

Aboriginal Courtwork Program Basic Curriculum (DRAFT)

Preface, Executive Summary and Table of Contents

Acknowledgements and Disclaimer

This national criminal Courtworker training manual is the result of collaboration between Aboriginal Courtwork Program Directors and Federal, Provincial and Territorial government officials. Its content was developed from pre-existing training materials produced by Aboriginal Courtwork delivery agencies and content is currently being reviewed for updating.

Financial assistance for this publication was provided by the Federal Department of Justice. Although statements made in this document do not necessarily reflect the views or policies of the federal government, any questions concerning this publication may be directed to the Programs Branch of the Federal Department of Justice at (613) 957-4345.

Purpose of the Manual

The purpose of this manual is to serve as a reference and training resource for Aboriginal Courtworkers on a variety of topics deemed to represent their basic responsibilities. Efforts have been made to capture both courtworkers' traditional functions and those they may carry out in relation to their evolving role.

While this manual reflects basic duties common to courtworkers across Canada, it is important to note that it does not represent a set of compulsory or minimum standards for courtwork services. Rather, given the diversity of Aboriginal Courtwork Programs across the country, it is expected that the individual service delivery agencies will supplement this basic curriculum with training materials that address their unique character and mandate. Also given the unique program delivery circumstances in Canada's territories, it is recognized that this curriculum does not meet all of the territories' needs, and that these should be addressed separately.

Aboriginal Courtwork Program: Objectives

As described in the federal-provincial Aboriginal Courtwork Contribution Agreement (most of which were signed around 1990), the program seeks to:

- Assist Aboriginal people to understand their right to speak on their own behalf or to request legal counsel, to better understand the nature of the charges against them and the philosophy and functioning of the criminal justice system;
- Assist in enhancing the awareness and appreciation of the values, customs, languages and socio-economic conditions of Aboriginal people on the part of those involved in the administration of the criminal justice system; and
- Respond to the problems and special needs caused by communication barriers that exist between Aboriginal [people] and those who are involved in the administration of the criminal justice system.

Resulting from a Tripartite Review of the Program, these objectives were later supplemented by the April 1999 Recommendations Paper to include the following:

- The Aboriginal Courtwork Program focuses on providing services to Aboriginal accused persons at the earliest stages of the criminal justice process. These services will normally be delivered in the context of judicial proceedings but can also be provided through community-based justice alternatives. Delivery of the Aboriginal Courtwork Program should be provided in a manner that addresses the unique needs of Aboriginal accused and their communities. The program may also assist other Aboriginal persons involved in the criminal justice process.
- The purpose of the Aboriginal Courtwork Program is to facilitate and enhance access to justice by assisting Aboriginal people involved in the criminal justice system to obtain fair, just, equitable and culturally sensitive treatment.

The objectives of the Aboriginal Courtwork Program are specifically to provide Aboriginal accused at the earliest possible

stage of the criminal justice process with timely and accurate information about:

- the disposition or direction given by the court or community to the offender;
- the nature and consequence of the charge
- the philosophy and functioning of the criminal justice system and of alternative justice processes (if available); and
- court procedures.

These objectives are achieved by:




- Provide Aboriginal accused with appropriate referral to legal resources (as available and where practical);
- Refer Aboriginal accused to appropriate social, education, employment, medical and other resources to enable them to address the underlying problems which contribute to their charges and, where appropriate, follow-up on these referrals;
- Liase between Aboriginal accused and criminal justice personnel to help overcome communication barriers and reduce Aboriginal alienation from the criminal justice system. This may include being available to provide appropriate information to the courts and speaking on behalf of the accused;
- Inform justice officials about the cultural traditions, values, languages, socio-economic conditions, and other concerns of the Aboriginal community and the perspective of Aboriginal accused. Initiate further understanding when required;
- Promote understanding, within the Aboriginal community, of the existing criminal justice system and alternative justice processes; and
- Promote and facilitate practical, community-based justice initiatives and help build community capacity to identify and address problems that could end up in the courts or community justice system.

The Recommendations Paper further indicates that:

- While all Aboriginal persons are eligible for services, service delivery agencies may establish priorities concerning the type of clients to be specifically targeted (e.g. first and second-time offenders). Service delivery agencies may also examine the feasibility of focusing on particular offences (e.g. minor versus more serious; alcohol-related; administration of justice; family-related etc..)
- Limited resources make it difficult to pursue all objectives with equal vigour. At a minimum, programs will seek to provide court-based information, counselling, liaison and referral services to accused persons.

The Organization of the Manual

The Manual consists of eight sections, a set of appendices and a Glossary of Terms. Items contained in the Glossary are printed in bold face when they first appear in the text. Each section contains content that supports certain employment responsibilities of a Courtworker.

ICON KEY	
	Important Information
	Test Your Knowledge
	Suggested Reading

At the end of each section there is a set of learning activities that can be used to test the reader's understanding of the content (Self-Tests), as well as opportunities to practice certain skills associated with the section's content (Practice Activities).

Self-Test

The self-tests can be used by Courtworkers to determine how well they have understood the contents of the Training Manual. The Courtworker's supervisor could review responses to the questions for completeness and accuracy. In a more formal training setting, self-tests can be used to test a learner's comprehension of training content. As the Basic Curriculum is not a prescribed course of study, it is expected that the different agencies may choose to modify and/or supplement the learning activities that have been developed as part of the Basic Curriculum.

Self-tests help participants to retain what they have learned. Practice activities allow them to apply the lessons learned.

Practice



The Practice Activities can be used in a variety of settings. The Courtworker's supervisor could review the responses and offer feedback and possible suggestions for improvement. If the training is offered to a group of Courtworkers, the practice activities could involve role playing or opportunities for small group discussions.

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Note

It should be noted the term 'Aboriginal Community' refers to all indigenous persons in Canada.
Gender-neutral language has been incorporated into the text of the manual.

Executive Summary

The Aboriginal Courtwork Program Basic Curriculum is presented in eight sections. Each section deals with an aspect of Aboriginal Courtwork that may be central to the role of a Courtworker, although this may vary from agency to agency.

Aboriginal Courtwork: Working Principles

The Aboriginal Courtworker acts as an intermediary between the accused and the criminal justice system. The task of the Courtworker is to assist Aboriginal youth and adults in receiving fair, just, equitable and culturally sensitive treatment when before the criminal courts.

The Courtworker works in cooperation with, yet is independent from, the courts, the government and other Aboriginal organizations. The Aboriginal Courtworker attempts to bridge whatever gaps may exist between the criminal justice system and Aboriginal people. The Courtworker strives to contribute to the achievement of the goals of the criminal justice system, as well as to a more complete understanding of the needs and concerns of Aboriginal people by the administrators of criminal justice.

Courtwork Services

- Provide legal information - not legal advice. Only a lawyer can provide legal advice; it is against the law for a Courtworker to do so;
- Remain objective. It is not important to assess a client's guilt or innocence. The Courtworker's task is to provide assistance to ensure a client's rights are protected;
- Keep an accurate record of all appointments and court dates;
- Build a good working relationship with personnel;

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- Be aware of Aboriginal/alternative justice programs in place in the community and bring these to the court's attention (i.e. sentencing circles);
- Ask for help when in doubt. To protect the rights of the client and the reputation of the Courtworker Program. It is essential that assistance be requested from other experts;
- Keep an up-to-date copy of the Criminal Code and provincial acts at all times;
- Encourage the client to ask questions;
- Encourage the client to become involved in the court process. The Courtworker should not do for the client what he/she can do independently;
- Avoid conflict of interest. A Courtworker who also works in another occupation in the community must not allow such outside interests to jeopardize the integrity, independence or competence required by the Courtworker position. Further, a Courtworker should not accept gifts or money from clients, nor act as a trustee for clients' money or property;
- Withdraw services only with good cause and appropriate notice;
- Maintain confidentiality. The client has a right to expect strict confidentiality from the Courtworker. Disclosure should only take place with the client's consent;
- Understand that client "privilege" (legal right of the client to confidentiality regarding what he/she tells the lawyer) exists only between a lawyer and a client. A Courtworker enjoys a relationship of qualified trust with his/her client. However, solicitor-client privilege does not exist between a Courtworker and his/her client;
- Avoid doing anything that obstructs the course of justice. To do so would be unethical and illegal. A Courtworker must never knowingly assist or encourage any dishonesty, fraud, crime, or illegal conduct, or instruct a client on how to violate the law or avoid punishment;
- Adhere to courtroom etiquette by:
 - a) Address the judge as follows:
 - i) For a Queen's Bench Superior Court or Supreme Court Judge use "My Lord"/"Your Lordship" or "My Lady"/"Your Ladyship"; or

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- ii) For a Provincial Court Judge or Justice of the Peace use "Your Honour";
- b) Always stand when addressing the court;
- c) Dress and appearance should be professional;
- d) Refer to all persons (lawyers, clients, and witnesses) as Mrs./Mr./Miss/Ms.;
- e) Rise when court is opened and closed;
- f) When leaving or entering the court, be quiet and unobtrusive. A slight bow of the head indicates respect; and
- g) Be polite, sincere, and respectful. Do not laugh, shout, wander, joke, chew gum, talk loudly to a client, or be under the influence of drugs or alcohol in court.

In Section 1, the reader is introduced to the division that exists in Canadian law between public and private law. Public law, the law that deals with the relationship between the individual and the state, is most relevant to Aboriginal Courtwork. Conflicts arising between individuals and the state are adjudicated in Canada's court system. The type of offence that a person is charged with will determine which court hears the individual's case.

Regardless of the nature of the offence, all persons charged with an offence have certain rights guaranteed to them by the Canadian Charter of Rights and Freedoms. Those rights must be respected by all persons in the justice system and it is an important function of a Courtworker to ensure that client rights are respected at all times.

Section 2 examines the function of the Criminal Code in the justice system. The Criminal Code documents criminal offences in Canada. In order to assist a client charged with an offence, a Courtworker should be able to interpret the offence to the client, including the consequences of the client being found guilty.

While the Criminal Code applies to all persons charged with a criminal offence, young persons between the ages of 12 and 17 are treated differently by the Justice System. The substance of those differences is found in The Youth Criminal Justice Act (YCJA). The objectives of the Youth justice system are to

prevent crime; rehabilitate and reintegrate young persons into society and ensure meaningful consequences for offences. A Courtworker who is assisting a young client should be aware of the YCJA and ensure that the client receives the benefits of the Act.

Section 3 looks at court procedures and court personnel. A Courtworker needs to be familiar with court procedures and court personnel so that those procedures can be explained to a client. In addition, as a trial progresses, certain options or decisions may become available to a client. A Courtworker should be prepared to explain those options or decisions, as well as the consequences of choosing one course of action over another.

Additional responsibilities of a Courtworker include monitoring the trial process to ensure that a client's rights are acknowledged and respected at all times and that a client meets her or his responsibilities during the trial process.

Section 4 examines Courtworker duties in regards to the trial process, including assisting the client at first appearance. When a client is charged with an offence, he or she must decide how they are going to plead to the offence. Once that decision is made, their case may go to trial. It is also important that the Courtworker ensure that the *Information* detailing the alleged offence is free of defects or errors of either form or substance.

A Courtworker should also be prepared to assist a client at a bail or show-cause hearing and assist the client to obtain bail if feasible and practical. Lastly, a Courtworker should assist the client in accessing Legal Aid if the client is eligible.

Section 5 considers the functions of a Courtworker after a trial is completed. If the client is found guilty, the Courtworker can work with the client and the justice system to determine a fair and appropriate sentence, including offering input into various pre-sentence reports.

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Once a client is sentenced, a Courtworker can work with the client to determine the consequences of a sentence and what the client must do to comply with the sentence.

Section 6 considers the importance of working with Aboriginal communities to better understand the justice system. A related Courtworker function is to work with justice system personnel to assist them to better understand Aboriginal communities and the unique backgrounds and experiences of Aboriginal offenders.

This latter responsibility is supported in law by *R. v. Gladue*, [1999] 1 S.R.C. 688 (*Supreme Court of Canada*) and other related court decisions.

Lastly, a Courtworker may be able to provide assistance to victims of crime, especially in regards to referring them to appropriate programs or services.

Section 7 looks at the counselling responsibilities of a Courtworker. A Courtworker can offer informal counselling to a client as part of the Courtworker-client relationship. Such counselling does not attempt to address any social or psychological problems that the client may be experiencing. However, the Courtworker should be sensitive to the potential existence of such problems and make appropriate referrals as required. Lastly, a Courtworker should be prepared to deal with clients who are in crisis or who are severely agitated in order to defuse or mediate the situation.

Lastly, Section 8 introduces the concept of 'integrated case management'. The concept of integrated case management requires a Courtworker to consider all of the needs of a client and not just those that are specific to the justice system. The Courtworker needs to be sensitive to the client's emotional state and be prepared to assist the client to access counselling that addresses that emotional state.

In order to do that, a Courtworker needs to consider both the client and his/her background, experience and personal

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situation. Based on this informal assessment, the Courtworker will make appropriate referrals for service.

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Introduction to the Canadian Justice System

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SECTION 1: INTRODUCTION TO THE CANADIAN JUSTICE SYSTEM

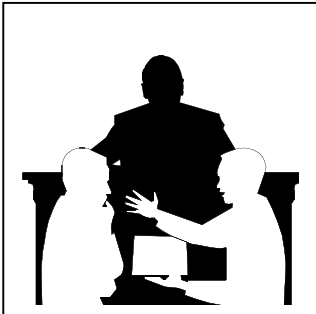
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Introduction to the Canadian Justice System

Purpose of the Section

This section describes Canada's system of law and justice, Canada's court system, and the Canadian Charter of Rights and Freedoms. As Courtworkers provide services to persons accused of criminal offences, it is important that they know how the justice system works, which courts deal with which offences and how the Charter of Rights and Freedoms guarantees clients certain legal rights and what those rights are.



Courtworker Functions

The Courtworker should:

- *Explain Canada's court system to persons unfamiliar with the system;*
- *Read and understand the relevant sections of the Charter of Rights and Freedoms;*
- *Ensure that clients are aware of and understand their rights; and*

Learning Objectives

The Courtworker will be able to describe Canada's system of laws and justice, including the court system.

Monitor court procedures to ensure that a client's rights are The System of Law and Justice¹

The law is a set of rules for society, designed to protect basic rights and freedoms, and to treat everyone fairly. These rules are divided into two basic categories: public law and private law.

¹ Source: Department of Justice Canada

Public Law

Public law deals with matters that affect society as a whole. It includes areas of the law that are known as criminal, constitutional and administrative law.

These are the laws that deal with the relationship between the individual and the state, or among jurisdictions. For example, if someone breaks a criminal law, it is regarded as a wrong against society as a whole, and the Crown takes steps to prosecute the offender.




Private Law

Private law, on the other hand, deals with the relationships between individuals in society and is used primarily to settle private disputes. Private law deals with such matters as contracts, property ownership, the rights and obligations of family members, and damage to one's person or property caused by others. When one individual sues another over some private dispute, this is a matter for private law. Private suits are also called "civil" suits.

Obviously, there is more to Canada's system of law and justice than the laws themselves. Laws must be enforced, interpreted and applied if they are to be effective, and the legal system includes a number of institutions to carry out these duties. For example, we have police forces to ensure that the law is enforced. We have courts to interpret both private and public laws in specific cases, and to impose remedies, sanctions or penalties. Persons found guilty by a court of a criminal act can, for example, be discharged, placed on probation, or sentenced to a fine or a period of imprisonment. Persons who violate rules of private law, such as failing to perform a contract, may be ordered to pay compensation and their property or salaries may be seized if they refuse.

Canada's Court System

When there is a dispute between individuals, or between an individual and the Crown, either side may go to court to have his or her rights upheld and the dispute settled under the law.

ICON KEY	
	Important Information
	Test Your Knowledge
	Suggested Reading

Supreme Court of Canada

The highest court in the land is the Supreme Court of Canada. It is the general court of appeal from all other Canadian courts (civil, criminal and constitutional.)

Common Law and Civil Law

Common law is based on precedents. Each decision of a judge is a precedent that may be used to guide other judges in making subsequent decisions. Thus, common law is constantly evolving.

In Quebec, the legal system is known as "civil law", or law that is written down in a code. The Civil Code of Quebec is derived from France's Code Napoléon. Many of the rules set out in Quebec's Civil Code are stated as broad, general principles so that they can be applied to a wide range of disputes. Unlike common law courts, courts in a civil law system look first to the code, then to previous decisions, for guidance.

In Canada, outside of Quebec, the specific statutes enacted by the federal, provincial or territorial governments take the place of the common law with respect to the particular subject matter of the statutes. In Quebec, legislation may also be enacted to deal with specific matters not covered by the Civil Code.

Crimes are defined and penalties are prescribed in the Criminal Code of Canada, which applies to the whole country.

The Supreme Court is composed of a Chief Justice and eight "puisne" (or "ranked after") judges who are appointed by the federal Cabinet. By law, three of the judges must come from Quebec. By tradition, three come from Ontario, two from Western Canada and one from the Atlantic provinces.

The Court sits in Ottawa for three sessions a year - winter, spring and fall.

Recently, the Court began using tele-conferencing technology to permit presentations from other parts of the country.

Generally, cases may be appealed to the Supreme Court only with "leave" of the Court. Leave is granted if the case involves a matter of public importance, or if it raises an important question of law, or of mixed law and fact. Leave is not required in certain cases, such as criminal cases when an acquittal has been set aside by a provincial court of appeal or when one of the appeal court judges dissents on a question of law.

The Court also has a special jurisdiction whereby it considers questions of law or fact concerning the Constitution, and provides an opinion to the federal or provincial Cabinet. Canada is the only country in the common law world where the highest court has this "reference" jurisdiction.

Federal Court of Canada

The Federal Court of Canada is organized into appeal and trial divisions and, while it is based in Ottawa, the judges of both divisions may sit across the country. The court reviews the disputed decisions of federal boards, commissions and tribunals. The Federal Court's jurisdiction also includes interprovincial and federal-provincial disputes, intellectual property proceedings, admiralty matters, citizenship appeals, and appeals under certain federal statutes. The Federal Court shares jurisdiction with the provincial superior courts with respect to claims by and against the Crown.

Judges of the Federal Court may also act as Umpires under the Employment Insurance Act, and as Assessors under certain acts affecting Canadian agriculture.

Tax Court of Canada

The Tax Court of Canada was created in 1983 to replace the Tax Review Board. Headquartered in Ottawa, the court sits in major cities across the country. Its jurisdiction relates to tax and revenue matters.

Courts Martial

Courts martial are established under the federal National Defence Act to try members of the armed forces for breaches of the military Code of Service Discipline. A court martial is presided over by a judge advocate, who is a legally trained officer of the armed forces. A court martial might be composed of three or five officers of the armed forces, who have the authority to determine the guilt or innocence of the accused and, in the event of a guilty verdict, to determine the sentence.

Provincial Courts

The provinces joining Confederation in 1867 all had their own systems of courts. Except for Quebec, which always had two basic levels, the provinces maintained three distinct levels of trial courts, based upon the British model. At the top were the "superior" courts, so called because they could deal with cases from across the province and had unlimited monetary and substantive jurisdiction; they heard the most serious criminal cases and the largest civil suits. Next were the county or district courts, which were restricted by both the subject matter and monetary value of the litigation and by its geographic location. Finally, there were the "inferior" courts - courts presided over by magistrates or justices of the peace, which dealt with small civil claims and minor criminal offences.

As a result of court reforms over the past 20 years, all of the county and district courts have been amalgamated into the superior trial courts.

The superior courts of the provinces include both trial and appeal levels of court. The trial levels, in turn, may include some or all of the following divisions: small claims; family; and general. The names of the superior courts and their divisions vary considerably from province to province and the one used in this manual, is Court of Queen's Bench. Please note, however, that the term is not used in Ontario, Quebec, British Columbia, Newfoundland, Prince Edward Island, Nova Scotia, Yukon and Northwest Territories.

