court?

Step One:

-On your first appearance in court a lot of technical legal decisions have to be made. These can often happen quickly if you are being assisted by a lawyer, but you should understand what is happening.

-First, the Judge or the Court Clerk will read out the charge to you so that you know what you are in Court for. This is referred to as the “reading of the charges”.

-If you have a lawyer then they will usually state that they “waive the reading of the charge” which means that the charge will not be read out in Court. Your lawyer will do this if they have already reviewed the Disclosure materials.

Step Two:

-The Judge will then ask for the language election from you (or your lawyer if you have one).

-This is where you can choose between English and French.

-This is also a good time to advise the Court if you have a different first language – for example, if you understand your First Nation language better than English or French because that is the language you speak at home.

-It is ok to say that you do not understand what is being asked. It is the Judge’s responsibility to make sure you do understand and to get you an interpreter if necessary.

Step Three:

-The Crown then decides how the matter will proceed based on how serious it is. For many offences, this is called a “Crown Election” and there are two choices:

- Summarily – these are less serious matters;
- Indictable – these are the more serious matters

-The Judge will ask for the Crown election and the Crown will state “summarily” or “by indictment” to inform the Court

-Sometimes the Crown is not ready to make this decision and will state “reserved” which means that this decision will be made at your next court appearance

Step Four:

-After the Crown makes their election there may be choices for you to make.

-If the Crown proceeded summarily, then the matter will proceed in Territorial Court before a Judge. You do not have any decisions to make about process if the matter proceeds summarily.

-If the Crown proceeds by indictment, then you must make a decision on who you want to Judge you:

- Territorial Court Judge sitting alone;
- Supreme Court Judge sitting alone; or
- Supreme Court Judge with a jury

-This is called a “Defence Election” which the Judge will ask you or your lawyer for. If you are planning to speak to a lawyer about your charges, you should not make this decision until you have talked to ne. When asked by the Judge you can tell them you want to speak to a lawyer first and they will understand.

-Supreme Court is a higher level of court and involves appearing before different Judges. A lawyer can explain the pros and cons to each Court to help you decide how to proceed.

Step Five:

-Depending on what decision you make for the Defence Election, there may be an additional decision:

- If you choose Supreme Court Judge sitting alone or Supreme Court Judge with a Jury then you will have a choice to have a preliminary inquiry, which is a mini-trial in court to test some of the evidence that the Crown has against you. This will occur several months before your trial.

-there are sometimes good reasons to have a preliminary inquiry and you should speak to a lawyer about having one in your case.

What if I cannot make it to Court?

-Failure to attend Court is a criminal offence and you can be charged if you do not show up.

-If you cannot make it to Court you should contact a lawyer or an Indigenous Court Worker for assistance. In some cases they will be able to appear on your behalf which called appearing as your "agent".

-If you cannot get a lawyer or an Indigenous Court Worker to help you then in some cases a family member can also appear as your agent in Court.

-If you fail to attend Court the Judge will issue a warrant for your arrest. A warrant directs the RCMP to pick you up and take you into custody to appear before a Judge.

-If you have an agent attend Court for you then the Judge will either not issue the warrant or, in cases where the agent is not allowed to appear in Court for you, issue a warrant but order that it be "held"

-A "held" warrant means that the Judge is giving you a chance (because you made the effort to have an agent show up_ to show up at your next scheduled Court appearance before the RCMP are asked to pick you up. If you show up then the warrant will be cancelled. If you do not show up then the warrant will go to the RCMP so that they can pick you up.

When do I plead guilty or not guilty?

-If the matter is proceeding in Territorial Court then you can plead guilty or not guilty as soon as that decision has been made

-If the matter is proceeding in Supreme Court, then you can wait to plead guilty or not guilty until after you have your preliminary inquiry if you chose to have one

-If the matter is proceeding in Supreme Court and you choose not to have a preliminary inquiry then you can plead guilty or not guilty at your first court appearance in Supreme Court

What happens if I plead Not Guilty?

-If you plead not guilty then you will be required to set a trial date

-When you are setting a trial date it is important to know if your witnesses will be available for the date you set

-A trial date might not be for several months depending on how busy the Court calendar is. You will be expected to know your availability and the availability of your witnesses for up to 6 months depending on how busy the Court is.

What does the Crown have to prove at trial?

- You can be convicted only if the Crown proves each essential element of the charge(s) against you beyond a reasonable doubt
- Most of the essential elements of the offence you are charged with should be set out the Information, which is one of the documents in the Disclosure that lists the charges against you.
- Generally, one of the essential elements of the offence is that you intentionally and/or knowingly committed the offence.
- Before your trial starts, you may ask the judge to review the essential elements of the charge against you so that you will understand what the Crown must prove.