The vast majority of criminal trials are not litigated in the superior trial courts. They take place in the "inferior" or Provincial Courts, as the

former magistrates' courts are now commonly called. The Provincial Courts may also include family and small claims divisions, as well as a youth or young offenders division. Actual court structure varies from province to province, as do the number and type of divisions within each court. As well, all preliminary inquiries, which are held to determine whether there is sufficient evidence to warrant a full trial in the more serious criminal cases, take place before the Provincial Court judges or justices of the peace.

Administration of the Courts

Normally, each court employs a person who is responsible for managing administrative work, including the appointment of staff and the management of finances. This person is sometimes known as the "Registrar", but may carry other titles such as "Clerk" (in the case of some provincial courts) or "Administrator of the Court" (in the case of the Federal Court of Canada.)

These officials may also perform other functions such as informing the legal profession of courtroom procedures, signing orders and judgments, issuing summonses, certifying copies of court proceedings, receiving and recording documents filed in court, and collecting court costs.

Sheriffs, sometimes assisted by bailiffs, are usually responsible for jury management (that is, they summon, pay, seclude and guard jurors). In some provinces they escort accused and convicted persons, provide security for prisoners, witnesses and the courtroom, and arrest persons for contempt on an order of the judge. Sheriffs and bailiffs are sometimes responsible for serving legal documents, seizing goods, and collecting levies.

Other officials include "masters" or "prothonotaries," who schedule cases, issue summonses, render default judgments, approve the sale of assets in certain circumstances, and keep accounts. Sometimes masters and prothonotaries have additional powers to act as a judge in chambers when the judge is absent or unable to act or when a delay might result in the loss of a right or cause harm to a party. Other judicial officers include family law commissioners, masters in bankruptcy, and the like.

Other Courts

There are many relatively minor legal matters that are not required to be heard in open court, but may be dispensed with by a judge in chambers.

These matters include interlocutory applications to determine a preliminary point at issue, and appeals to vary or set aside the orders of masters and registrars.

In fact, there are a number of judicial officers who operate as judges in certain circumstances. They include hearing officers, magistrates, adjudicators, and justices of the peace. These officials perform many pre-trial, informal and formal court proceedings. They may assess penalties under summary conviction on Criminal Code offences, set bail, release prisoners on bail, take information and issue search warrants. In Ontario, family law commissioners were created to deal with a backlog of divorce petitions. They now operate as judges in many family law matters, conducting hearings referred to them by the Superior Court of Justice.

The Charter of Rights and Freedoms and Rights in Criminal Law

Learning Objective

The Courtworker will be able to describe those sections of the Charter of Rights and Freedoms that are relevant to his or her client and their implications to the client's case.

Sections 7 to 14 of The Charter of Rights and Freedoms list specific rights with regard to criminal law.² These sections are as follows:

- s.7 Everyone has the right to life, liberty and security of the person, and the right not to be deprived thereof, except in accordance with the principles of fundamental justice.
- s.8 Everyone has the right to be secure against unreasonable search and seizure.
- s.9 Everyone has the right not to be arbitrarily detained or imprisoned.
- s.10 Everyone has the right on arrest or detention:
 - a) to be informed promptly of the reasons thereof;

² Sections 7 and 14 of the *Charter* do not exclusively apply to criminal law, as they do also apply to civil matters.

- b) to retain and instruct counsel without delay and to be informed of that right; and
- c) To have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.
- s.11 Any person charged with an offence has the right:
 - a) to be informed without unreasonable delay of the specific offence;
 - b) to be tried within a reasonable time;
 - c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
 - d) to be presumed innocent until proven guilty according to law, in a fair and public hearing by an independent and impartial tribunal;
 - e) not to be denied reasonable bail without just cause;
 - f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
 - g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
 - h) if finally acquitted of the offence, not to be tried for it again and, if found guilty and punished for the offence, not to be tried or punished for it again; and
 - i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.
- s.12 Everyone has the right not to be subjected to any cruel or unusual treatment or punishment.
- s.13 A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.
- s.14 A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted, or who is deaf, has the right to the assistance of an interpreter.

Summary

In summary, Canadian law is divided into two types of law: public and private. Public law, the law that deals with the relationship between the individual and the state, is most relevant to Aboriginal Courtwork. Conflicts arising between individuals and the state are adjudicated in Canada's court system. The type of offence that a person is charged with will determine which court hears the individual's case.

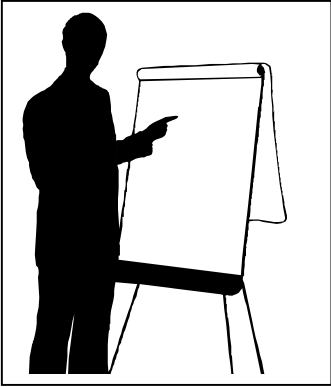
Regardless of the nature of the offence, all persons charged with an offence have certain rights guaranteed to them by the Canadian Charter of Rights and Freedoms. Those rights must be respected by all persons in the justice system, and it is an important function of a courtworker to ensure that client rights are respected at all times.

Learning Activities

Self-Test

Please answer the questions below. If you are unable to answer the question, please refer back to the manual or ask your supervisor for assistance.

1. What is the difference between public law and private law?
2. What is the difference between common law and civil law?
3. Under what circumstances might a case be appealed at the Supreme Court Level?
4. In what courts are most criminal trials most commonly held?
5. What title is given to the person responsible for court administration in your location?
6. What rights are guaranteed by the Charter of Rights and Freedoms under:
 - a) Section 10?
 - b) Section 11?
 - c) Section 13?
 - d) Section 14?
7. Why should a Courtworker understand the criminal law sections of the Charter of Rights and Freedoms?
8. What should a Courtworker do if he or she feels that a client's rights under the Charter have been violated?



Practice

Please complete the following and submit it to your supervisor or a colleague for feedback.

Task

You have been invited by a local organization to give a short presentation on the Canadian criminal justice system. Prior to the presentation, you need to prepare speaking notes that will guide your presentation. Prepare a set of such notes that could be used in a variety of settings and for different audiences.

Alternative Activity

If appropriate, the preceding practice exercise could be presented as a role-playing activity. The Courtworker would make the presentation to his/her colleagues who would then ask the Courtworker questions and give feedback on the presentation.

Section 2

The Criminal Code

Overview: The Youth Criminal Justice Act

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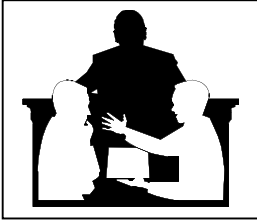
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The Criminal Code

Purpose



In order to explain the nature of an offence to an accused person, a Courtworker should be able to locate and interpret criminal offences in Canada's Criminal Code. This section describes common criminal offences, with their Criminal Code reference.

Courtworker Functions

The Courtworker will:

- Read and understand the Criminal Code
- Explain charges and their potential consequences to a client

Learning Objective

The Courtworker will be able to explain to his/her client the substance of Criminal Code Offences and the implications for the client if convicted.

Note to the Reader:

The Criminal Code is a complex text that is frequently revised and published annually. As such, the reader must consult and up-to-date Code when researching the details of a particular criminal offense.

📁 The Criminal Code¹

A

All criminal offences are contained in federal legislation. The main criminal legislation is the Criminal Code. The Criminal Code contains sections. All of the well-known offences, such as theft, robbery and assault are defined in the Code. The Code also contains many of the rules of criminal procedure, such as the rules for making arrests and conducting trial. In addition to the Criminal Code, there are many other federal statutes that contain criminal law. Other examples of criminal laws are found in the:

- Controlled Drugs and Substance Act
- The Food and Drug Act
- The Customs Act and
- The Income Tax Act.
-

Specific Offences

As a Courtworker, there are some types of criminal offences that you will meet more often than others. Some, like murder and manslaughter, may not be so common, but they are charges you should be familiar with since they are complex cases and require more research.

¹ Source: Courtesy of Saskatchewan Courtwork Program

Murder And Manslaughter

Homicide involves doing something that causes the death of another person. Non-culpable homicide is homicide that is not blameworthy and does not result in a criminal conviction. This could involve things like causing someone's death by accident, if the circumstances were such that no negligence or illegal act was involved. It could include death that results from self-defence. Culpable homicide, on the other hand, is homicide that is blameworthy and can result in a criminal conviction for murder or manslaughter.

First Degree Murder, ss. 229, 231(2) Criminal Code

First-degree murder is culpable homicide that is planned and deliberate. This means that it is pre-meditated, or thought out before the action. Because drinking alcohol can impair a person's ability to plan, it can be a defence to a charge of first degree murder.

First degree murder must be intentional, and not accidental. The intent that must be proven in a charge of first degree murder is intent to cause the death of the victim or intent to do something that is likely to cause death and being reckless about whether death results.

- First degree murder is the most serious offence a person can be charged with. It carries an automatic sentence of life in jail and no parole for 25 years.
- Second degree murder is murder that is intentional, but not planned and deliberate, that is, it is not thought out before the time it is committed. Rather, it happens spontaneously, or impulsively, with no plan in advance.

The intent that must be proven for second degree murder is the same as that first degree murder, to cause the death of the victim or to do something that is likely to cause the death of the victim and being reckless about whether death results.

Second degree murder carries an automatic sentence of life in jail with no parole (a minimum of ten years). As well, trial Judges can increase the ten year minimum to anywhere between ten and 25 years when they pass sentence.

Manslaughter, ss. 232 and 234 Criminal Code

Manslaughter involves killing someone in a manner that is not planned or premeditated. The difference between second degree murder and manslaughter, however, relates to the intent, or mens rea. Manslaughter involves striking or killing someone without the intention of causing the person's death. Second degree murder, while not premeditated, is intentional.

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Provocation can reduce a second degree murder charge to manslaughter. If the victim of the offence did something to provoke the accused person to strike, and the accused person did so, he could then be found guilty of manslaughter rather than second degree murder.

Manslaughter carries a possible life sentence, but not an automatic one. Manslaughter is a lesser included offence of second degree murder, which is a lesser included offence of first degree murder.

Attempted Murder

A person can be charged with attempted murder if she or he does something that is intended to kill someone else but which the other survives. The maximum (but not automatic) sentence for attempted murder is life in jail. All homicide charges are indictable offences.

Assaults

Some of the most common offences before the Courts are the different types of assault charges. An assault occurs when someone intentionally applies force to another without that person's consent. Touching, slapping, kicking, choking, punching, beating are all methods of assault. A threat to do one of these which causes the other person to fear its happening is an assault, even if the victim is not physically touched.

Assaults can take place between strangers or friends. They can take place between spouses and common-law spouses, or between other family members.

The relationship between the alleged assaulter and the victim is not a factor in determining whether an assault has taken place. It is just as much a crime to assault your spouse, as it is to assault a stranger on the street.

In the past, victims of a spousal assault were sometimes allowed to withdraw the charges. Notwithstanding, the decision to lay a charge lies with the police, and today, the latter are strongly compelled to lay a charge if there is evidence an assault has been committed. If the Crown decides there is enough evidence to prove the charge, under the policy of the Attorney General it has very little discretion not to proceed. This is done to prevent the accused from putting pressure on the victim to have the charges withdrawn, particularly in domestic situations.

There are four different types of assault charges.

- Assault, s. 266 Criminal Code Assault is a charge that does not result in any injury to the victim, or results in minor injuries that will soon go away, such as bruises. It is sometimes called simple assault or common assault. It is the least

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serious assault charge and lesser included offence of all the other assault charges. Assault is a dual procedure offence, for which an accused can receive a maximum jail sentence of five years if the Crown prosecutes it by indictment.

- Assault with a Weapon, s. 267 (a) Criminal Code is an assault in which a weapon, such as a knife, club, gun, or stick, is used to injure or frighten the victim. It is not necessary to prove any injury to the victim to obtain a conviction on this charge, only to prove that a weapon was used. Sometimes one issue in this type of case is whether the thing used in the assault, constitutes a "weapon". Assault with a weapon is an indictable offence with a maximum sentence of ten years in jail.
- Assault Causing Bodily Harm, s. 267 (b) Criminal Code. Another charge that is more serious than assault is assault causing bodily harm. Here, the victim is injured in some serious way that is more than trifling and transitory. This means that the injuries are more serious and will not pass quickly. This could include injuries such as broken bones, sprains, and even extensive bleeding. To find a person guilty of assault causing bodily harm, the court would probably require some medical evidence of the injuries sustained by the victim. Assault causing bodily harm is a lesser included offence of aggravated assault. It is an indictable offence that carries a maximum sentence of ten years in jail.
- Aggravated Assault s. 268 Criminal Code. The most serious assault charge, aggravated assault, is an assault that wounds, maims, disfigures or threatens the life of the victim. As happens with causing bodily harm, there would probably need to be medical evidence to find an accused person guilty of this offence. Aggravated assault is an indictable offence and carries a maximum sentence of 14 years in jail.

Sexual Assaults

Sexual assaults are assaults with sexual overtones. It includes any type of sexual contact, including kissing, fondling, petting, touching genitals and sexual intercourse, to which the victim does not consent. It is not necessary to have sexual intercourse to be sexually assaulted, although a sexual assault can include sexual intercourse. There are several different types of sexual assault charges, some more serious than others.

The victim of a sexual assault can be either male or female, as can the accused person. A person can now be charged with sexually assaulting his or her spouse. This is true even if the couple is living together at the time the assault occurred. Sexual assaults can occur between common-law spouses. To prove that a sexual assault occurred, the Crown has to prove that the sexual contact occurred without the consent of the victim. This often becomes the main issue in a trial of sexual assault.

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In the past few years, a number of changes have been made to protect the rights of victims of sexual assaults and to make it easier to prosecute these cases. These include the following:

- The defence cannot now give the court evidence about the sexual reputation of the victim.
- They cannot discuss what other people say about the alleged victim's regular sexual behaviour.
- In addition, they cannot present evidence about the sexual activity of the victim with anyone other than the accused, without the leave or permission of the court.

The Crown can call the spouse of a person charged with a sexual assault to testify even if he or she does not wish to do so. (Under most circumstances, spouses can be required to testify against one another in court.) If the victim of a sexual assault is under 18, his or her statement can be videotaped and presented as evidence in the court. The victim would still have to come to Court and swear that the statement in the video is true. The victim may also chose to affirm solemnly, and in some cases with children, can even testify under promise to tell the truth pursuant to s. 16 (3) of CEA. He or she would still be subject to cross-examined by the defence.

The Crown can request an order that the identity of the victim of a sexual assault not be published or broadcast. This order, if requested, must be granted.

The different types of sexual assaults are discussed below:

- Sexual Assault, s. 271 Criminal Code. Sexual assault is any kind of sexual contact to which the victim does not consent. No injury to the victim need be proven to obtain a conviction for sexual assault. Sexual assault is a dual procedure offence with a maximum sentence of ten years in jail. There are many factors considered in determining the seriousness of the assault. It is a lesser included offence of all other sexual charges.
- Sexual Assault with a Weapon, s. 272(a) Criminal Code. Sexual assault with a weapon is when a weapon such as a knife or gun is used to attack the victim or frighten her or him into submitting. As with sexual assault it is not necessary to prove injury to the victim. Sexual assault with a weapon is an indictable offence that carries a maximum sentence of 14 years in jail. In addition, s. 272 (2) (a) provides that if a sexual assault is committed while using a firearm, a minimum of four years custody applies.
- Sexual Assault with Threats to a Third Party, s. 272(b) Criminal Code. This is a sexual assault in which the assaulter threatens to injure someone other than the victim (such as her or his children) to frighten her or him into submission. This is an indictable offence with a maximum sentence of 14 years in jail.

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- Sexual Assault Causing Bodily Harm, s. 272(c) Criminal Code. This is a sexual assault in which the victim receives some injuries, such as broken bones, which are more than minor or transient. Medical evidence would usually be required to prove a charge of sexual assault causing bodily harm. Sexual assault causing bodily harm is an indictable offence with a maximum sentence of 14 years in jail.
- Sexual Assault Involving Co-Accused, s.272 (d) Criminal Code. This is a sexual assault in which two or more people are charged in the same incident, or a "gang" sexual assault. This is an indictable offence with a maximum sentence of 14 years in jail.
- Aggravated Sexual Assault, s. 273 Criminal Code. An aggravated sexual assault is the most serious sexual assault charge and carries a maximum sentence of life in jail. As with sexual assault causing bodily harm, the Crown would have to present medical evidence of serious injuries to the victim to prove this charge.

Impaired Driving Offences

There are a number of different offences with which a person can be charged while driving a motor vehicle while under the influence of alcohol or drugs. A person can be charged with these offences while both driving and having control of a vehicle. For example, if someone has his keys in the ignition while sitting in the driver's seat of a car, and is intoxicated he can be charged with having the care or control of a vehicle while impaired. This is true even if the ignition is not turned on. A person does not need to be actually driving to be charged with an impaired driving offence.

These offences include impaired driving, driving with over 80 milligrams (mg) of alcohol per 100 millilitres (ml) of blood, and refusing to take a breathalyzer test. These offences cover any type of motor vehicle, including cars, trucks, four wheelers, skidoos, boats and aircraft.

Impaired Driving, s. 253(a) Criminal Code

This is the offence of driving while your ability to do so is impaired by alcohol or drugs. Alcohol, street drugs or prescription drugs can cause this impairment. Some prescription drugs, for example, can make a person very drowsy and dull their reflexes, impairing their ability to drive. Most of the cases before the courts involve impairment by alcohol, however. In these cases, the police officer who arrests the person will describe the person's state at the time of the arrest. For example, the police officer might testify that the accused was staggering, had bloodshot eyes, and smelled of alcohol to prove that the person's ability to drive was impaired by alcohol.

Driving with Over 80 Alcohol, s. 253 (b) Criminal Code

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This is the offence of driving with over 80 milligrams of alcohol in 100 millilitres of blood. It is sometimes called "driving over 80." An alternative description over .08 grams of alcohol per 100 millilitres of blood, or simply as "driving over .08". Both these statements mean the same thing.

The amount of alcohol in one's blood is calculated by a breathalyzer test. This test is usually taken twice, the second one 15 or 20 minutes after the first in order to compare the readings on the two tests.

If the person cannot take a breathalyzer test, for example because he is unconscious, a Justice of the Peace can sign a warrant authorizing the police to obtain a blood sample from the person. This warrant can be authorized by telephone. A blood sample can only be taken in situations where it would not endanger the person's health to do so.

While an individual may be charged with both offenses, (a) and (b) under s. 253, he or she may only be convicted of one or the other.

Refusing to Take a Breathalyzer Test s. 254(5) Criminal Code

The police have the right to order a driver they suspect may be impaired to submit to a breathalyzer test. If the person then refuses to do so without a good reason then he can be charged with refusing to take the test. Lawful excuses for failure to blow include mistaken identity (was not the actual driver) and health incapacity (i.e., severe asthma).

Sentencing ss. 255 and 259

The possible sentences for all of these offences are the same. For a first offence, a person receives a minimum fine of at least \$600, and usually much more than that. He will receive an automatic driving prohibition of at least twelve months and possibly three years for a first offence. This sentence will be imposed even if the person needs to drive to get to work or to do his job. The court no longer has the discretion to allow a person to continue driving in these circumstances. There are two levels of penalties that can be imposed, and provincial sanctions vary from province to province.

On a second offence, a person is liable to an automatic jail sentence of at least 14 days, and a driving prohibition of between two and five years. On each subsequent offence, the person is liable to a minimum jail sentence of 90 days and automatic driving prohibition of between three and ten. On a first or subsequent offence, the person can receive a jail sentence of up to five years. These increased sentences on second and subsequent offences can only be imposed if police have served the accused with a piece of paper called a Notice of Intention to Seek

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Greater Penalty. If they have not served this notice, the Judge can still impose the higher penalties, but does not have to do so.

A person will receive a greater sentence if someone is injured as a result of his driving while impaired. In this instance, the person can be sent to jail for up to ten years. If a person dies as a result of an accident in which a driver was impaired, the driver can be sentenced to life imprisonment. These charges are indictable; all other impaired driving charges are dual procedure “hybrid” offences, meaning the Crown they elect may proceed by indictment or by summary conviction procedure. The latter is used in less severe cases and limits the sentencing.

Drug Offences

Most of the offences you are likely to encounter are found in the & Narcotic Control Act, at the back of the Criminal Code. The most frequent charges seen here are possession of narcotic; possession for the purposes of trafficking; and trafficking.

Possession of Narcotic, s. 4 Controlled Drug and Substance Act

Possession of a narcotic means knowingly having a narcotic in your possession. For example, it can be in your house, car, purse or pants pocket. The most frequently seen narcotics are marijuana, or cannabis, and hashish, or cannabis resin.

This is a dual procedure offence for which a person can receive a maximum of seven years in jail.

Trafficking in Narcotics, s. 5(1) Controlled Drug and Substance Act

Trafficking in narcotics involves knowingly giving, selling, mailing, sending, delivering or distributing narcotics to another person. The quantity involved may be very small or quite large; what is important is the transfer of narcotics from one person to another. It is not restricted to selling narcotics, but can include giving a marijuana cigarette to a friend. Trafficking in narcotics is an indictable offence for which a person can receive a sentence of life in jail.

Possession for the Purpose of Trafficking, s. 5(2) Controlled Drug and Substance Act

A charge of possession of narcotics for the purpose of trafficking can be laid if the police have reason to believe that the person intends to traffic in narcotics they have found in his or her possession, even if they do not have evidence of trafficking. For example, if she or he has an especially large quantity of narcotics in her or his possession more than one person could consume in a reasonable time, the police can infer that the person probably intended to sell the narcotics,

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and charge him or her with possession for the purpose of trafficking. The Judge or jury then must decide whether he or she intended to traffic in the narcotics.

Possession for the purpose of trafficking is an indictable offence for which a person can be sentenced to life in jail.

Theft Offences

Offences that involve taking other people's property are quite common. The offences that you are likely to meet in the courts include theft, possession of stolen property, breach of trust, robbery and breaking and entering.

Theft, ss. 322,334 Criminal Code

A person who takes or steals anything that belongs to another person without the permission of the owner can be charged with theft. The penalty for theft depends on the stolen goods.

Where the value of what is stolen does not exceed \$5000, the theft is commonly called 'theft under'. This is a dual procedure offence for which a person could go jail for up to six months if the Crown proceeds by indictment. When the Crown does continue by indictment on this charge, the accused does not get to elect whether his case should be heard in Court of Queen's Bench or Provincial Court. It can only be heard in Provincial Court.

If the goods stolen have a value over \$5000, the offence, commonly called theft over, is indictable and the accused person can go to jail for up to ten years. These charges can be heard in either Court of Queen's Bench or Provincial Court.

Possession of Property Obtained by a Crime, s. 354 Criminal Code

A person who possesses stolen goods can be found guilty of possession of stolen property if it is proven that he knew that the goods were stolen. If the goods are in the possession of the accused a very short time after they were stolen, the court can infer that the accused knew that they were stolen. It then becomes the onus, or responsibility of the accused to prove that he did not realize the goods were stolen. This rule is sometimes called the doctrine of recent possession.

The maximum sentence for possession of stolen property, as with theft, depends on the value of the property. If the property is worth not more than \$5000, the charge is dual procedure and the maximum jail sentence on conviction is two years in jail. Like theft under, these charges can only be heard in Provincial Court.

If the property is worth more than \$5000, the charge is indictable and the maximum jail sentence is ten years.

Joy Riding, s. 335 Criminal Code

Another common theft-type offence is that of joy riding, or taking a motor vehicle without the permission of the owner. The offence of joy riding occurs when the accused takes a motor vehicle, skidoo, or boat without the owner's consent. In the past, it was quite accepted for a person in the community to borrow, without consent, his or her neighbour's skidoo or boat, and it often did not result in charges being laid. In recent years, however, this practice has become less socially accepted and charges are more common.

Joy riding is a summary conviction offence that carries a maximum sentence of six months in jail.

Breach of Trust, s. 336 Criminal Code

Another offence that has become increasingly common in small communities is breach of trust. A person who betrays the trust of someone can be charged with offence. There are a number of ways this can happen. It is usually seen, however, in situations where theft from an employer is involved.

Employees of organizations are often entrusted with a great deal of money and are regarded as being a trustee of funds. This work carries it a special responsibility to safeguard the money and ensure that it is not spent for any purpose other than its intended use.

Anyone who has this responsibility and steals the money, or breaches the trust of the organization she or he is working for, can be charged with either breach of trust or theft. Breach of trust charges under s. 336 are almost never laid. Normally theft is charged instead. Theft is a lesser included offence of the offence of breach of trust.

Robbery, s. 344 Criminal Code

Robbery is a theft that is committed with violence against the victim of the theft, at the time of the theft or immediately before or after. It includes the threat of such violence to overcome the resistance of the person being stolen from, even if the person is not physically touched. For example, pointing a gun or knife at someone to hand over money is robbery. Theft is a lesser included offence of robbery.

Robbery includes an assault against a person with the intention of stealing from him, even if nothing is stolen. For that reason, assault can be a lesser included offence of robbery.

Robbery is indictable offence for which a person can be sentenced to life in jail if found guilty.

Breaking and Entering, s. 348 Criminal Code

To be found guilty of breaking and entering, it is not necessary to use force to enter, break or damage the property in any way. Merely walking through an unlocked door or putting part of your body into a house is breaking and entering if it is done without the consent of the owner or occupant of the premises and if done as a part of a plan to commit an offence such as stealing.

There are two different types of break and enter charges you are likely to encounter. Break, enter and theft involves going into any place without the owner's consent and stealing something from that place. Theft is a lesser included offence of the offence of break, enter and theft.

Break and enter with intent, on the other hand, involves going into any place that one does not own or occupy with the idea of committing an offence, such as stealing. If you do not commit another offence in the broken into premises, you may still be found guilty of breaking and entering with intent, only because you had the plan or intention to do so.

If the place broken into is someone's home or dwelling place, the maximum sentence is life in jail.

Other Property Offences

There are offences that involve damage to, rather than theft of, other people's property. Of these, the ones you are most likely to come across are mischief (s. 430) and arson (s. 433-36).

Mischief

Mischief involves willfully destroying or damaging property belonging in whole or in part to someone else. It can refer to interfering with someone else's ability to use or enjoy their property. How seriously the charge of mischief is viewed depends on the amount of damage to the property. If the damage to the property is not more than \$5000, the charge is a dual procedure offence for which the person can go to jail for up to two years. As with theft under \$5000, this is a charge that is automatically heard in Provincial Court if the Crown decides to continue by indictment.

If the property damaged is worth over \$5000, the charge is still a dual procedure but the person can go to jail for up to ten years if the Crown decides to continue

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by indictment. These charges can be heard in Provincial Court or Court of Queen's Bench.

On the other hand, if the mischief causes danger to life, the person is charged with and indictable offence and is liable to imprisonment for life.

Restitution orders are common in mischief charges. In these orders, the person who commits the offence is ordered to pay to the owner of the property the amount of money it would take to repair or replace the damaged property.

Arson

Although relatively rare, you may encounter a person charged with arson. An arson charge is a charge of willfully setting fire to a building, crops, forests, lumber or other substance, including someone else's personal belongings.

Arson is an indictable offence. The maximum jail sentence depends on what the object of the arson is, is life imprisonment.

Breach of Process Charges

As well as the substantive charges listed above; there are a number of charges that relate specifically to court procedure. These include such things as breach of recognizance, failure to appear, contempt of court, perjury and breach of probation, among others.

Undertaking or Recognizance, s. 145(3) Criminal Code

An accused person who signs an undertaking or recognizance with conditions attached (to be released from jail before his trial) can be charged with a breach of recognizance or breach of undertaking if he willfully violates any of the attached conditions. For example, if he telephones or visits the victim of the offence after being told not to communicate with him or her in any way, a charge can be laid.

However if the victim is the one who initiated the contact, the accused person still has an obligation to cease contact. Breach of recognizance or undertaking is a dual procedure offence for which a person can be sentenced up to two years in jail if the charge is prosecuted on indictment.

Failure to Appear, s.145 (2)

An accused who fails to attend court when she or he has been notified to be there and does not have a lawful excuse for her or his absence can be charged with failure to appear. It is also an offence if she or he fails to come into the police station for fingerprinting when ordered to do so (this is a s.145 (4) offence).

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Failure to appear is a dual procedure offence for which a person can be sentenced to up to two years in jail if the charge is prosecuted by indictment.

Refusing to Give Evidence, s. 545 Criminal Code

A witness who refuses to be sworn or give evidence at a preliminary inquiry can be jailed for up to eight days and then brought back to court to give evidence again. This procedure can be used again until the person does agree to testify at the preliminary inquiry.

Contempt of Court, s. 708(1), 484 Criminal Code

A witness who has been subpoenaed and fails to appear, either at a trial or at a preliminary inquiry, and does not have a good reason, can be cited for contempt of court. A witness can be cited for contempt of Court for refusing to give evidence at a trial. These citations of contempt of Court can carry a maximum jail sentence of 90 days.

A Judge can cite for contempt anyone who refuses to obey orders made by her or him in Court or who disrupts Court proceedings. This can include newspapers that print a preliminary inquiry after a non-publication order has been made. The power to cite for contempt for Court is a wide-ranging power to help the Judge maintain order both within and outside the Courtroom.

Perjury, s. 131, 132 Criminal Code

Any witness who makes a statement that he or she knows is false while under oath or affirmation can be convicted of perjury. This includes both oral evidence (testimony in court) and written evidence (affidavits, statutory declarations and depositions) Perjury is an indictable offence with a maximum jail sentence of 14 years.

Giving Contradictory Evidence, s. 136 Criminal Code

A witness who gives evidence that is contradictory an inconsistent on two separate court appearances can be charged with giving contradictory evidence.

A witness could be charged with giving contradictory evidence if he or she says one thing at preliminary inquiry, and the opposite at trial.

In this charge, there is no need to prove which piece of evidence was true and which is false. It is necessary, however, to prove that the inconsistent evidence was given with the intention to mislead the court. Like perjury, this is an indictable offence that carries a maximum sentence of 14 years.

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Breach of Probation, s. 733.1 Criminal Code

An accused person who willfully refuses to comply with a condition of a probation order is guilty of breach of probation. This might happen if, for instance, the accused is ordered to report to the probation officer on a regular basis and fails to do so without having a good reason. Breach of probation is a dual offence.

Quasi-criminal Matters

Quasi-criminal matters are legal matters that sometimes arise in Court but do not involve a criminal charge. The most common quasi-criminal matter heard in Court is peace bonds.

Peace Bonds, s. 810, 811 Criminal Code

Anyone who fears that someone else will injure him or her, or his or her spouse, children or property, can lay an Information alleging such fear. The person seeking the peace bond, called the informant, must come to court and explain to the Judge or Justice of the Peace why he or she fears the other person. The Justice of the Peace or Judge holds a hearing and, if satisfied that the person laying the information has realistic fears, the Justice of the Peace or Judge can order the accused to keep the peace and be of good behaviour.

This order is a recognizance, but it is more commonly called a peace bond.

The Justice of the Peace or Judge can attach a number of other conditions to the order such as staying away from the person laying the information. The maximum length of a peace bond is 12 months. They cannot be renewed. However, if the person who sought the peace bond still fears the person against whom it was obtained when it expires, he or she can go back to court and ask for new peace bond. Under s. 810 (3) (b), if a person refused to enter into a recognizance, the Court can impose a jail sentence of up to twelve months.

Most peace bond applications arise from family situations (e.g., a wife seeking a peace bond against a violent husband). However, they can be sought against anyone whom the informant fears.

Legally, the peace bond has the same effect as an undertaking or recognizance signed at a show cause hearing. If the person breaches the peace bond, he or she can be charged with breach of recognizance. This is a dual offence with a maximum sentence of six months in jail. This is different from the other breach recognizance charge involving a person who is out on a recognizance while awaiting trial. That breach of recognizance charge is a dual procedure offence for which person can be sentenced to two years in jail. In 1997, new sections were

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added to the Criminal Code including s. 810.01 (fear of criminal organizations) and s. 810.1 (fear of sexual assault).

 **Activities**

Self-Test

Please answer the questions below. If you are unable to answer the question, please refer back to the manual or ask your supervisor for assistance.

- Why is the Criminal Code important to the work of a Courtworker?
- List other federal statutes that deal with criminal law.
- What provincial acts may be relevant to the work of a Courtworker?

Practice

Please complete the following and submit it to your supervisor or a colleague for feedback.

Task

Using your copy of the Criminal Code, please research the following criminal offences.

- Mischief
- Joy Riding
- Sexual Assault

For each offence, rewrite the Code description in plain English/French so that a client could easily understand the charge.

The following section presents a brief overview of the *Youth Criminal Justice Act* which applies to young persons between the ages of 12 and 17 charged with a criminal offence. A Courtworker who is assisting a young client should be aware of the *Youth Criminal Justice Act* and ensure that the client receives the benefits of the *Act*.

To find out more about the *Youth Criminal Justice Act*, please visit the Department of Justice website at <http://canada.justice.gc.ca/youth>. On the Department of Justice website, *YCJA Explained* contains a wealth of material on the *Youth Criminal Justice Act* (YCJA), including information on:

- The policy goals and objectives of the *Act*;
- The application of the *Act*;
- The decision points that the *Act* provides for;
- The factors to be considered at the decision points; and
- The roles and responsibilities of those involved in the administration of the *Act*.

Introduction

On February 4, 2002, the House of Commons passed Bill C-7, the Youth Criminal Justice Act, S.C. 2002, c. 1 (hereinafter “YCJA”) to replace the Young Offenders Act, R.S.C. 1985, c. Y-1 (hereinafter “YOA”). The YCJA builds on the strengths of the YOA and introduces significant reforms that address weaknesses in the YOA. The YCJA provides the legislative framework for a fairer and more effective youth justice system.

Declaration of Principle

The YCJA contains both a Preamble and a Declaration of Principle to clarify the principles and objectives of the youth justice system. The Preamble, while not legally enforceable, contains significant statements from parliament about the values on which the legislation is based. These statements can be used to help interpret the legislation.

The Declaration of Principle sets out the policy framework for the interpretation of the legislation. The YCJA provides guidance on the priority that is to be given to key principles. The Declaration of Principle provides that:

- The objectives of the youth justice system are to prevent crime; rehabilitate and reintegrate young persons into society; and ensure meaningful consequences for offences. In these ways, the system can contribute to the long-term protection of

society.

- The youth justice system must reflect the fact that young persons lack the maturity of adults. The youth system is different from the adult system in many respects, including: measures of accountability are consistent with young persons' reduced level of maturity; procedural protections are enhanced; rehabilitation and reintegration are given special emphasis; and the importance of timely intervention is recognized.
- Young persons are to be held accountable through interventions that are fair and in proportion to the seriousness of the offence.
- Within the limits of fair and proportionate accountability, interventions should reinforce respect for societal values, encourage the repair of harm done, be meaningful to the young person, respect gender, ethnic, cultural and linguistic differences and respond to the needs of Aboriginal young persons and of young persons with special requirements.
- Youth justice proceedings require special guarantees to protect the rights of young people; courtesy, compassion and respect for victims; the opportunity for victims to be informed and to participate; and that parents be informed and encouraged to participate in addressing the young person's offending behaviour.

Extrajudicial Measures

The Youth Criminal Justice Act (YCJA) sets out extrajudicial measures which are measures other than court proceedings used to deal with a young person who has committed an offence. These extrajudicial measures are particularly appropriate for responding to less serious youth crime in a timely and effective manner. They include:

- taking no further actions
- measures based on police discretion, such as warnings, cautions and referrals to community programs with consent of young person;
- cautions by crown attorneys; and
- extrajudicial sanctions, which are the most formal type of extrajudicial measures.

One of the key objectives of the YCJA is to increase the use of effective and timely responses that do not involve the court with less serious offences by youth. Such extrajudicial measures provide meaningful consequences, such as requiring the young person to repair the harm done to the victim. They also allow early intervention with young people and provide the opportunity for the community to play an important role in developing community-based responses to youth crime.

Principles

- Extrajudicial measures should be used in all cases where they would be adequate to hold the young person accountable.

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- Extrajudicial measures are presumed to be adequate to hold first-time, non-violent offenders accountable.
- Extrajudicial measures may be used if the young person has previously committed offences.
- The objectives of extrajudicial measures include repairing the harm caused to the victim and the community; providing an opportunity for victims to participate in decisions; ensuring that the measures are proportionate to the seriousness of the offence; and encouraging the involvement of families.

Judicial Measures

Where informal extrajudicial measures have been deemed inappropriate to deal with a young person accused of a criminal offence, an official may decide that a charge should be laid against the young person.

Rights of Young Person

Once the charge has been laid, officials within the judicial system are obliged to ensure that the rights of the young person are protected. Most important among the obligations are the requirements to advise the young person of the right to counsel and to notify the young person's parents.

Other Aspects

Other aspects of the judicial process include:

- the first appearance,
- the plea,
- the trial, and
- appeal routes.

The provisions relating to the judicial process also set out the circumstances in which the court can:

- order the attendance of the parents of the young person,
- require the medical or psychological assessment of the young person or
- refer the young person to a child welfare agency.

Conferences

In general, "conference" refers to various types of processes in which affected or interested parties come together to provide advice to decision makers in specific youth justice cases.

Conferences generally operate in an informal manner. They can take the form of family group conferences, community accountability panels, sentencing circles and inter-agency case conferences. Conferences provide an opportunity for a wider range of perspectives on a case, more creative solutions, better coordination of services, and increased involvement of the victim and other community members in the youth criminal justice system.

Who May Call a Conference

A conference can be convened by:

- a youth justice court judge,
- the provincial director,
- a police officer,
- a justice of the peace,
- a prosecutor; or
- a youth worker.

Purpose of a Conference

Conferences may be convened, among other things, to give advice on:

- appropriate extrajudicial measures,
- conditions for judicial interim release,
- sentences, including the review of sentences; and
- reintegration plans.

Conferences are advisory only; they are not decision-making bodies. Conferences provide advice to a decision-maker, such as a police officer who is deciding whether to use an extrajudicial measure or a judge who is deciding which sentence to impose. The decision-maker would be unable to accept a conference's advice if it were not consistent with the requirements of the Act. For example, an agreement reached at a “restorative” conference must not include measures that are disproportionate to the seriousness of the offence.

Right to Counsel

A young person has the right, at any stage of the proceedings, to retain and instruct counsel without delay, and to exercise this right personally. The right to counsel applies before and during the consideration of an extrajudicial sanction. Young persons who are arrested or detained must be advised without delay about the right to counsel by either the arresting officer or the officer in charge. The officer must also provide the young person with an opportunity to obtain counsel. It should be noted that the right to counsel belongs to the young person — it is not exercised through a parent or guardian.

In addition to the obligations imposed on the police officer during arrest or detention, the YCJA requires that courts and review boards presiding at various stages in the process advise the young person of the right to counsel, and provide him or her with an opportunity to obtain counsel.

Upon Arrest or Detention

Once arrested or detained, a young person is to be advised without delay by the arresting officer or the officers in charge of his or her right to counsel. The young person is also to be given a reasonable opportunity to obtain counsel. If the young person does not have a lawyer at the first appearance before the court, the youth

justice court judge or justice must inform the young person of the right to retain and instruct counsel.

If the young person is not represented, before accepting a plea the court must:

- Ensure that the young person understands the charge.
- If applicable, explain the consequences of being liable to an adult sentence, and explain the process for applying for a youth sentence.
- Explain the plea options, and, if applicable, the election options.

If the court is not satisfied that the young person understands these matters, then the court must direct that the young person be represented by counsel.