Presumption of innocence, reasonable doubt and proof

- Everyone charged with an offence is presumed to be innocent. That is why you cannot be convicted unless the Crown proves each essential element of the charge against you beyond a reasonable doubt.
- The phrase “reasonable doubt” does not require proof to an absolute certainty or beyond any doubt. It does involve a significant level of proof far beyond the “balance of probabilities” standard of proof in civil cases.

What if I change my mind after my trial date is set and want to plead guilty?

- You can change your plea from not guilty to guilty at any time.
- If you decide to change your plea to guilty then you should contact the Crown and Court so that it can be done before the trial date, if possible. A change to Guilty before the trial date will be considered by the Judge as an “early guilty plea” at your sentencing in most circumstances and will result in favourable consideration. A guilty plea on the day of trial does not always result in the same favourable consideration.
- The reason for receiving favourable consideration at your sentencing on an early guilty plea is that you spared the victim from having to prepare for and attend at trial, as well as the Court participants from doing extra work thinking that you are proceeding to trial.

What happens if I plead guilty?

- If you decide to plead guilty, the Judge is required to make sure that you understand what a guilty plea means.
- The judge may accept your guilty plea only if he or she is satisfied that:
 - You are making the plea voluntarily (nobody is making you do it either by threat of harm or promise of some benefit)
 - You understand that the plea is an admission of all the essential elements of the offence
 - You understand the nature and consequences of the plea (that you will proceed to be sentenced and you understand what the possible sentence will be based on what the Crown is seeking).
 - You understand that the judge is not bound by any agreement you made with the Crown, including what sentence should be imposed. (The Judge will make the final decision regardless of what the Crown is asking for at the sentencing).
- After you plead guilty you will be required to set a sentencing date.

- For less serious charges you might have the option to proceed to sentencing on the same day as you enter your plea.
- Before you enter your plea you can ask the Crown what they will be asking for as a sentence. The Crown is not the decision maker, the Judge is the one who sentences you. However, the Crown position will give you an idea of what might happen and help you decide if you should speak with a lawyer first.

Can I change my mind after I plead guilty?

- Once you plead guilty you might not be able to change your mind. You should speak to a lawyer before you plead guilty.
- There are circumstances where the Judge will let you change your mind so you should inform the Court as soon as possible of your decision to try. If you do not have a lawyer then the Judge will explain your options to you.

What steps should I take for sentencing?

- During the sentencing process the Judge will want to know as much as possible about you. Information about your culture, childhood, education, work history, addictions and family can all be helpful to get you the best possible sentence.
- You can request a Pre-Sentence Report to get your information before the Court. This report takes 6 to 8 weeks to prepare and is written by a Probation Officer. If you choose to have a Pre-Sentence Report prepared then you will have to meet with the probation officer several occasions and talk about personal information and talk about the offence. The probation officer will also want to talk to your family members and employers about your background information.
- You can request a Gladue report if you are Aboriginal to get your personal information before the Court. This report takes about 8 weeks and is written by an independent writer who has been approved to write the reports. You can request an Aboriginal writer. Like with the pre-sentence report, you will have to meet with the writer several times and talk about personal information as well as the offence. The writer will also want to talk to some of your family members and others about your background information.
- You can present support letters to the Court from friends, family, employers, counsellors or other individuals who can provide information to the Court about you.
- If you are not represented by a lawyer, you should contact the Crown office and ask what they will be seeking for a sentence. The decision is up to the Judge but knowing the Crown position will help you prepare for court.

What is a Joint Submission on sentence?

- A joint submission occurs when the Crown is making a sentencing recommendation that you are agreeing to.
- Joint submissions are a result of negotiations between the Crown and you, your lawyer or the Indigenous Court Worker on your behalf. You are agreeing to plead guilty and to be sentenced to a specific penalty rather than taking separate positions and not knowing what the Judge will do.

-A Joint Submission will be followed by the Judge in most cases. The Judge is only allowed to dismiss a Joint Submission in rare cases where they find the Joint Submission is unreasonable.

What can I do if my lawyer is not talking to me or is not doing a good job?

-Your lawyer works for you

-It is important that you trust your lawyer and understand everything that they are doing on your behalf.

-A lawyer is supposed to take her instructions from you and may not take steps without your permission. At any time you can “fire” your lawyer by advising the Court you no longer want them to represent.

-All lawyers in the Yukon are regulated by the Law Society of Yukon. If you have concerns about your lawyer you can contact the Law Society and make a complaint about them. The Law Society will then investigate and potentially discipline the lawyer.

-If you have a Legal Aid lawyer, you can also contact Legal Aid and ask for a new lawyer to be appointed to help you.

Indigenous Court Worker and Community Justice Training

Presented by John Phelps, PPSC and David Christie, Legal Services Society – February 6, 2018