Before a Young Person Makes a Voluntary Statement

The taking of statements from young persons is strictly governed. The provisions relating to statements are found in section 146 of the YCJA. If these provisions are not complied with, then the statement may not be admitted. This module is concerned strictly with how the right to counsel relates to statements taken from young persons. A separate module deals specifically with the topic of evidence.

The following steps must occur before a young person makes a voluntary statement:

- The person to whom the statement is to be made must caution the young person that he or she has the right to consult counsel and a parent or other appropriate adult.
- The person to whom the statement is to be made must caution the young person that any statement he or she makes must be made in the presence of counsel, a parent or other appropriate adult, unless the young person desires otherwise.
- The young person must be given a reasonable opportunity to consult with counsel, a parent or other appropriate adult.
- If consultation with counsel, a parent or other adult occurs, the young person must be given a reasonable opportunity to give the statement in the presence of the person with whom he or she has consulted.

During Consideration of Extrajudicial Sanctions

A young person has the right to retain and instruct counsel before and during any consideration of an extrajudicial sanction by the police officer or crown. Furthermore, a young person must be advised of the right to counsel and be given a reasonable opportunity to consult with counsel before consenting to the application of an extrajudicial sanction.

At a Hearing

When a young person attends a hearing under the YCJA without a lawyer, the court or review board must advise the young person of the right to counsel and must give the young person a reasonable opportunity to obtain counsel. This

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obligation is imposed on the court or review board regardless of whether the young person has already been informed of his or her rights by a police officer, or by any notice that the young person has received. The obligation provides an additional safeguard to the young person's right to counsel.

The hearings that give rise to the above obligation of the YCJA are:

- pre-trial detention hearings;
- adult sentence hearings;
- trials;
- hearings to consider the application for a continuation of the custodial portion of a youth sentence;
- hearings to determine whether the young person has breached condition(s) of his or her community supervision;
- hearings to set the conditions of a young person's conditional supervision;
- hearings to determine whether the suspension of a young person's conditional supervision is appropriate;
- reviews of a youth sentence held before a youth justice court under the YCJA;
- reviews of the level of custody.

Pre-Trial Detention

The YCJA provides new provisions that restrict the use of pre-trial detention and encourage the use of alternatives, including:

- a prohibition on the use of detention as a substitute for child welfare, mental health or other social measures;
- a presumption against the use of detention if the young person could not be sentenced to custody if found guilty of the offence; and
- a requirement that the judge inquire about the possible availability of a "responsible person" to provide an alternative to detaining the young person.

Trial

All trials of young people now take place in youth court, whether a youth or an adult penalty is sought. There is no transfer to adult court. All trials and sentencing are conducted separately from the adult process, with youth appropriate protections clearly set out and applicable to youth.

Electing Mode of Trial

Where an offence may attract a penalty, on conviction, of five years or more, the YCJA guarantees the youth's entitlement to elect his or her mode of trial, which is provided in the Criminal Code. This is a recognition of rights guaranteed the youth (and all other accused) under the Charter of Rights. The youth may choose between trial by judge or by judge and jury and may opt to have a preliminary inquiry. This arises in the case of offences that carry adult penalties of five years or more and in the case of murder whether an adult or youth penalty may apply.

Whatever mode of trial the young person selects, all trials take place in youth court.

Where the crown has indicated that it does not intend to seek an adult sentence and the court has ordered that an adult sentence shall not apply, an election is not necessary as any resulting youth sentence would be three years or less. There is one key exception to this rule, which arises in the case of first or second degree murder, for which the youth could be sentenced to 10 and 7 years, respectively. With respect to a possible youth sentence for one of these offences the court must put the youth to an election as to how he or she wishes to be tried.

Wherever entitled to elect mode of trial, the young person may elect between:

- Trial by youth justice court judge without a jury;
- Trial by judge without a jury following a preliminary inquiry; or
- Trial by judge and jury following a preliminary inquiry.

The judge reads the election to the young person before he or she makes a plea, explaining the options for trial and asking the young person to select one. The judge may require co-accused young persons to be tried by a court composed of a judge and jury. The crown may also require a young person to be tried before a jury despite his or her having elected another mode.

Youth Sentences

Following a finding of guilt, the court must proceed to consider the question of an appropriate sentence. The YCJA is devoted to sentencing and includes a statement of purpose and a set of sentencing principles to guide judges in deciding on a fair and appropriate youth sentence. Under the YCJA, the purpose of youth sentences is to hold young persons accountable through just sanctions that ensure meaningful consequences for them and promote their rehabilitation and reintegration into society.

Principles

- The sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person.
- Within the limit of proportionality, the sentence must be
 - the least restrictive alternative;
 - be the sentencing option that is most likely to rehabilitate and reintegrate the young person; and
 - promote in the young person a sense of responsibility and an acknowledgement of the harm done by the offence.
- The sentence must not be more severe than what an adult would receive for the same offence.
- The sentence must be similar to youth sentences in similar cases.
- Custody is restricted to violent and serious repeat offenders for whom there is no reasonable alternative to custody.

Youth Sentencing Options

In general, a custody sentence is to be reserved primarily for violent offenders and serious repeat offenders. In the case of a violent or serious repeat offender, custody is also prohibited unless no alternative to custody is available and a custody sentence would be consistent with the principles of sentencing listed above.

The addition of other new sentences in the YCJA provides youth court judges with more options to deal with the full range of youth crime. The new sentences include:

1. Reprimand. A reprimand is essentially a lecture or warning from the judge in minor cases.
2. Intensive support and supervision order. This sentencing option provides closer monitoring and more support than a probation order to assist the young person in changing his or her behaviour. It can be an alternative to custody. The availability and content of such a sentencing option is to be determined by the provinces/territories.
3. Attendance order. This order requires the young person to attend a program at specified times and on conditions set by the judge. The availability and content of such a sentencing option is to be determined by the provinces/territories.
4. Deferred custody and supervision order. This sentencing option allows a young person who would otherwise be sentenced to custody to serve the sentence in the community under conditions. If the conditions are violated, the young person can be sent to custody. This order is not available to the court if the young person has been found guilty of a serious violent offence.
5. Intensive rehabilitative custody and supervision order. This order is a special sentence for serious violent offenders. The court can make this order if:
 - The young person has been found guilty of murder, attempted murder, manslaughter, aggravated sexual assault or has a pattern of repeated, serious violent offences;
 - The young person is suffering from a mental or psychological disorder;
 - An individualized treatment plan has been developed for the young person; and
 - An appropriate program is available and the young person is suitable for admission.

Adult Sentencing

Young persons who have been arrested and charged with an offence may, in certain circumstances, be at risk of receiving an adult sentence if they are found guilty. For this situation to arise, the offence must have been one that would attract a penalty of more than two years if committed by an adult and the young person must have been alleged to have committed it when fourteen years or older. Of the offences that could fall into this category, some may carry a presumption that an adult sentence would apply on conviction, unless the youth can persuade the court that it is not necessary. The presumption does not mean that there will be an automatic adult sentence. It means that the young person must persuade the court that he or she should receive a youth sentence. With respect to the remainder of the offences in the category, the burden is on the crown not only to

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apply to the court for an adult sentence to be considered but also to demonstrate to the court that it is necessary.

Changes included in the Youth Criminal Justice Act (YCJA) have eliminated the problems associated with the transfer hearing to adult court in the YOA. While youth still remain at risk, under certain limited circumstances, to the longer terms and less youth-appropriate characteristics of adult sentences, new sentencing principles provide guidance to assist in ensuring that this exception to the youth sentencing regime is strictly focused on appropriate cases.

The YCJA does not lower the age at which a young person may be subject to an adult sentence. The YCJA does contain some significant changes regarding adult sentencing:

- The transfer process is eliminated. Instead, the youth court first determines whether or not the young person is guilty of the offence and then, under certain circumstances, the youth court may impose an adult sentence.
- A pattern of repeated, serious violent offences is added to the list of offences that give rise to the presumption of an adult sentence.
- The age at which the presumption of an adult sentence applies is lowered to 14. However, provinces have the authority to set the age at 15 or 16.
- If the Crown notifies the youth court that it will not be seeking an adult sentence for a presumptive offence, the court cannot impose an adult sentence.
- The test for an adult sentence requires the court to determine whether a youth sentence would be of sufficient length to hold the young person accountable. The accountability of the young person must be consistent with the greater dependency of young persons and their reduced level of maturity. If a youth sentence would be of sufficient length to hold the young person accountable, the court must impose a youth sentence.
- A young person under age 18 who receives an adult sentence is to be placed in a youth facility unless it would not be in the best interests of the young person or would jeopardize the safety of others.

When an Adult Sentence May Be Considered

In the following circumstances, a court may consider an adult sentence:

- The youth have been found guilty of an offence for which an adult could receive a sentence of more than two years; and
- He or she have been at least 14 years old at the time the offence was committed.

With respect to certain particularly serious offences, a presumption is created by the legislation that an adult sentence will result following a finding of guilt. Jurisdictions are authorized to determine the age (14, 15 or 16) at which this presumption will begin to arise. With respect to all other offences with a penalty of more than two years (for which no presumption arises), the crown must apply to the court if it wishes an adult sentence to be considered. In either case, all trials of young persons take place in youth court and, following a finding of guilt, the court is required to determine whether an adult penalty is sought or opposed by the parties. The court will do so by holding a hearing to assess whether a youth sentence would be of sufficient length to hold the youth accountable for his or her conduct. Only if the court finds that a youth sentence would not be sufficiently long may it go on to consider imposing an adult sentence.

Categories of Offences that May Attract an Adult Sentence

A youth could be liable for an adult sentence if convicted of an offence for which an adult could receive a sentence of more than two years. Within this offence range, the youth's liability and the process to be followed vary according to the nature or type of offence. These variations fall into three groups:

- Presumptive "a" Offences: Specified Offences (murder, attempted murder, manslaughter, aggravated sexual assault)

In the case of young persons charged with one of the four presumptive "a" offences, it is presumed that an adult sentence will apply.

- Presumptive "b" Offences: Repeat Serious Violent Offence

When a youth with a history of violent activity is charged with an offence involving serious violence, a presumption of adult sentence may apply. This will happen in cases where on at least two prior occasions the youth has been found guilty of an offence involving violence and a court has made a judicial determination in each case that the offence is a serious violent offence.

- Non-presumptive Offences

In addition to offences that may qualify as presumptive offences, as described above, there is a range of offences for which no presumption arises but for which the crown may apply to the court to consider an adult penalty. These are offences for which an adult could receive a sentence of more than two years that were committed by a youth when 14 years of age or older.

Custody and Reintegration

The YCJA includes many provisions to assist the young person's reintegration into the community after release from custody. Underpinning the new legislation is the belief that young people can be rehabilitated and successfully reintegrated

into the community. The focus of every custody sentence must be on reintegration and on measures aimed at assisting the young person not to re-offend.

Custody and Supervision in the Community

Under the YCJA, every period of custody is to be followed by a period of supervision in the community, as part of the sentence. This includes custody and supervision orders, intensive rehabilitative and supervision orders and youth sentences for murder. The judge, at the time of imposing a custody sentence, must clearly state in open court the portion of the sentence to be served in custody and the portion to be served in the community.

The YCJA contains a list of mandatory conditions that apply to all young persons while under supervision in the community. Additional conditions can be imposed to support the young person and address his or her needs, as well as to manage risk.

If a young person breaches a condition while under supervision in the community, reviews will be held that can result in a change in conditions or in the young person being returned to custody. If the provincial director has ordered the young person to be returned to custody, the court will conduct a review. If the court is satisfied that the young person has breached a condition, the court may order the young person to serve the remainder of the community portion in custody if the breach was serious. If the breach was not serious, the court may vary the conditions or impose new conditions.

It is also possible that a young person may not serve a portion of the sentence in the community following custody. Before the start of the community portion, the court can require the young person to remain in custody if the court is satisfied that there are reasonable grounds to believe that the young person will commit an offence causing death or serious harm before the end of the sentence.

Reintegration Plans and Reintegration Leaves

When a young person goes into custody, the YCJA requires that a youth worker plan with the young person for his or her reintegration into the community. The reintegration plan sets out the most effective programs for the young person to maximize his or her chances for successful reintegration.

When the young person is serving the community supervision portion of the sentence, the youth worker will supervise the young person, and provide support and assistance to the young person in respecting conditions and implementing the reintegration plan.

Under the YCJA, a young person may be authorized to have a reintegration leave for the purpose of the young person's rehabilitation and preparation for eventual reintegration into the community. Such leaves can also be used for medical,

compassionate or humanitarian reasons. Leaves are for a period of thirty days, though the provincial director on reassessment of the case can renew them.

Separation from Adults

The YCJA retains the general rule that a young person who is serving a youth custody sentence is to be held separate and apart from adults. The YCJA also creates a presumption that if a young person in a youth facility reaches the age of twenty, he or she should be transferred from the youth facility to an adult facility to serve the remainder of the sentence.

When a young person serving a youth sentence reaches adult age, a judge may authorize the provincial director to place the young person in a correctional facility for adults if the court considers it to be in the best interests of the young person or in the public interest. If a young person is placed in an adult facility, the adult conditional release entitlements will apply to the young person. The privacy provisions associated with a youth sentence will continue to apply.

The YCJA also contains new provisions that relate to placement of a young person who receives an adult sentence. Unless the judge is satisfied that it would not be in the best interests of the young person or would jeopardize the safety of others:

- A young person who is under the age of eighteen at the time of sentencing will be placed in a youth custody facility.
- A young person who is over the age of eighteen at the time of sentencing will be placed in an adult facility.

Publication

A cornerstone of youth justice in Canada is that the identity of a young person should be protected. The rationale is that publication of the name of a young person would impede rehabilitation efforts and detrimentally affect young persons and compromise public safety in the long run. However, there are certain exceptions.

Under the YCJA, the identifying information cannot be published until a youth court had found the young person guilty of the offence and imposed an adult sentence. The YCJA also allows publication of identifying information where a youth sentence is imposed for a presumptive offence. However, there are limitations:

- The court may decide that publication is not appropriate, taking into account the importance of rehabilitating the young person and the public interest.
- Publication is not permitted if the prosecutor has notified the court that an adult sentence will not be sought for the presumptive offence.

Victims

The youth justice system has been criticized for not adequately recognizing the interests and needs of victims. Under the YCJA, the interests and needs of victims are clearly recognized and the role of victims at different stages of the youth justice process is specified. Key provisions include:

- The principles of the YCJA specifically recognize the concerns of victims. Victims are to be given information about the proceedings and given an opportunity to participate and be heard. They are to be treated with courtesy, compassion and respect for their dignity and privacy.
- Victims have a right of access to youth court records.
- Victims are encouraged to participate in community-based approaches to responding to an offence.
- If a young person is dealt with by an extrajudicial sanction, the victim of the offence has a right to be informed of how the offence was dealt with.

Section 3

Client's Legal Rights and Responsibilities

Explaining Criminal Justice Procedures to Clients and Families

Courtroom Personnel

Adult Court Processes

CLIENT'S LEGAL RIGHTS AND RESPONSIBILITIES
EXPLAINING CRIMINAL JUSTICE PROCEDURES TO CLIENTS AND FAMILIES
COURTROOM PERSONNEL
ADULT COURT PROCESSES

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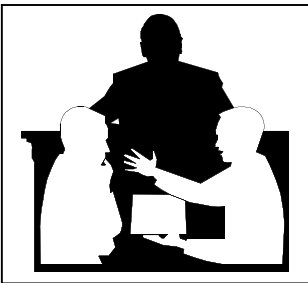
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Client's Legal Rights and Responsibilities, Explaining Criminal Justice Procedures to Clients and Families, Courtroom Personnel and Adult Court Processes

Purpose

The Criminal justice process can be very confusing and intimidating to a person who is unfamiliar with that system. One of the responsibilities of a Courtworker is to explain to a client and his or her family what is happening, and what may happen, as the person progresses through the system. This section is designed to assist a Courtworker with this responsibility.



Courtworker Functions

The Courtworker will:

- *Explain court procedures to a client and her/his family*
- *Explain the possible consequences to the client as a trial progresses*
- *Explain any options that may be available to the client as a trial progresses*
- *Advise clients of any Aboriginal/alternative justice programs (i.e. pre or post-charge diversion programs, sentencing circles) in operation in the community*
- *Monitor the justice process to ensure that a client's rights are respected*
- *Assist the client in meeting her or his obligations during the trial*

Clients' Legal Rights and Responsibilities

Learning Objective

The Courtworker will be able to explain a client's rights and responsibilities at various stages of the criminal justice process.

Learning Objective

The Courtworker will be there to monitor the legal process to ensure that a client's rights are being recognized and respected as the client progresses through the system.

The following describes the rights and responsibilities of your client at various stages in criminal justice process.

Rights At The Time of Arrest

- To remain silent;
- To retain and instruct legal counsel (or in the case of a youth;
- To refuse to submit to tests (e.g. polygraph, medical). (A person can refuse a breathalyser, but a charge of refusal would result);
- To appear before a Judge or Justice of the Peace within 24 hours of arrest, or as soon as reasonably possible;
- To refuse to appear in a police line-up;
- To refuse to come in for questioning, subject to an arrest;
- To know what the charge is;
- To refuse to submit to photographing and fingerprinting for a summary conviction offence; and
- To be released from custody, unless the arresting officer or officer-in-charge believes:
 - a) that detention is in the public interest, or
 - b) that there are reasonable and probable grounds that the accused will not appear in Court.

To determine if detention is in the public interest, the police must consider the need to:

- Identify the accused;
- Prevent the accused from committing another offence; or
- Protect evidence about the offence.

Responsibilities at Time of Arrest




- To obey the instructions of the arresting officer.
- To identify oneself to police.
- To submit to "reasonable search and seizure" (with or without a warrant).
- To comply with terms of release by the arresting officer or officer-in-charge.

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- To be photographed and fingerprinted, if charged with an indictable or dual procedure offence (could be prosecuted by indictment or a summary conviction).
- To appear at a specified police station to be photographed and fingerprinted, if charged with an indictable or dual procedure offence.

Rights in Court

- To request a show-cause (bail) hearing;
- To be released at a show-cause (bail) hearing, if the Crown Prosecutor agrees and Court so orders;¹
- To be represented by legal counsel at the show-cause (bail) hearing;
- To have an agent (friend, Courtworker) appear with the client during all Criminal Court proceedings;
- To have a Courtworker present when a client is charged with an indictable offence;
- To request an adjournment in first appearance Court to consult a lawyer;²
- To proceed to trial within a reasonable time after pleading not guilty;

ICON KEY	
	Important Information
	Test Your Knowledge
	Suggested Reading

¹ In some cases, the Crown Prosecutor does not have to show why the accused person should be kept in jail, and instead, the accused person must argue for his/her release. This happens if the accused person is not a resident of Canada, or is charged with trafficking in narcotics, or is charged with murder or an indictable offence while on bail for another serious offence. In these cases, the accused person must satisfy the Judge that it is safe to release him/her. This is reflected in sections 515 (6) and 522 of the Criminal Code. In a situation where an accused must satisfy the Judge that it is safe to release him/her, this is referred to as “reverse onus”.

² If the charge is an indictable conviction offence, generally the accused has the right to an election (choice) in first appearance court to choose one of the following: a) Provincial Court; b) Court of Queen’s Bench with Judge alone; or c) Court of Queen’s Bench with Judge and jury. (Most cases go to Provincial Court. For some offences, the accused person has no choice but Provincial Court. For some offences, the accused person has no choice but Provincial Court. Many other cases go to Provincial Court because that is where the accused person chooses to have the case tried. Very serious offences, such as murder, must be tried in the Court of Queen’s Bench with a Judge and jury. Where both the accused person and the Attorney General consent, these offences may be tried before a Queen’s Bench Judge alone.)

- To a fair trial with rights to: counsel; be presumed innocent until guilt is proven beyond a reasonable doubt; make full answer and defence; know the charges; be present at the trial and face his/her accusers; refuse to testify; a jury trial, when charged with an offence where the maximum sentence is five years or more;
- To the assistance of an interpreter in Court, to be provided and paid for by the Court, where necessary to ensure due process; and
- To a trial in English or French.
- To have dispositions/sentences explained, and to receive a document explaining the disposition/sentence.
- To appeal a conviction and/or sentence.
- To request time to pay a fine and to apply to participate in the Fine Option Program.
- Not to be tried or punished again for the same offence.
- Not to be found guilty of an act or omission if, at the time it was committed, it was not an offence.
- If the punishment for the offence has been changed between the time of commission and the time of sentencing, the accused has the right to receive the lesser punishment, if found guilty.
- Youth are entitled to have their parents notified and to have them accompany them to Court.

Responsibilities in Court

- To appear in Court when charged, on the date specified in a valid appearance notice, promise to appear, recognizance, or summons, in order to enter a plea or make an election.
- To enter a plea or make an election in first appearance Court, if proceeding without counsel.
- To comply with the bail order.
- To comply with the sentence/disposition.

Explaining Criminal Justice Procedures to Clients and Families

Introduction

A criminal case starts when the police charge a person with committing a criminal offence, and ends when the accused is acquitted or the sentence is completed.

The procedural steps in a criminal case can generally be described as pre-Court, Court, and post-Court procedures.

This section of the Training Manual provides an overview of the criminal procedures involved in a criminal case including Criminal Court proceedings and the role of various court personnel. Understanding these processes will enable you, as a Courtworker, to explain this information to your clients and their families. This is one of your primary responsibilities as an Aboriginal Courtworker.

Criminal Justice Procedures: An Overview

A criminal case starts when the police charge a person with committing an offence. There are many steps a case may go through. Not all cases follow the same steps. The steps a case takes depend on the circumstances. The police arrest some people but not others so the description of arrest procedures will not apply in all cases. If the person is arrested, there may be a show cause or bail hearing to decide if he or she stays in jail. All people charged with an offence appear in court to enter a plea.

This is when the person chooses to plead guilty or not guilty. Many people decide to plead guilty. Their cases never reach trial stage because of this choice. Others plead not guilty and go on to trial. In some cases there is a Preliminary Inquiry before trial.

Charge

When a police officer charges a person, he or she formally accuses that person of committing the offence. Subsequently, the police prepare a document containing the allegations and charges against the accused. This document is called the *information*. A person charged with an offence is provided with a copy of the *information*.

Whether the police officer arrests a person or not, he or she swears an *Information* at the police station charging the person with a crime.

The police often charge a person with a criminal offence but do not arrest the person. An arrest is when the police take the person into custody. The police can give a person an Appearance Notice at the scene of the crime, they can have the person come into the police station or they can later give summons to the person. The police can charge the person with another offence if he/or she does not appear in court.

Defences to a Charge

A defence lawyer may use one or more of the following defences at a trial. The lawyer presents evidence such as witnesses, physical evidence or the testimony of the accused to prove a defence.

No criminal state of mind

Where the accused person did not have a guilty mind when committing the crime, he or she may be found not guilty. For example, if the accused person was forced under compulsion to do something, he or she may not have had a guilty mind. He or she may not have had the intention to do something criminal.

Behaviour not voluntary

The accused person must have acted consciously. The criminal behaviour of that person must be voluntary. A person who does something while sleepwalking, for example, may not be acting

consciously. Similarly, a person's actions, brought on by an epileptic seizure or by a blow to the head, are not truly voluntary. Crimes committed in an unconscious state are rare, but if actions were not voluntary the accused person will be acquitted. This is called the defence of "automatism" because the person moves about automatically, without consciously controlling his or her actions.

Alibi

An alibi is used when an accused person claims that he or she was not present at time of the offence. Independent evidence supporting this claim strengthens an alibi defence.

Self-defence

A person who is attacked may use force to resist the attack. The person may use only the amount of force necessary to defend against the attack. This is called "reasonable force". A person charged with assault, murder or manslaughter might use this defence.

Defence of property

The defence of property is similar to self-defence. A person may use reasonable force to prevent someone from entering his or her home or coming on that person's property. The person defending his or her property may not use excessive force. This defence cannot justify shooting, stabbing or setting traps that would injure a trespasser.

Duress

A person who commits an offence because he or she was threatened may claim the defence of duress. The threat must be of immediate death or serious injury. It must have forced the person to commit the offence. Duress is not a defence to violent crimes such as sexual assault, aggravated assault or murder. An innocent bystander, forced at gunpoint to drive the getaway car after a bank robbery, might use this defence.

Provocation

Provocation is something that causes another person to lose his or her self-control. It can be an act or an insult. Provocation can reduce a charge of murder to manslaughter. This is the only time a person may use provocation as a defence. An accused person who acts on provocation before "cooling off" may be acquitted of murder and convicted of manslaughter. If too much time passes between the provocation and the offence, the defence of provocation may not be available. Even so, evidence of provocation can lessen the punishment the accused person receives for the offence if the person is convicted.

Mistake Of fact

A person whose behaviour would otherwise be criminal may have a defence if he or she made a mistake about the facts. Someone who leaves a bicycle in a bike stand, and rides off on another bicycle the same colour and make could use this defence. The rider was mistaken about which bike belonged to him or her, not about whether it was illegal to take someone else's bike. The person must be mistaken about the facts, not the law. The mistaken belief must be an honest one. Mistake of fact, where it occurs, cancels any "criminal state of mind".

Mistake of law

Ignorance of the law is no excuse. Not knowing that something is a criminal offence does not mean it is all right to commit the offence. But when an accused person can show that a government official misled him or her about the law, an exception called "officially induced error" applies. This is an example where mistake of law can provide a defence.

Mental disorders

An accused person who suffered from a mental disorder at the time he or she committed the offence may not be criminally responsible. The person must not have been conscious of what he or she did or that what he or she did was wrong. This defence was formerly called the defence of insanity. The Judge

may order an assessment of the accused person's mental condition. The assessment may be done to see whether the accused person is unfit to stand trial, to see whether the accused person was suffering from a mental disorder at the time of the offence, or for several other reasons. A psychiatrist or other medical practitioner assesses the person and reports back to the Judge, the defence lawyer and the Crown Prosecutor.

If an accused person is found not criminally responsible, on account of a mental disorder, the Judge has a choice. She or he may make an order concerning the person or may choose instead to refer the person to a review board. If the Judge makes an order, there are three choices available: an absolute discharge, a conditional discharge or a term in a psychiatric hospital.

The Judge may grant an absolute discharge. A mentally ill person can be kept in a hospital for a maximum of 90 days, at which time a review board must review the person's case.

If the Judge does not make an order and refers the case to the review board, the board has the same choices of absolute discharge, conditional discharge or a term in a psychiatric hospital.

Necessity

A person who does an illegal act to prevent a more serious result may raise the defence of necessity. There are several conditions. The accused must show that the act was done to avoid greater evil; there must have been no more than necessary to avoid the evil.

Intoxication

Ordinary intoxication by alcohol or drugs is no excuse. For example, in criminal law, a person who gets drunk and does a criminal act is usually still responsible for his or her actions when drunk.

Intoxication may be a defence for a narrow range of offences, such as murder or theft. These offences require the accused

person to form a special intent. A specific intent means the accused thinks about and intends a particular result, such as the intent to kill in murder cases.

A person maybe so intoxicated that she was unable to form this intent to kill. In this example the accused person may not be convicted of murder but could be convicted of manslaughter.

Long-term drunkenness or abuse of drugs may cause a person's health to deteriorate so that a mental disorder results. In that case, the accused person may not be criminally responsible for his or her actions and could use a defence of mental disorder.

Special pleas

A person who has been tried for an offence cannot be tried again for a similar offence arising out of the same facts. That person may plead a special plea that he or she has already been acquitted, convicted or discharged.

The Charter of Rights and Freedoms also includes this right.

Entrapment and Abuse of process

The police may carry out undercover activities to detect crime. In doing so, legally they may present a person with the opportunity to commit a crime, but they may not harass, bribe or otherwise induce the person to break the law. Police conduct that conduces criminal behaviour is called entrapment.

The accused person must prove entrapment. Entrapment is an abuse of process. It is so unfair and shocking to our sense of justice that it would be an abuse to force the accused person to stand trial in these circumstances. After accepting that there was an abuse of process, the Judge "stays" or stops the trial.

Arrest

A police officer may arrest a person he or she thinks has committed an offence. Although an officer may show that the person is under arrest by touching the person, usually the officer simply tells the person that he or she is under arrest.

The officer must say something that clearly shows that the person is not free to leave and must obey the instructions of the arresting officer. An officer may use force to make an arrest, if necessary. What is reasonable force depends upon the circumstances. The officer must say why the arrest is taking place, unless circumstances make it impossible to do so or unless the reason for the arrest is obvious.

Arrest With a Warrant

A warrant is a Judge's order for the arrest of the person named in the warrant. The police officer that believes an offence has been committed asks a judge to issue a warrant. A judge must reasonably believe that a person has committed a criminal offence before issuing a warrant.

Arrest Without a Warrant

Usually when a police officer arrests a person, he or she does so without having a warrant. To make an arrest, the officer must have a good reason to believe that a person has committed an offence. If that is the case, the officer may arrest someone to find out who the person is, to preserve evidence of the offence, to stop the offence from continuing or to make sure that the person will come to Court.

An officer also may arrest a person for whom he or she believes there is a valid arrest warrant. If these circumstances do not exist, the Criminal Code directs that the officer cannot arrest the person. The officer will charge the accused person and later serve the person with a summons to appear in Court.

If the officer has a good reason to believe that a person committed one of certain indictable offences, he or she may

arrest that person without a warrant. The officer then is then not limited to those circumstances listed above.

Citizen's Arrest

Any person may arrest another person who is committing an indictable offence who is escaping from arrest. This is called a "citizen's arrest". A person who owns property may arrest another person if he or she finds that person committed an offence against that property. After making a citizen's arrest, the citizen must take the arrested person to a police officer as soon as possible. Citizen's arrests are rare. Most people rely on the police to make arrests.

After Arrest

After a police officer arrests a person, that person must go with the officer. The officer must tell the accused person why he or she has been arrested. The person has the right to remain silent and the right to a lawyer. If the police keep the person in custody, they must charge him or her with an offence. Any person who has been arrested must be taken before a Justice of the Peace within 24 hours or as soon as possible.

Search

A police officer may search a person, place or thing for evidence. Since a search is an intrusion on a person's body or property, the police must have a good reason to search. In certain circumstances the police may make a search without a warrant. In other cases, they must have a warrant.

Search With a Warrant

Often the police must have a search warrant to search a place or a thing. For example, in most cases the police may not search a private residence without a warrant. A warrant is a Judge's order permitting the search. The warrant allows the police to search a place or a thing named in the warrant. The police officer who asks the Judge for a search warrant must have reason to believe that he or she can find evidence there.

There is a special provision for the police to get a warrant to force a person to give cell sample for DNA typing. The police must show that a serious offence has been committed, that there were cell samples at the crime scene and that there are reasonable and probable grounds to believe that the person committed the offence. The cell sample may be a few hairs, a saliva swab or drops of blood from a prick in the person's fingertip.

Search Without a Warrant

In certain situations the police may conduct a search without a warrant. For example, the police may search a person when they make an arrest. The police also may search a person they believe is carrying a dangerous weapon. Some laws give the police power to search a place or a thing without a search warrant.

Drug laws, customs laws, liquor laws and weapons laws allow searches without a search warrant. For example, under the Narcotic Control Act police may sometimes search a person, place or thing without a warrant. They may do this if they would have grounds to get a warrant but at the time it is not practical to get one. Under this law, the police may stop and search a car if they have a good reason to believe that it contains illegal drugs. Customs laws allow customs officers to open a package or search a person or a car. The officer must reasonably believe that someone is trying to smuggle goods into or out of the country before he or she conducts a search.

The Charter and the Right to Search

The Charter protects our right to be free from unreasonable search and seizure. Even where a law allows a search without a warrant the police should get a warrant, if possible, before the search. A search without a warrant may be against the Charter. A Judge who finds this right has been violated may decide not to allow evidence obtained through the search to be given in court. If the Judge decides not to allow the evidence in court, it may be difficult or impossible to get a conviction.

Seizure

After making a search, the police may take things they believe could be used as evidence. This is called seizure. The police must report to a judge about anything they seize under a search warrant, even if it will be used as evidence.

The Judge or Justice of Peace may order that the police or the Crown Prosecutor keep anything they need for the investigation, for a preliminary inquiry or for trial until the investigation is completed or the hearing takes place. Other things must be returned to the owner.

Fingerprints and Photographs

A person charged with an indictable or dual offence must allow the police to fingerprint and photograph him or her. Since most offences are either indictable or dual offences, in all but a few cases the police have a right to take fingerprints and photographs. The police do not have this right for an offence that is only a summary conviction offence.

If the police arrest a person, they usually fingerprint or photograph the person while he or she is in custody. If the police serve a person with a summons they will set a date, time and place for fingerprinting and photographs.

The police may ask a person charged with an offence to appear voluntarily in a police line-up. The person may agree or refuse.

Release From Custody

The police often release an arrested person soon after charging him or her. A judge may order that the police keep an accused person in jail until a later date or until a trial. There must be good reason to keep a person in custody. Only a Judge or Justice of the Peace may order that the accused stay in jail for longer than 24 hours.

Release by the Police

The police officer who arrests a person may release that person if he or she is charged with a less serious offence. In fact, the officer must release the accused person unless the officer believes there is a need to identify that person, to prevent him or her from committing another offence or to protect evidence about the offence. The officer also may refuse to release the accused person if he or she believes that person will not appear in Court. The police usually give the accused person an appearance notice or a summons that states what date the person must go to Court.

The officer in charge at the police station may release the accused person if there is no longer any reason to keep him or her under arrest. The officer may release a person charged with any offence punishable by imprisonment for five years or less. The officer in charge usually has the accused person sign a promise to appear or gives the person a summons. The officer in charge may refuse to release the accused person for the same reasons as the arresting officer.

Language Rights

There are two kinds of language rights available in criminal proceedings. First, the accused person or any witness has the right to the assistance of an interpreter. Second, the accused person is entitled to trial in English or French, depending on which of these two languages he or she speaks.

Section 14 of the Charter guarantees the right to an interpreter:

A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter. The accused person or a witness may have an interpreter if he or she does not understand or express him or herself adequately in the language the trial is held. The court provides and pays for an interpreter.

Canadian Courts may function in French or English. If an accused person does not have a lawyer at the time he or she first goes to court, the judge must advise the accused person of his or her right to have a trial in English or French, depending on which of these two languages he or she speaks. If the accused person's language is not French or English, the Judge can hold the trial in whichever of the two languages the accused person can best give evidence. In some cases the trial can be held before a Judge or Judge and jury who speaks both official languages. This language right is available across the country, no matter where the accused person lives, but the accused person must ask for them.

Plea

All offences, whether summary or indictable, start in Provincial Court. After an accused person has been released from custody at a bail hearing, he or she returns to Provincial Court to enter a plea or to elect which court to be tried in.

An accused person who was not held in custody appears in Provincial Court for the first time for the same purpose. The accused person may ask for an adjournment at this time to consult a lawyer. The judge usually grants this request. The Judge adjourns or puts off the case for a short time to allow time to see a lawyer.

The Judge will ask an accused person who chooses to go ahead without a lawyer to enter a plea or make an election, if one is required, at this Court appearance.

If the accused person pleads guilty and the Judge accepts a plea, there is no trial. The Judge has a duty to make sure that the facts justify a plea of guilty and that the person is not pleading guilty out of fear or ignorance. If the Judge accepts the guilty plea, the Judge holds a sentencing hearing, often right away. If the accused pleads "not guilty", the judge sets a date for the trial. The trial may be several months away, depending on how busy the courts are. The Charter protects the right to have a trial within a reasonable time.

The Courts must now consider this Charter right when scheduling criminal trials. An accused person who has an election and who chooses the Court of Queen's Bench does not make a plea until after the preliminary inquiry. If the accused person is committed to stand trial, at the first appearance in the Court of Queen's Bench, the Judge asks him or her to enter a plea.

Election

At the first appearance in Provincial Court the judge or the Crown Prosecutor reads the charge. The accused person enters a plea of guilty or not guilty.

Before entering a plea, a person charged with certain indictable offences must choose which court to be tried in. The accused person can choose Provincial Court or the Court of Queen's Bench. There are two types of trial in the Court of Queen's Bench: with Judge alone or with a judge and jury. This means an accused person may have the choice of a trial in (1) Provincial Court, (2) the Court of Queen's Bench with a Judge alone or (3) the Court of Queen's Bench with a Judge and jury. This choice is called an election.

Fewer cases go to the Court of Queen's Bench than to Provincial Court. Some offences do not go to the Court of Queen's Bench because the accused person has no choice but Provincial Court. Many other cases go to Provincial Court because that is where the accused person chooses to have the case tried.

Some very serious offences, such as murder and treason, must be tried in the Court of Queen's Bench with a judge and jury. Where both the accused person and the Attorney General consent these offences may be tried before a Queen's Bench Judge alone.

Preliminary Inquiry

There must be a preliminary inquiry for all cases that will be tried in the Court of Queen's Bench. A Judge conducts the preliminary inquiry to see if there is enough evidence to justify sending the case to trial. All preliminary inquiries are held in Provincial Court by a Provincial Court Judge. If the Judge finds there is not enough evidence to send the case to trial, the Judge will dismiss the charge. If the Judge finds there is enough evidence to justify trial, the judge commits the accused to trial in the Court of Queen's Bench. A date is set for trial and the accused person then enters a plea and the trial is held in the Court of Queen's Bench.

Even if the Provincial Court judge dismisses a case after holding the preliminary inquiry, a small chance remains that the case might continue to trial. The Attorney General may decide to send the case to trial. This is called a "direct indictment".

Rarely will an Attorney General choose to send a case to trial on a direct indictment without having a preliminary inquiry at all.

Trial

At the trial the Crown Prosecutor and the defence lawyer call witnesses and argue their cases. The Crown Prosecutor goes first; the defence follows. The length of the trial varies depending on how many witnesses the lawyers call and how long the testimony takes.

The accused person has a right to remain silent and does not have to give evidence at trial. No one can force him or her to say what happened. But, if the accused person takes the stand, he or she may be cross-examined and must answer any question asked, as long as the question complies with the rules of evidence.

If the charges are proved at trial, the Judge or jury finds the accused person guilty. If the charges are not proved, he or she is found not guilty. Another way of saying this is that the person

accused of the crime is acquitted. After the person has been tried and acquitted he or she may not be tried for that crime again, unless the Crown Prosecutor successfully appeals the case. This is a basic principle of Canadian law.

Appeals

A finding of guilty or not guilty does not necessarily end in the case. Appeal Courts exist to make sure that Courts do not make mistakes when applying the law.

Appeal rights and the procedure on appeal depend on how the offence was prosecuted. A person convicted of a summary conviction offence can appeal. If the charge has been dismissed, the Crown Prosecutor can appeal.

Both the accused person and the Crown Prosecutor may appeal an indictable matter. The Crown Prosecutor's right to appeal is limited to "question of law", such as the admissibility of evidence or the interpretation of the Criminal Code cases. The accused person or the Crown Prosecutor must have a judge's permission to appeal. This is called "leave" to appeal. Both the accused person and the Crown Prosecutor may appeal the sentence for any offence. Sometimes the Judge must also give leave for a sentence appeal.

Appeals go to a higher Court. In most appeals the Appeal Court does not listen to the evidence again. The Court studies the transcript of the trial and listens to the lawyers for each side. The Appeal Court has the power to decide if the lower Court correctly interpreted the law or if the sentence is fair.

Most summary conviction appeals go to the Court of Queen's Bench. Appeals of indictable offences go to the Court of Appeal. The Supreme Court of Canada hears appeals from the provincial Court of Appeal where "leave" is granted or where the Criminal Code gives a right of appeal.

Alternatives to Criminal Justice Procedures

In some communities, Aboriginal/alternative justice programs are in place. Offenders can enter such programs at various stages in the criminal justice process. The most common points of entry are: pre-charge, post-charge, sentencing, probation and parole. Courtworkers should familiarize themselves with the various programs in place in their communities.

Courtroom Personnel

Learning Objective

The Courtworker will be able to describe the functions and responsibilities of courtroom personnel.

The following is a brief explanation of the people involved in Criminal Court, and their roles in the Court/trial process.

The Person Charged

The person charged with a criminal offence is known as the "accused" or the "defendant". The accused is presumed innocent until proven guilty.

- He or she may want a lawyer to defend/represent him/her, or simply to give advice about the proceedings, including whether to plead guilty or not guilty.
- The accused person hires and instructs a lawyer and makes the final decision about a) how to plead; and b) whether to testify or not.

Learning Objective

The Courtworker will facilitate communication between clients and individuals within the Canadian Justice System.

The Police

- The police investigate crimes, arrest people suspected of committing offences, and charge people with criminal offences.
- Sometimes police officers prosecute minor provincial offences, such as traffic offences, but Crown Prosecutors handle criminal prosecutions.
- The provincial government in each province is responsible for policing.

The Defence Lawyer/Counsel

The Defence Lawyer/Counsel can be:

- Hired by the accused (if the accused can afford it);
- Provided by Legal Aid (if the accused's financial situation and the charge meet the criteria/conditions for Legal Aid) or
- Appointed by the Court (as under the YCJA).

The role of the Defence Lawyer/Counsel is:

- To speak on behalf of the person charged with the crime, and to defend the client to the best of his or her ability.
- To try to persuade the Judge or Jury that his or her client should be acquitted or should be found guilty of a less serious charge.
- To try to show the flaws or weaknesses in the Crown Prosecutor's case.
- To attempt to raise some doubt in the Judge or jury's mind as to the guilt of the accused; raises factors that point to the client's innocence or raise a "reasonable doubt" about the accused person's guilt. If there is a "reasonable doubt" about the accused being guilty, he/she must be acquitted.
- The defence lawyer also helps to make sure that the legal system operates fairly, by bringing to the Judge's attention any laws that assist the accused person's defence.
- If the person is found guilty, the defence lawyer can make submissions to the Judge (recommendations or factors which should be taken into consideration) regarding sentence.

Every person, even someone who was arrested in very suspicious circumstances, is entitled to present a defence at trial. A defence may be defined broadly as any denial or answer to the charge against the accused person. This definition includes defences that cancel part of the prosecution's case, such as the defence of "no criminal state of mind". Occasionally the defence lawyer thinks the Crown Prosecutor's case is so

weak that the defence lawyer chooses not to present any evidence. The defence lawyer can still argue that the Crown Prosecutor has not proven the facts or the required criminal state of mind, even when the defence calls evidence.

To convict, the Crown Prosecutor must prove the facts and the required state of mind in every case.

In a more narrow sense, a defence is a legally recognized excuse or justification for criminal conduct. To raise such a defence, the accused person must be able to point to evidence that supports the defence. For example, in an assault case, the Crown prosecutor may have proved that the accused person hit someone and that the accused person intended to hit that person. Unless she raises a defence, the accused person will be convicted. The defence may present evidence that the accused person was defending herself.

The defence of "self-defence" may then justify what would otherwise have been criminal conduct.

The Crown Prosecutor

The Crown Prosecutor is a government lawyer employed by the provincial or territorial Attorney General's department to handle criminal cases. (Federal Prosecutors handle drug cases and federal offences, except for Criminal Code and most Youth Criminal Justice Act offences.) The Crown Prosecutor's role is:

- To prepare the criminal case, after the charges have been laid, by:
 - a) researching the law;
 - b) reviewing exhibits and paperwork for Court; and
 - c) interviewing witnesses.
- To decide if there is enough evidence to justify taking the case to trial.
- To also decide whether to prosecute a dual offence as a summary conviction or as an indictable offence.
- If there is enough evidence for the case to go to trial, the Crown Prosecutor attempts to prove, beyond a reasonable doubt, that the accused person is guilty.

- If the person is found guilty, the Crown Prosecutor can make submissions to the Judge (recommendations or factors which should be taken into consideration) regarding the sentence.

The Judge

The role of the Judge is to:

- Decide the facts;
- Attempt to discover the truth;
- Judge whether certain evidence will be admissible.
- Decide if all of the elements of the charge have been proven beyond a reasonable doubt; and
- If the accused is found guilty, the Judge must decide what sentence (disposition) to give the person, within the possible range of sentences for that charge (which are provided within the Criminal Code).

Justice of the Peace

- The Criminal Code allows a Justice of the Peace to carry out some judicial functions, such as issuing arrest or search warrants.
- Sometimes an accused person appears before a Justice of the Peace, not a Judge. However, Justices of the Peace do not conduct criminal trials or sentence people.

Witnesses

Witnesses give evidence of their knowledge of the crime, or of the circumstances surrounding the crime.

- Usually the Crown Prosecutor or the defence lawyer asks a witness to appear in Court by issuing a subpoena to the witness. A subpoena is a written document ordering that person to appear in Court on a certain date.
- A Peace Officer, such as a Commissionaire or a Police Officer, usually delivers or "serves" the subpoena personally to the witness. It can also be served on another resident of the witness's home.

- A Judge may issue a warrant for the arrest of a witness who receives a subpoena and does not appear in Court. A witness can be charged with a criminal offence if he or she fails to appear in Court.
- If the witness refuses to testify, the Judge may find him or her in contempt of Court. The witness faces a jail sentence or a fine for contempt of Court.
- Witnesses can testify in Court about anything that is important to the case. This information must be something that the witness saw, heard, and knows or feels to be true.
- Witnesses cannot normally give evidence based on what someone told them (with a few minor exceptions). This type of evidence is called "hearsay".
- Witnesses must take an oath or solemnly affirm to tell the truth. It is a criminal offence, called "perjury", to lie while giving evidence under oath or affirmation in Court. Perjury is a serious criminal offence, punishable by up to 14 years in jail.
- Witnesses are usually seated outside of the Courtroom until they testify, so that their testimony will not be influenced by the testimony of other witnesses.
- Most people can appear as witnesses at a criminal trial. A child or young person under the age of 14 may give evidence, if he/she understands the nature of an oath or solemn affirmation and can communicate the evidence. He or she must be able to communicate the evidence and must promise to tell the truth.
- A husband or wife can testify against the other, but in some cases, the Crown cannot force the spouse to give evidence. The spouse may choose. There are times when the spouse can be forced to testify, for example, about certain violent offences, such as spousal or child abuse.
- An accused person may give evidence, if he or she wants to take the stand. The Crown Prosecutor cannot force the accused person to do so. It is the accused person's choice.

Commissionaire

DRAFT

A commissioner may deliver or "serve" a subpoena personally to each witness, requesting that they attend Court to testify on a specific date.

The Jury

The right to a jury trial is available for many serious criminal cases.

The Charter says a person charged with an offence where the maximum punishment is five years or more has the right to a jury trial.

As well, there are many offences under the Criminal Code punishable by less than five years in prison, where the accused person has the right to a jury trial (e.g. & Criminal Code Section 264.1, subsection 1 (b) or (c), uttering threats).

- Some offences, such as murder, must be tried by a jury, except where the accused person and the Attorney General agree to a trial without a jury.
- There is no jury in Youth Court.
- A jury is made of 12 people who do not have legal training. Each province and territory has laws that set out how juries are selected and who is eligible to serve on a jury. During the trial, the jurors listen to all the evidence. Sometimes the Judge asks the jury to leave the Courtroom, while the lawyers argue about whether the jury may hear certain evidence. (This is called a voir dire.)
- The jury must decide whether they are satisfied that the accused person is guilty, beyond a reasonable doubt. If they have a reasonable doubt about guilt, they must choose to acquit the accused person. To acquit the person means to find him or her not guilty of the offence. The jury members must all agree on the verdict of either guilty or not guilty.
- If the jury members cannot agree on a verdict, the Judge lets them go and ends the trial without a conviction (finding of guilt) or an acquittal (being found not guilty). When the jury cannot decide on a verdict, this is called a

"hung jury". The Attorney General may order a second trial with a different jury.

Court Reporter

- Court Reporters sometimes attend Court to type evidence as it is given. In most Courtrooms, tape recording machines have replaced Court Reporters.
- If lawyers ask for a transcript, a Court Reporter uses the recorded tape to prepare the transcript of the trial, which is a typed Court record of the proceedings in the case. Transcripts are often used at appeal hearings.

Court Clerk

The role of the Court Clerk is as follows:

- Maintains records and assists the Judge;
- Announces when the Court is in session;
- Reads the charge to the accused;
- Administers the oath to all witnesses;
- Marks and records exhibits entered as evidence; and
- Records the decision and sentence on the "*Information*".

Other Court Staff

Bailiff

If the accused person or a witness is in custody, the Bailiff accompanies him or her to Court.

The Bailiff also helps to maintain order in the Court.

Interpreter

The accused person has the right to request an interpreter, if one is required. If this request has been made, an interpreter would be made available in Court to interpret proceedings for the accused, and to translate the accused's testimony and statements to the Court.

Adult Court Processes

Summary Conviction Offences

All summary conviction offences (and absolute jurisdiction offences) are tried in Provincial Court by the procedure outlined below:

Learning Objective

The Courtworker will be able to describe the steps involved in both summary and indictable offence trails, including the appeal process and the implications of each stage for the client.

- The accused goes to his or her first appearance in Provincial Court.
- The accused may request an adjournment.
- The accused may enter a plea.
- If the accused is in custody, the Court may remand the accused to a later date (for a show-cause hearing).
- If the accused is in custody, the Court may hold a show-cause (bail) hearing.
- If the accused pleads guilty, the Judge will:
 - a) pass sentence; or
 - b) the accused may request an adjournment to prepare to speak to sentence; or
 - c) the Judge may request a pre-sentence report, and the accused may be released; or
 - d) the accused may be remanded until a show-cause hearing.
- If the accused pleads not guilty, the Judge will:
 - a) set a trial date, and the accused may be released, or
 - b) the accused may be remanded until a show-cause hearing.
- The judge's decision either
 - a) convicts the accused and passes sentence; or
 - b) acquits the accused.

Indictable Offences

For indictable offences, most first appearances are also held in Provincial Court. Some indictable offences may only be tried in a Provincial Court. These are called absolute jurisdiction offences under Section 553 of the Criminal Code and include:

- Theft, fraud, or possession of stolen goods under \$5,000;
- Attempt to commit the above;
- Operating a gambling house;

- Bookmaking;
- Placing bets;
- Cheating at play;
- Operating a lottery;
- Keeping a bawdy house;
- Fraud in relation to fares;
- etc...

Some other indictable offences under Section 469 may usually only be tried in Court of Queen's Bench with a jury. These include:

- Treason;
- Alarming her Majesty;
- Intimidating parliament or legislature;
- Inviting to mutiny;
- Seditious offences;
- Piracy;
- Murder;
- Being involved with the cover-up of a murder;
- Bribery of a Judge or acceptance of a bribe by a Judge;
- Attempting to commit any of above;
- Conspiring to commit any of the above;
- Crimes against humanity;
- etc....

However, where both the accused person and the Attorney General consent, these offences may be tried before a Queen's Bench Judge alone. In all other cases, the accused may choose or elect how he/she wishes to be tried:

- By Provincial Court Judge in Provincial Court;
- By judge and jury and Court of Queen's Bench; or
- By judge alone at Court of Queen's Bench.

The majority of cases go to Provincial Court. Some offences do not go to the Court of Queen's Bench because the accused person has no choice but Provincial Court. Many other cases go to Provincial Court because that is where the accused person chooses to have the case tried.

Release by a Judge

When the police keep a person in custody, they must take that person before a Justice of the Peace or a Provincial Court Judge within 24 hours or as soon as possible. The Judge must release the accused person unless the Crown Prosecutor argues that the person should not be released. If this happens, there will be a show cause hearing. This hearing is often called a bail hearing.

A lawyer may represent the accused person at a show cause hearing. Most show cause hearings take place in Provincial Court. A few serious offences, such as murder, go to the Court of Queen's Bench for the show cause hearing.

At a show cause hearing the Crown Prosecutor must show that there is a good reason to keep the accused person in custody. The Crown Prosecutor can show that the accused person is not likely to appear for trial or that he or she would be a danger to the public if released. In some cases, the Crown Prosecutor does not have to show why the accused person should be kept in jail. The accused person must argue for his or her release. This happens if the accused person is not a resident of Canada. This also happens if the accused person is charged with murder or with an indictable offence while on bail for another serious offence, or if the accused person is charged with trafficking in narcotics. In these cases and a few other situations, the accused person must satisfy the Judge that it is safe to release him or her.

At the end of the show cause hearing the Judge decides. The Judge will release the accused person unless there is a strong risk he or she will not appear for trial or that the accused person will be a danger to public safety.

If the Judge releases the accused person, that person must sign an undertaking in court. The Judge may add conditions to the release, such as reporting to the police once a week or even once a day. Sometimes the Judge orders the accused person to sign a recognizance. A recognizance is a written promise made by the accused person to appear in Court and to pay money if he or she does not appear. In some cases, the Judge asks for a deposit of money with the Court. The Judge can ask that

another person guarantee payment of the amount of the recognizance. If the accused person does not show up for trial, the person who paid the deposit loses the money.

Court Process: Entering a Plea

If the accused chooses a Provincial Court Judge, he/she will next enter a plea. The Provincial Court Judge may sentence the accused or a trial date will be set. This option is much the same as a summary proceedings, except that the sentences may be heavier. There must be a preliminary inquiry for all cases that will be tried in the Court of Queen's Bench, unless the accused waives the right to the preliminary hearing.

A Judge conducts the preliminary inquiry to see if there is enough evidence to justify sending the case to trial. A Provincial Court Judge holds all preliminary inquiries in Provincial Court. If the Judge finds there is not enough evidence to send the case to trial, he/she will dismiss the charge. If the Judge finds there is enough evidence to justify a trial, he/she commits the accused to trial in the Court of Queen's Bench and a date is set for the trial. The accused person then enters a plea and the trial is held in the Court of Queen's Bench.

Trial

- If the charges are proven at a trial, the Judge or jury finds the accused person guilty.
- If the charges are not proven, the accused person is found not guilty.

The Judge

- Convicts the accused and passes sentence; or
- Acquits the accused.

Appeals

Appeal rights and the procedure on appeal depend on how the offence was prosecuted. A person convicted of a summary conviction offence can appeal. If the charge has been dismissed, the Crown Prosecutor can appeal. Both the accused person and the Crown Prosecutor may appeal an indictable matter.

Summary Appeals

- The accused may appeal to have the conviction set aside and a not guilty verdict delivered. (Usually, if the Court feels that there is any basis for this, a new trial will be held.)
- The accused may appeal to have the sentence reduced.
- The Crown may appeal to have accused's sentence increased.
- The Crown may appeal to have accused's acquittal reassessed.

Indictable Appeals

The same appeals may be made in the case of indictable offences:

- The accused may appeal against the conviction;
- The accused may appeal against the sentence;
- The Crown may appeal against the sentence; or
- The Crown may appeal against the acquittal.

Appeals go to a higher Court. In most appeals, the Appeal Court does not listen to the evidence again. The Court studies the transcript of the trial and listens to the lawyers for each side. The Appeal Court has the power to decide if the lower Court correctly interpreted the law, or if the sentence is fair.

Summary conviction appeals go to the Court of Queen's Bench, with a subsequent appeal to the Provincial Court of Appeal. Appeals of indictable offences go directly to the Provincial Court of Appeal. The Supreme Court of Canada hears appeals from the Provincial Court of Appeal where "leave" is granted, or where the Criminal Code gives a right of appeal.

Stages of a Trial

The defendant is arraigned (first Court appearance).



The Crown and the defence may make opening addresses.



The Crown calls its evidence. Each witness is examined and cross-examined.



The defence may ask that the case be dismissed for insufficient evidence, or



The defence calls its evidence.



The Crown may call rebuttal evidence (evidence that contradicts that of the defendant). The defence may then call surrebuttal evidence (evidence that contradicts the Crown's rebuttal evidence).



The Crown and the defence may make closing addresses.



In a jury trial, the Judge charges the jury (reviews the evidence and tells the jury what law applies).



The jury retires to reach a verdict, and the Judge makes a finding of guilty or not guilty.



The defendant is sentenced if found guilty, or acquitted if found not guilty.

Summary

In summary, a Courtworker needs to be familiar with court procedures and court personnel so that those procedures can be explained to a client. In addition, as a trial progresses, certain options or decisions may become available to a client. A Courtworker should be prepared to explain those options or decisions, as well as the consequences of choosing one course of action over another.

Additional responsibilities of a Courtworker include monitoring the trial process to ensure that a client's rights are acknowledged and respected at all times and that a client meets her or his responsibilities during the trial process.

Learning Activities

Self-Test

Please answer the questions below. If you are unable to answer the question, please refer back to the manual or ask your supervisor for assistance.

1. Is an arrested person required to answer all of a police officer's questions?
2. Is an arrested person required to take a breathalyser test?
3. What is a 'reasonable search'?
4. Under what circumstances is a person required to agree to be finger printed?
5. Is a person required to identify him or herself when asked to by a police officer?
6. Can an accused person request the services of an interpreter?
7. Can a Courtworker represent a client accused of a summary conviction offence?
8. Can an accused person be required to testify against himself/herself?
9. Is the right to have a lawyer restricted only to persons charged with an indictable offence?
10. Which sections of the Charter of Rights and Freedoms deal specifically with criminal law?
11. Can an accused person be tried more than once for the same charge?
12. What information must be given to a person when they are first arrested or detained?
13. Are there any limitations on the amount of time a person can be free on bail?



Practice

Please complete the following and submit it to your supervisor or a colleague for feedback.

Tasks

Case Study #1

Please read the following case studies and answer the questions following each case study.

Conway, a young man, is browsing through a music store. He sees two cassettes by a recording artist whom he really likes. The cassettes are priced at \$12.95 each. Not having enough money, Conway slips the two cassettes into an inside pocket of his jacket. He continues to look through the cassettes and discs for a few minutes. Then he picks up a blank tape priced at \$3.99, which he intends to pay for as he passes the cashier's counter. As he approaches the cashier, he realizes that he is being watched. Before he reaches the cashier's counter, he removes the cassettes from his pocket and places them on a table filled with sale-priced cassettes. Then he proceeds to the cashier's counter where he pays for the blank cassette tape he is carrying. At this point, he is stopped by a security guard. The police are called and Conway is charged under section 334 of the Criminal Code with theft of the two cassettes.

What are Conway's rights and responsibilities?

What would you tell Conway when you first meet him?

Case Study # 2

A teacher heard some yelling and shouting coming from the bottom of a stairwell in the school. He and another teacher went down the stairs to investigate. As they descended, they started to smell marijuana. Three students were found at the bottom of the stairs. One of the teachers told these students to stay where

they were with the teacher. She then set off to get the vice-principal. After she had left, the second teacher started to question the students. One student refused to answer any questions, stating that he had been arbitrarily detained, contrary to section 9 of the Charter.

1. Is this detention of the student a violation of section 9 of the Charter?

- Choice A Yes. He had been told not to leave, and a teacher was there to make sure that he did not.
- Choice B No. Such detentions are a reasonable part of the educational environment.
- Choice C Yes. This was an unreasonable detention based on weak suspicion only.

The Correct Choice: Choice B

The student is "mouthing off". Submission to disciplinary steps such as these is a normal part of going to school. The Courts will not allow themselves to be drawn into such routine disciplinary procedures through the Charter. This is not a detention under section 9 of the Charter. Such an occurrence cannot provide a valid claim for a remedy.

Case Study #3

R. v. Therens [1985] 1 S.C.R. 613 (Supreme Court of Canada)

In April, 1982, the accused lost control of his car on a street in Moose Jaw, Saskatchewan, and hit a tree. A police officer investigating the accident demanded a breathalyser test, which the accused agreed to provide when he went to the police station for the test. After the test, he was charged with having more than the legal limit of alcohol in his blood. At no time was Therens informed of his rights under Section 10(b) of the Charter. He was cooperative throughout the investigation and was not placed under arrest at any time.

At trial, the Provincial Court Judge dismissed the charge. The Crown appealed to the Saskatchewan Court of Appeal. That Court upheld the dismissal. The Crown then appealed to the Supreme Court of Canada, which dismissed the Crown's appeal in a landmark judgement handed down in May 1985. A major issue in the case was whether the accused was under detention, within the meaning of Section 10 (b) of the Charter. In its decision, the Supreme Court ruled that a suspected driver who agrees to go to a police station for a breath test has been legally detained by the police. One of the Justices stated, "Detention may be affected... if the person concerned submits or acquiesces in the deprivation of liberty and reasonably believes that the choice to do otherwise does not exist."

1. Why did the Provincial Court Judge dismiss the charge against Therens?
2. Is it necessary to threaten to apply physical restraint to detain a person?
3. Why did the police and the Crown argue that Therens was not detained?
4. What are the rights of a person under detention?

Case Study #4

R. v. Sayer (1987), 54 Sask. R. 106 (C.A.)

The accused was charged with attempted murder in February 1983. It was alleged that she cut her husband's throat when they were arguing at a party. Her trial did not begin until September 1985, a delay of 31 months. She first appeared before a Judge in February 1983. She was released on her own recognizance. A preliminary hearing was set for June 1983. On the day of the preliminary hearing, the Crown asked for an adjournment because two witnesses, the victim and his brother, did not appear. In September 1983, the Crown asked for another delay because the witnesses failed to appear. A preliminary hearing was finally held in January of 1984. In February of 1984, the accused was committed for trial. There were then several more delays, all except one due to requests of the Crown.

1. Which one of the accused's rights has been violated?
2. Do you think the violation is justified?
3. In what way has the accused been harmed by the violation of her right?

Self-Test

Please answer the questions below. If you are unable to answer the question, please refer back to the manual or ask your supervisor for assistance.

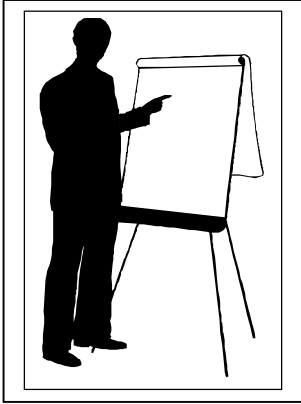
1. Is the *Information* the same as the charge?
2. Is an arrest a situation in which a person has been taken into custody?
3. Is a summons only issued by a Court Clerk?
4. Do the police always need a warrant to arrest a person?
5. Must a person who has been arrested be taken before a Judge or Justice of the Peace within 24 hours of the arrest?
6. Can police stop and search a car if they believe they have good reason to suspect that the car contains illegal drugs?
7. Can a person be held in custody if the police believe that the person, if released, will commit another crime?
8. What is a 'show cause hearing'?
9. What is a 'recognizance'?
10. Can an accused person request at first appearance an adjournment to consult a lawyer?
11. Under what circumstances must an accused person choose the court in which they will be tried?
12. When will a preliminary inquiry occur?
13. What does the term 'acquittal' mean?

Self-Test

Please answer the questions below. If you are unable to answer the question, please refer back to the manual or ask your supervisor for assistance.

Briefly explain the role of the following:

1. The defence lawyer/counsel
2. The Crown Prosecutor
3. The Judge
4. The jury



Practice

Please complete the following and submit it to your supervisor or a colleague for feedback.

Task

Indicate the defence being used by the person making each of the following statements:

- a) Accused: "I was speeding on the way to the hospital because the woman in the back of my car was giving birth."
- b) Witness: "The accused was at my home watching a video at the time of the offence."
- c) Accused: "He told me that if I didn't get him some drugs there would be skid marks on my back."
- d) Doctor: "Our examination indicates that the accused is susceptible to epileptic fits."
- e) Witness: "She struck her opponent with her hockey stick after being tripped by her three times."
- f) Accused: "I saw him selling televisions to other people. I didn't know they were stolen."
- g) Defence counsel: "My client was found not guilty of theft based on the same facts, your honour."

h) Doctor: "The accused suffered repercussions due to a blow to the head during the hockey game."

Alternative Activities

The Practice Exercises can be presented as opportunities for small group discussions if the training setting is appropriate.

Section 4

Courtworker Roles and Responsibilities In Court Part One:

- **Introductory Remarks**
- **First (and Second) Appearance**
- **Entering a Plea**
- **Show-Cause Hearings**

SECTION 4 COURTWORKER ROLES AND RESPONSIBILITIES IN COURT PART
ONE
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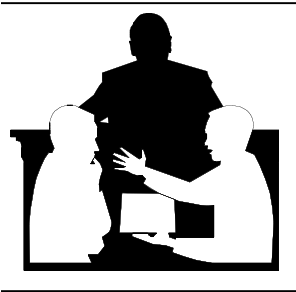
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Courtworker Roles and Responsibilities In Court Part One

Purpose

Sections 1 to 4 of this manual have presented a considerable amount of information that serves as the basic knowledge needed by Courtworkers to perform their duties. In Sections 5 and 6, we will consider the actual functions that a Courtworker may assume when she or he assists a client to move through the various stages of criminal court. The actual responsibilities of a Courtworker may vary, based on the location of the court, the Courtworker's job description or the mandate of the Courtworker's agency. However, although the Courtworker may not perform all of the functions contained in this section, he or she should be familiar with the duties and the accepted standards of performance.



Courtworker Functions

The Courtworker will:

- *Assist the client to obtain a fair trial*
- *Liaise with court personnel as required at various stages of a trial*
- *Assist the client to exercise his or her rights during a trial*
- *Act for the client as required or as directed by the court*

Learning Objectives




The Courtworker will be able to identify the required elements of an Information.

The Courtworker will be able to assist his/her client in preparing for court appearances.

As a Courtworker, one of your most important duties is to explain various procedures in criminal court to your clients and their families. Your role includes assisting clients before the criminal courts to receive fair, just, equitable and culturally sensitive treatment. It is also necessary for you to liaise between your client and administrators of the criminal justice system, and to assist the client in various steps along the way. This section will enable you to review procedures related to criminal court, so that you can explain them to your client and his/her family. As

well, you may assist the client to speak, as a "friend of the court", in such circumstances as first appearance in court, entering a plea, show-cause hearing, and speaking to sentence. This section will enable you to explain court procedures and perform the criminal court duties required of a Courtworker.

Act For the Client in a Liaison Role

ICON KEY	
	Important Information
	Test Your Knowledge
	Suggested Reading

The Courtworker can act for the accused in a number of areas before, during and after trial. Before proceeding with court work, the accused and the Courtworker should discuss all available options and alternatives in dealing with the charge including the availability of Aboriginal/alternative justice programs in the area. However, a Courtworker should never attempt to replace a lawyer. If the offence is an indictable offence, or if the accused is facing a possible jail sentence, the accused should be advised to seek legal counsel - either privately or through Legal Aid. In all cases, the Courtworker must be certain to do no more than the client has authorized. The Courtworker does not act as counsel for the client.

Acting for the Client in Criminal Court Procedures: Summary

Acting at First Appearance

Prior to the date of first appearance, the Courtworker should try to obtain a copy of the *Information* from the Court Clerk or from the police, if there is no Courthouse in the area. (The *Information* is the document that charges the accused with an offence and states when and where the offence was committed.)

- ✓ Prior to court at the first appearance (if the client does not have defence counsel or Legal Aid), ask the Crown for a copy of the circumstances (the *Information* and the particulars). The circumstances will normally contain a police report about the offence.
- ✓ At the first court appearance, if the Court Clerk or police have not previously supplied a copy, ask the judge for a

copy of the *Information*. If there is no *Information* available, the accused should be **discharged**.

- ✓ Usually, the accused should ask for a two-week adjournment to seek legal advice. The accused has a right to plead guilty at this stage, but the Courtworker should urge him/her to seek legal advice before deciding how to plead.

Acting Before Trial

Before trial, the Courtworker can act for the accused in a number of areas. The Courtworker may assist the client in such ways as the following:

- ✓ Obtain copies of documents (i.e. the *Information*, reports on evidence, statements by the accused);
- ✓ Obtain particulars; (i.e. charges, etc);
- ✓ Request/suggest court dates for preliminary motions (e.g. objections to defective *Informations*);
- ✓ Assist the accused at a show-cause (bail) hearing, if necessary ("speaking to bail");
- ✓ Assist the accused in obtaining a lawyer;
- ✓ Assist the accused in contacting local Aboriginal/alternative justice programs, if desired;
- ✓ Assist the accused in plea-bargaining with the Crown; and
- ✓ Obtain psychiatric assessment and assistance for the accused, if necessary.

In dealing with the Crown Prosecutor or the court prior to trial, the Courtworker must always ensure that the other party knows that he/she is speaking on behalf of the accused.

Acting at a Trial

After the accused has appeared (personally or through the Courtworker) and pleaded, the court may proceed to hold the trial, if no adjournment has been requested or granted. The accused is entitled to examine and cross-examine witnesses personally, or through a defence counsel.

Acting After Trial

The Courtworker may do a number of things after trial to assist the client. In assisting the client after trial, the Courtworker may:

- ✓ Obtain a certificate of dismissal;
- ✓ Seek an adjournment to allow the preparation of a pre-sentence report and/or a psychiatric assessment;
- ✓ Assist the client to set a date for the sentencing hearing;
- ✓ Assist the client to obtain transcripts of the trial for appeal purposes, or for use in preparing a sentencing submission;
- ✓ Assist the client to arrange for any witnesses for the sentencing hearing (including obtaining subpoenas, if necessary); and
- ✓ Arrange for defence counsel for an appeal.

Courtworker Responsibilities

Responsibility to the Client

The Courtworker has a responsibility to act in the client's best interests and to keep him/her fully informed at all times. This means not only informing the accused of what the Courtworker has done and the results of those actions, but also what the Courtworker proposes to do, why, and the probable results.

In addition, the Courtworker has a duty to keep the accused fully informed as to the developments in the case, and to have him/her participate fully in any evaluation and decision-making. The ultimate decision as to the conduct of the case and the role of the Courtworker must be the client's. However, a Courtworker's assistance for a client is limited to the defined roles and responsibilities of a Courtworker.

Responsibility to the Crown Prosecutor

The Courtworker must inform the officials, including the Crown Prosecutor, that he or she is acting for the accused. It is also

advisable to inform the Crown of the precise nature of the action (for example, to appear in court to set a trial date). The Crown should also be advised that the Courtworker will not take action on behalf of the client, without first obtaining his/her consent.

Responsibility to the Court

The Courtworker also has a responsibility to the court. The court must be informed of the Courtworker's status when he/she appears in court. The Courtworker should tell the court that he/she is appearing for the accused, and explain why the accused is not present, when this situation arises.

Assist the Client at First Appearance

Introduction

Usually, the trial of an accused is not held at the first appearance, although it can be, if all parties are prepared to proceed. Normally, however, there are preliminary matters to be settled prior to the trial, particularly if the first appearance comes soon after the accused has been charged. It is important for the Courtworker to complete all first appearance procedures properly, as this ensures efficiencies in the judicial process.

Requesting Amendments to Client Information

Your client has a right to know the charges against him or her. An *Information* is the document that charges a person with committing a criminal offence. It is important that you, as a Courtworker, examine the *Information* with your client to check for possible errors or **defects**.

If there are defects in your client's *Information*, you will need to assist your client to get the *Information* amended or quashed (made void) whereby no further proceedings may be taken on it.

Defects in an Information

In order to be valid, an *Information* charging an offence must meet the following conditions:

- It must be in writing and made under oath;
- It must charge an offence that is in a statute;
- It must not contain a "defect in form". Defects in form are defects in the way an *Information* is set out. An *Information* is usually set out in the form specified in the Criminal Code;
- It must not contain "defects of substance". Defects of substance are errors and omissions relating to the actual charge; and
- For a summary conviction offence, it must have been sworn within six months of the date on which the offence was allegedly committed.

The Courtworker and the client should read the *Information* to determine:

- What offence the accused is charged with;
- What section of which statute was broken;
- When and where the offence occurred;
- What acts are alleged as constituting the offence;
- How the offence was committed (e.g. any weapons used);
- Who was injured;
- What property was damaged; and
- What defects, if any, there are in the *Information*.

A defective *Information* should be challenged because:

- It may provide misleading information; or
- It may fail to provide the necessary information to allow the accused to enter a plea or prepare a proper defence.

If an *Information* is defective, the accused can make a motion to quash the *Information*.

This motion should be made prior to entering a plea by the accused or by the Courtworker, by simply informing the court of a motion to object to the *Information*. An objection to the

defective *Information* can also be made after entering a plea, but only with the judge's permission.

Defects in Form

Defects in form can vary from simple spelling mistakes, to omissions, such as failure to state the date of the offence, or failure to give the address of the *informant*. The *informant* swears before a justice by way of the *information* that the accused committed a criminal offence or, that he or she believes on reasonable grounds that the accused committed the offence. Whereas the *informer* is an individual who provides information to the police and whose identity is usually kept confidential. An *Information* that is not set out in the proper form will lack essential information that the accused is entitled to know. Defects in form are considered technical problems. If an *Information* is defective in form, the court will allow the Crown to amend the form by supplying the necessary information.

Defects in form are always amendable. If the *Information* is otherwise sufficient, defects in form will not be a ground for quashing the *Information*. Defects in an *Information* can be amended by the Crown in the following ways:

- The Crown can make a motion to amend the *Information*;
or
- The Crown can swear a new *Information* in the proper form, and either stay or withdraw the charges, based on the original defective *Information*. (In the case of summary conviction offences, the court may be prevented from doing this, if the six-month limitation period for the laying of charges has expired.)

Defect in Substance

There are three categories of defects in substance in an *Information*:

- Lack of sufficient detail to inform the accused and the court of the precise charge facing the accused. This is called "insufficient particularity". The charge must give

sufficient detail to identify acts or omissions by the accused;

- Lack of an essential element of the offence that is necessary to make the offence. This is called "lack of essential averment". For example, a charge of over 80, under section 253 of the *Criminal Code* must cite that the accused's blood alcohol level exceeded 80 mgs. of alcohol per 100 mls. of blood; and
- Duplicity. An *Information* is defective in the area of duplicity when it deals with more than one transaction or offence; (e.g., if an *Information* lists a number of accused persons whose offences are unrelated, or lists more than two offences in a single count).

If an *Information* is successfully challenged, the court may quash or amend the *Information*, or order the Crown to provide further details. If the challenge is unsuccessful and the *Information* stands, the accused may be able to appeal the decision. However, an amendment is, by far, the most common remedy.

First Appearance

When an accused first appears in court to answer a charge, one of the following can occur:

- If the accused is in custody, the court can hold a show-cause (bail) hearing to determine if, and under what conditions, the accused should be released from custody pending trial;
- The accused may request an adjournment to seek legal counsel;
- The accused may plead guilty. In this case, the accused may wish to ask for an adjournment to prepare a sentencing submission;
- The accused may plead not guilty; a trial date may be set. (The trial date should be at least a month away, to allow the accused to prepare a defence); and
- The accused may be "remanded" to a later date for the purposes of entering a plea, setting a trial date, or holding a show-cause (bail) hearing.

The Role of the Courtworker

The first step is to consult the section of the *Criminal Code* enacting the accused's charge in order to determine whether the accused's offence is a summary, indictable or dual offence.

Summary Offence

If it is a summary offence, the Courtworker must then consult the section of the *Criminal Code* enacting the accused's charge in order to determine the respective penalty for the summary offences at issue. Unless otherwise provided in the *Criminal Code*, the maximum penalty for a summary offence is a fine of \$2,000 and/or six months imprisonment in accordance with s. 787 of the *Criminal Code*. In addition, for all summary offences, the Courtworker should indicate to the accused that he or she will be tried at the Provincial Court level.

Indictable Offence

If it is an indictable offence, the Courtworker should determine whether the charge falls under one of the following three categories:

- a) s. 553 offences (such as theft under \$5,000, for which the accused does not have a choice as to mode of trial and will have his or her trial in the Ontario Court of Justice); or
- b) s. 469 offences (such as murder, for which the accused will be tried before the Superior Court of Justice); or
- c) other s. 554 offences - for all other indictable offences which do not fall within s. 469 or s. 553. The accused has the right to an election or choice of trial by:
 - i) a Provincial Court Judge, or
 - ii) a judge of the Court of Queen's Bench alone, or
 - iii) a judge of the Court of Queen's Bench and jury.

Dual Offence

If it is a dual offence, the Courtworker must then ask the Crown how it will elect to proceed, that is by indictment or summary conviction.

The accused's first appearance before a court in answer to an indictable offence will vary, depending on whether the accused is in custody or not.

- If the accused is in custody, the first appearance will usually be within 24 hours of the accused's arrest, or as soon as reasonably possible, and will be held to determine whether the accused should be released pending trial, and if so, under what conditions; and
- If the accused is not in custody, the first appearance will usually be for entering a plea and setting a date for trial. If the accused pleads guilty, the appearance could become a sentencing hearing, unless the accused moves to adjourn.

In summary conviction matters, the accused may be represented by an agent such as the Courtworker, rather than appear in person. At the first appearance, the Courtworker can deal with any matters that the accused has authorized him or her to deal with. (Note however, that the Courtworker may appear only with the judge's permission, and the judge may require the accused to appear personally.)

When appearing before the court, the Courtworker should:

- ✓ Introduce himself or herself;
- ✓ Inform the court that he or she is appearing on behalf of the accused based on authority given by the client through letter, phone call, etc.;
- ✓ Be prepared to explain why the accused is not present or why the accused wishes to have a Courtworker act for him or her; and
- ✓ Explain to the court what the accused wants (i.e. enter a not guilty plea, adjourn to seek legal counsel, etc.)

Even if the accused wishes to have a Courtworker appear on his/her behalf, the court may insist that the accused appear personally. The court will normally order personal appearance in cases where the court has some doubt as to the qualifications of the Courtworker to carry out this particular function, or where there is some suspicion that the accused is trying to avoid the proceedings.

The Second Appearance

The accused's second appearance will take place on the adjourned date. The second appearance will have one of the following purposes:

- The accused's trial (where the trial date was set at the first appearance);
- Setting a trial date;
- Entering a guilty plea; and
- Requesting a further adjournment (where, for example, the Crown has been refusing to supply details, the *Information* is defective, or a new *Information* has just been laid).

Speak to Adjournment

Introduction

An accused person or a Courtworker may request an adjournment of court proceedings at any time in the court process. However, a good explanation should be provided for the request.

Usually, the court will grant an adjournment automatically, if one is requested at the first appearance. The procedure for setting a date for the second appearance will be much simplified, if the accused or Courtworker has discussed the matter with the Crown Prosecutor beforehand, to determine which dates are acceptable to both parties.

Requesting an Adjournment

Common reasons why the accused might request an adjournment are:

- The accused may not have had the opportunity to obtain and study the *Information*;
- The accused may be obtaining an order for particulars and need time to study it;
- The accused may wish to seek and instruct defence counsel.
- The accused may have objected to a defect in the *Information* and, although the *Information* has been amended, he/she has been prejudiced in his or her defence.
- The accused may need more time to prepare a defence.
- Where the accused has pleaded guilty, an adjournment may be requested prior to sentencing. The accused may wish to make a sentencing submission, or have a pre-sentence report and/or a psychiatric assessment made, before the judge passes sentence.

Procedures for Adjourning a Case

When seeking an adjournment, the accused or Courtworker should inform the Crown Prosecutor that an adjournment will be sought.

When the Courtworker requests the adjournment, the Courtworker should:

- ✓ Introduce him or herself;
- ✓ Inform the court that he or she is appearing on behalf of the accused;
- ✓ Be prepared to explain why the accused is not present, or why the accused wishes to have a Courtworker act for him or her. [Note: for indictable offences however, the accused must be present for all court appearances];
- ✓ Explain why the adjournment is being requested;
- ✓ Be prepared to tell the judge how long will be needed for the adjournment; and

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- ✓ Ensure that, in granting an adjournment, the judge states the time, date and place to which the matter is adjourned.

Assisting the Client to Enter a Plea

Introduction

This section will discuss how you, as a Courtworker, may assist your client in the important task of considering and entering a plea. Some accused persons plead guilty hastily, in order to get the court ordeal over with. Others do not fully understand the concept or meaning of a plea. It is your role to provide assistance and information to your client, to ensure he/she is well prepared to enter a plea.

Entering a Plea

It is advisable not to rush a decision on how to plead. It is worth first seeking advice and giving the matter serious consideration. For this reason, it is recommended that an adjournment be requested at the first appearance.

There are two categories of pleas:

Common Pleas

- **Guilty:** an admission that the Crown can prove all the elements alleged in the *Information*. A guilty plea is not a conviction. It is an admission by the accused of all the relevant particulars of the offence alleged in the *Information*; and
- **Not Guilty:** a statement that the accused is innocent until proven guilty. It puts the onus on the Crown to prove all the elements of the offence that the accused is charged with, beyond a reasonable doubt. Accused persons are presumed innocent. If an accused person pleads not guilty to a charge and is convicted, he or she may appeal against both the conviction and the sentence.

Special Pleas (Note: These are extremely rare.)

- **Autrefois Acquit:** statement that the accused has been previously acquitted of the same offence, using the same facts;
- **Autrefois Convict:** A statement that the accused has been previously convicted of the offence, using the same facts; and
- **Pardon:** A statement that the accused has been previously convicted of the offence and that a pardon has been granted.

The principle underlying special pleas is that no one should be tried twice for the same offence. If the accused wants to enter a "special plea", the Courtworker should arrange for him/her to see a lawyer. It is not recommended that the accused or Courtworker proceed on a special plea without legal counsel.

Factors to be Considered When Entering Common Pleas

These are some factors that an accused may consider when deciding whether to plead guilty:

- Is the Crown's case against the accused strong?
- Is a defence or argument of justification available to the accused?

[These are the primary considerations when deciding whether to plead guilty.]

The following factors should not be considered by the accused when considering whether to plead guilty:

- Can the accused afford the cost of a trial, if free legal services are not available through Legal Aid?
- Will the accused be embarrassed by a public trial?
- Is the trial likely to be lengthy?
- Are there some circumstances of the case that, if brought out at the trial, may embarrass the accused and may also result in a heavier sentence?

- Is a plea of guilty likely to result in a lesser sentence?
- Will the accused be kept in custody to await trial?
- Would the accused be able to plea-bargain with the Crown?

An accused person may consider pleading not guilty under the following circumstances.

- The Crown has a weak case (i.e. evidence is circumstantial and fairly tenuous);
- The accused has a defence or explanation for his or her conduct (i.e.; alibi, self-defence, mistake of fact);
- The Crown Prosecutor or witnesses have been guilty of misconduct (i.e., entrapment, fabrication of evidence, undue delay in laying charges or commencing prosecution);
- A number of years have passed since accused's last conviction, and another conviction would delay eligibility for pardon;
- The accused has received a pardon. A conviction would revive a previous record and the person could not obtain a second pardon;
- There is a possibility of a civil action arising from the offence (e.g. in a motor vehicle case, the accused might face a charge of criminal negligence and also be sued by the victim); and
- The accused may be deported if convicted.

A person who is uncertain how to plead should consider a plea of not guilty because it is easier to change a plea from "not guilty" to "guilty" than vice-versa.

Plea Bargaining

Plea-bargaining is the process by which the accused negotiates with the Crown Prosecutor for:

- A lesser charge;
- The withdrawal of one or more charges; or
- A favourable sentencing submission, in exchange for a guilty plea to a charge.

Plea bargaining may be considered by the accused in cases where:

- The accused has been charged with more than one offence;
- The accused has been charged with an offence which could be charged in a lesser degree;
- A less serious offence could be charged; or
- The Crown could make a favourable submission at sentencing.

Plea bargaining would not be considered where the accused has a defence to the charge, or where there is some likelihood the accused will not be convicted at trial.

Entering a Plea: Guilty or Not Guilty

The accused may appear personally, or be represented by a defence counsel, or in a summary conviction offence, by a Courtworker.

When entering a guilty plea, the accused informs the court that he or she wishes to plead guilty. A judge has the discretion whether or not to accept a guilty plea. If the judge accepts the plea of guilty to a summary conviction offence, the accused is convicted and sentenced.

When the accused pleads not guilty, the judge must accept the plea. The judge has no discretion to refuse or accept a "not guilty" plea. In summary conviction offences where the accused pleads not guilty, the court will set a date for the trial.

 **Role of the Courtworker When Client Enters a Plea**

The Courtworker should:

- Assist the client to determine the appropriate plea (guilty or not guilty), if a special plea is not available or if a special plea is rejected;
- Determine if there is a possibility of effective plea-bargaining with the Crown;
- Assist the client to plea bargain, if appropriate; and
- Inform the client how to enter a plea, and advise as to whether a lawyer should be consulted about the plea.
- Assist the client to enter a plea, or enter the plea on the instruction of the client, if the client is unable to do so.

Assisting the Client at a Show-Cause Hearing

Introduction

A show-cause hearing is a hearing held before a judge to decide if a person should be released from jail before trial. If an accused is held in custody until a show-cause hearing, it is usually an indication that the accused's case is fairly serious. It is advisable to seek the assistance of defence counsel for a show-cause hearing, if possible. In the event that your client cannot obtain legal counsel, your role as Courtworker is to assist your client at a show-cause hearing.

 **The Role of the Courtworker**

It is a principle of Canadian law that people should not be held in jail, unless there is a clear reason for doing so. If an accused person is not released by the police, he or she must be brought before a judge or a Justice of the Peace within 24 hours, or as soon as reasonably possible. The judge must release the accused, unless the Crown Prosecutor argues that the person should not be released.

For most offences, it is up to the Crown to "show cause" why the accused should not be released. At a show-cause (bail) hearing following first appearance (if the accused is still in remand), the accused or the defense counsel or the Courtworker has an opportunity to present arguments to support the release of the accused.

The court is concerned with questions such as whether the accused will show up for trial; whether detention is necessary for the protection or safety of the public; and whether the accused will commit further crimes, if released.

The Crown may show that the accused may not show up for trial because of:

- His/her criminal record;
- The seriousness of the charge (both may indicate that the accused is likely to receive a jail term);
- A history of failing to attend court or disobeying court orders (e.g. breach of probation); and
- The fact that the accused is transient (with no roots in the community).

The Crown may show that the public needs protection from the accused because of:

- His/her criminal record;
- Drug addiction or alcoholism;
- The use of a weapon during the offence;
- The accused's associations with known criminals;
- The nature of the charge which the accused is facing;
- The fact that the accused is on parole;
- The manner in which the accused earns his or her livelihood;
- Where the accused lives;
- The personality of the accused;
- The accused's behaviour in prison; and
- The risk of the accused threatening witnesses, or otherwise interfering with the administration of justice.

All these factors indicate that the accused may be engaged in serious and repetitive criminal activity. The defence (counsel, the Courtworker, or the accused) may argue that the accused will show up for trial because:

- He or she has firm roots in the community, for example: is married; has a family or lives with parents; has a job or is attending school; owns property or a business; has reputable friends in the community;
- The offence is not serious;
- This is a first offence; and
- He or she has been on bail before and has always attended court.

The defence may show that the public is not at risk if the accused is released because:

- He or she has roots in the community (friends, relatives, property, school); or
- He or she has no previous record or has had a long period without committing an offence.

If the Crown is requesting severe or onerous bail, the defence may address the following issues:

- The income and assets of the accused (particularly when the assets of the accused are located on a reserve and cannot be used as security for cash bail);
- The income and property owned by the accused (which would indicate the amount of recognizance or cash bail which the accused would be able to post);
- Whether the accused has friends of good character who may be sureties (and particularly, whether the accused is a member of a reserve community with friends and family who have assets, such as reserve land, that cannot be used to support an application for surety);
- Where the accused has a history of alcoholism and alcohol-related offences, and he or she has stopped drinking or joined a treatment program, this should be pointed out. Any effort at self-help or self-improvement should be mentioned; and

- In the event that the Crown asks for a cash bail and the accused cannot possibly pay it, this should be pointed out to the judge, with the argument that a cash bail would be similar to a detention order for this particular accused. If the offence is minor and the judge does not feel that a detention order would be appropriate under the circumstances, he or she may decline to order cash bail.

Release of the Accused After Show-Cause Hearing

Once a bail order is made, the accused must comply with the bail order before he or she is released from custody. The Courtworker may also assist here:

- If an undertaking is required, the accused must promise to appear in court when required to do so;
- If an accused is released on his or her own recognizance, he or she must sign the recognizance, thus agreeing to forfeit money if he or she fails to appear in court when required to do so;
- If a surety is required, a satisfactory surety must be found. The court may name particular persons as sureties in the order;
- If a cash deposit is required, the money must be deposited with the court Clerk; and
- If there are conditions, the accused must agree to abide by them.

If the accused complies with the bail order, he or she must be released. If the accused is unable to comply with the order, he or she is held on a warrant of committal, to be released when the order has been complied with. The accused should be properly informed of the time and location of his or her next court appearance.

Summary

When a client is charged with an offence, the accused must decide how he or she are going to plead to the offence. Once that decision is made, the case may go to trial. This section has examined Courtworker duties in regards to the trial process, including assisting the client at first appearance. It is also important that the Courtworker ensure that the *Information* detailing the alleged offence is free of defects or errors of either form or substance.

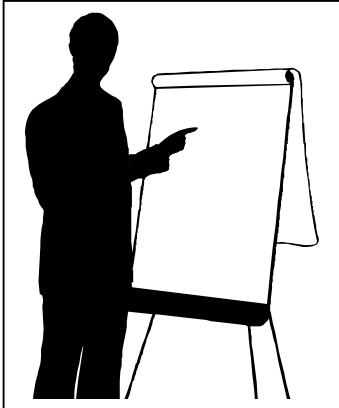
A Courtworker should also be prepared to assist a client at a bail or show-cause hearing and assist the client to obtain bail if feasible and practical. Lastly, a Courtworker should assist the client in accessing Legal Aid if the client is eligible.

Learning Activities

Self-Test

Please answer the questions below. If you are unable to answer a question, please refer back to the manual or ask your supervisor for assistance.

1. When can a Courtworker first obtain a copy of the *Information*?
2. When can a Courtworker assist a client to make an application for bail?
3. When can a Courtworker assist in obtaining psychiatric assessments of the accused?
4. Can a Courtworker arrange for witnesses to attend a sentencing hearing after the trial is complete?
5. When can a Courtworker seek an adjournment for the preparation of a pre-sentence report?



Practice

Please complete the following and submit it to your supervisor or a colleague for feedback.

Task

Please list, in your own words, a Courtworker's responsibilities to the following:

- The Client;
- The Crown Prosecutor; and
- The court

Practice

Please complete the following and submit it to your supervisor or a colleague for feedback.

Task

Using the information contained in the following case study, please describe what assistance you might give Joe if he was your client:

- Before the trial;
- During the trial; and
- After the trial.

CASE STUDY

Name: Joe Smith
Address: 123 Any Street
ANYTOWN, Canada
Telephone: 666-6666
Birthrate: 25/04/59 Sex: Male

Current Charge:

One (1) charge Assault, contrary to s. 266 CC.

Background:

Joe is the eldest of six children born to Lisa Smith. He was born on a small reserve in the north of the province. It was quite remote and his mother moved away with Joe shortly after he was born.

He does not know his natural father. The only father he has ever known is Joseph PERE, who lived in a common-law relationship with Lisa for about 12 years. While Joe indicates that he did not "love" Joseph, he found him to be "O.K." and a good provider. During the common-law relationship, Lisa was responsible for maintaining discipline in the family. When Joe was 15 years old, Joseph and Lisa broke up; Joe does not know why.

Lisa became involved with a man named George, a non-Aboriginal, who is the father of two of Joe's siblings. Joe recalls George's physical abuse of his mother and George's mistreatment of his brother and him. He does not remember when Lisa and George ended their relationship.

Lisa became involved in a third relationship with a man named Hugh. This was a sporadic relationship, which lasted for over 10 years. Joe blames Hugh for "dragging Lisa down". Joe left home soon after this last relationship began.

His memory of life at home is based on accounts provided by his siblings. Apparently, Hugh was an abusive alcoholic who deprived the children. Joe had witnessed Hugh's abuse of Lisa, and on one occasion got into a fight with Hugh over it.

Joe recalls that after he left home, he sent money to one of his brothers so that he could join him in Regina. The brother was able to buy a bus ticket, but Hugh kept the rest of the money.

Joe left his home in Prince Albert when he was 17 and moved to Regina. While he was in Regina, his mother and the family moved to British Columbia. Joe relocated a few times. In 1979 he moved to Alberta, to work on oil rigs and eventually in construction. He remained in Alberta for two years, during which time he had a relationship with a woman named Alice. Joe then moved back to Prince Albert where he stayed for four years. He then moved to Anytown. Shortly after moving to Anytown, Joe met Ann. Ann is from an Aboriginal community in British Columbia. Two years later, they began living together.

Joe and Ann's relationship has been somewhat rocky. He recalls a time when Ann caught him "cheating on her". Their relationship broke up for about a year. Ann indicates that over their six years together Joe showed verbal, mental, and physical abuse toward her, usually after he had been drinking. Joe admits to this abusive behavior, but justifies it by stating that Ann tends to "egg him on". He accused her of having a problem admitting to her alcohol abuse. Ann admits that Joe gets along with the children: Aaron, her son from a previous relationship and Chelsea, her and Joe's baby daughter.

Joe enjoys fishing, hunting and watching baseball. He pursues these activities alone, and, in the past, in the family unit with Ann.

Education and Training

Joe earned his Grade 12 through the Community College G.E.D. program in the early 1980's. He originally dropped out of school in Grade 7. He recounts the incident leading to this: he had been playing hooky and was caught by his mother; she told him that if he didn't go to school, he had to get a job and pay rent.

In 1981-82, Joe took a six-month electrical course. He expresses an interest in taking a typing course so that he can enroll in a computer repair program. He states that he will not do this until he deals with his current charge.

Employment

Joe is currently employed with a local firm cutting scrap steel. He started this job in January of this year. For a month last September 1990, he laid pipes for a construction firm. This was seasonal employment and he was laid off when the season ended. From 1987 to 1988, Joe worked as a welder.

He quit this job to go to work on the oil rigs in Alberta.

Financial Issues

Joe says he earns about \$880 a month. He has no assets and states that he has a personal loan debt of \$10,000, towards which he is not presently making any payments. Joe indicates that he would be able to pay a fine, if this is his sentence. He also indicates his willingness to participate in the Fine Option program, if he is allowed to work on week-ends.

Other Issues:

Joe admits to an alcohol problem. He says he has used alcohol since he was 15, and reveals he was sober only when in jail. In

1989, Joe was in the St. Louis Impaired Driver Treatment Program. He admits, however, that he entered at that time only to avoid jail. Recently, while on bail supervision, Joe was referred to the Calder Inpatient Rehabilitation Centre. He completed the three-week program. Harvey Wiseman, counsellor at Calder Centre, indicates in his reports that during his final week, Joe was active in group discussions and was progressively dealing with his self-esteem.

According to Mr. Wiseman, Joe left with a "clear understanding of addiction as a disease and how it applies to him". Joe was referred to the Calder Outpatient Clinic for a recovery plan, which he developed himself to include A.A. meetings and anger management. He indicates that he is attending A.A. meetings about three times a week.

Joan Caring of the Calder Outpatient Clinic reports that she saw Joe twice: once when he was referred to inpatient treatment, and once after the treatment. The early recovery program was recommended, but Joe only attended once. He reports that he got a job and was therefore unable to attend.

Joe has an extensive criminal record dating back to 1975.

His record indicates many alcohol-related offenses, including operation of a vehicle while under the influence. Joe's record also includes a sexual assault conviction in 1981, and an assault conviction in 1987. Sentences have included fines, restitution, and incarceration. He admits to a youth record in Prince Albert.

The Offence:

On February 21, 1999, Joe was in a bar with a friend. As they were leaving they met an angry Ann. Ann's son, Aaron, was outside in a car with his father, and Chelsea, the baby, was in the front seat. Ann gave the baby to Joe, saying that she, too, was going out drinking. Joe admits that this incident annoyed him during the rest of the evening.

Because Joe did not have a key to his house, he went to his friend's house with the baby. Joe then called his mother and brother in Prince Albert to tell them he wanted to go to their

place. During this time, he consumed more alcohol and was getting drunk. Joe eventually went to his home and tried to get in through the basement window while holding on to the baby. Anne caught him at the window and took baby Chelsea upstairs. A heated argument ensued.

Joe recalls only bits and pieces of the events. Ann suffered a swollen nose, black eyes and bruising to her body.

Impact on the Victim:

Emotionally, Ann says she is upset and afraid of Joe. She says she felt safer when he was in jail. She believes if given the chance, Joe would have shot her on the night of the offence.

Ann believes that Joe needs to spend a lot of time in jail. While he abstains from alcohol use now, Ann believes he will "fall off the wagon". She fears once this happens, he will come after her.

Offender's Attitude:

Joe admits his responsibility in this matter. He feels sorry for what has happened. Emotionally, he indicates that he is healing. He is concerned about visitation with his children. While on bail supervision, Joe underwent in-patient alcohol treatment and performed well. As a result, his case underwent a bail review and his Recognizance was amended, releasing him from his travel radius, curfew, and reporting conditions. As well, he got a job in January 1999.

He also indicates that he abstains from alcohol use. Joe is cooperative and appears forthright and honest. He willingly admits to an alcohol problem. He also willingly admits to his poor performance in the criminal justice system in the past. He appears to be making an effort to improve. He has also indicated a desire to reconnect with his family back in his home community.

Self-Test

Please answer the questions below. If you are unable to answer a question, please refer back to the manual or ask your supervisor for assistance.

1. What are 5 procedures that may occur at first appearance court?
2. How may a Courtworker assist the client at first appearance court?
3. What generally happens at a client's second appearance?
4. What usually happens at first appearance court if the client is charged with an indictable offence?
5. What are the five components of a valid *Information*?
6. What is meant by 'defect in form'?
7. What is meant by 'defect in substance'?
8. List examples of 'defects in substance'.
9. What should happen if an *Information* is defective?
10. What will probably happen if an *Information* is defective in form? In substance?
11. What is the limitation period for a summary conviction offence?

Practice

Task

Using the information contained in the following case study, please develop an outline for a presentation in which you request an adjournment in order to prepare a sentencing submission.

CASE STUDY: Jane Doe

A store is broken into, and the police investigate. Eventually, they question a suspect, Jane Doe, and then charge her with break, enter and theft. When the accused is arrested, the police search her and her apartment and find items taken from the store. Jane appears in court the next day. She is released on an Undertaking to appear for trial.

At the trial, she pleads not guilty and raises the defence of intoxication. The Crown Prosecutor, however, proves the case against the accused beyond a reasonable doubt. Jane is found guilty and sentenced to three years in prison.

She appeals the sentence, arguing that it is too harsh. The Appeal court agrees, since the accused is a first offender, and considers reducing the sentence.

Alternative Activity

The preceding practice activities could be presented as role-playing exercises if the training format is appropriate.