
Criminal Proceedings



IF YOU HAVE BEEN CHARGED WITH A CRIMINAL OFFENCE, THIS PAGE CONTAINS SOME USEFUL INFORMATION.

Criminal Charges

- ✎ Some criminal charges are made by way of a Summons, which is given to the accused person. These are typically for a charge of theft of a petty amount, simple possession of a small quantity of marijuana, and other offences that are more minor in nature.
- ✎ Some accused persons are charged and released from the police station on a Promise to Appear and Undertaking to Officer.
- ✎ Both the Summons and Promise to Appear require the accused person to attend at the police station for fingerprinting and mug shots, and to attend at the first court appearance.

Arrest & Detention

- ✎ In more serious cases, an arrest is likely to be made.
- ✎ Upon being arrested, the accused person has the right to silence, the right not to incriminate himself or herself, and the right to counsel of the accused person's choice. Having the right to counsel also means that if an accused person does not speak English, he or she must be given their rights to counsel by way of a lawyer who speaks their language or through the assistance of an interpreter.
- ✎ If an accused person chooses to provide a statement (that is, details about himself or herself, or details about the alleged crime) to police, anything that is said may be used against the accused person in a court of law. Therefore, it is recommended that an accused person speak with counsel before speaking with police.
- ✎ Duty Counsel (a lawyer funded by Legal Aid Ontario) can give you your rights in your given situation if your lawyer is not available.
- ✎ The best defence is to speak to counsel as soon as possible after being in contact with police (for example, if police ask you to attend at the station for an investigation, there is a good chance that you are a suspect and that they will arrest you). Assert your rights at the time of your arrest by asking the police to speak to counsel before you say anything further.
- ✎ If your rights to counsel and rights to silence are violated, you may be able to bring an application for a stay of proceedings and prevent the Crown Attorney's Office from continuing to prosecute you.

Releases without Bail

- ✎ After charging an accused person, an officer may release him or her on a Promise to Appear.
- ✎ Sometimes, an accused person's release may be offered if the accused person enters into a recognizance (without sureties) in an amount up to \$500 without depositing that money, but on the risk of losing it should the accused person not appear in court when required. An example of when this might happen is when an accused is not ordinarily resident in Ontario.
- ✎ An officer may detain an accused person for a bail hearing.

Releases on Bail

- ↵ An accused person has the right to reasonable bail and the right to appear in court within 24 hours, unless a justice is not available within that timeframe, in which case the accused must be brought before a justice as soon as possible.
- ↵ Sometimes, an accused person may be released on his or her own recognizance.
- ↵ In other cases, a surety may be required to secure your release. If you do not have a surety, in some cases, you may qualify for the local bail program.
- ↵ Having your own lawyer is invaluable. For instance, once retained to act on your behalf, we call your relatives and friends or your local bail program and make necessary inquiries to secure your release.
- ↵ In order to be approved by the court, a proposed surety will generally have to:
 - ↵ appreciate the seriousness of the charges;
 - ↵ be willing and able to supervise you or, possibly, reside at the same location as you;
 - ↵ be able to pledge an acceptable dollar amount as payment that may be forfeited to the court should you breach any of your bail conditions; and
 - ↵ be able to ensure your attendance at court as required.
- ↵ In some circumstances, the surety may actually have to post a cash bond in order to secure your release. An example of when this might happen is when an accused is not ordinarily resident in Ontario.
- ↵ Sometimes a publication ban may be imposed at the bail hearing so that evidence tendered at the bail hearing cannot be published until the conclusion of the matter. Likewise, there may be other orders made at a bail hearing.
- ↵ Sometimes, proper preparation is required for a bail hearing and that may mean it would have to be adjourned for a day or two. A lawyer will use that time to gather employment, medical and other evidence that would be useful in securing the release of the accused person. It is often less expensive to put a bail hearing over for a day or two than to proceed with it, be denied bail then have to wait a week to 10 days for a bail review hearing.

Bail Variation

- ↵ If initial bail conditions (such as to reside at a certain address or comply with a curfew) are too onerous, it may be possible to negotiate a variation to that bail. A court will change certain conditions if the Crown Attorney's office consents. If the Crown Attorney refuses to consent to the proposed change, a bail review application may be necessary.

Bail Review

- ↵ If bail is initially denied or the Crown Attorney refuses to consent to a change in the bail, a bail review application to the higher court (Ontario Superior Court of Justice) may be necessary. A privately retained lawyer can assist you with this process.
- ↵ Bail review applications require the Information (the document listing the criminal charges against you) and transcripts from previous bail hearings to be ordered, the preparation of an application, sometimes involving case law, and the preparation of affidavit and other evidence from one or more proposed sureties or other witnesses who can assure the Court that the release or change in conditions is appropriate.
- ↵ It is no small task to bring a bail review, but it usually costs about three times the amount of a bail hearing plus the cost of transcripts.

Pre-trial Custody

- ✎ In cases where an accused person is detained by virtue of not having a suitable surety or is denied bail for other reasons, any time spent in custody prior to the conclusion of the case is referred to as pre-trial custody.
- ✎ The courts used to grant 2:1 credit for pre-trial custody toward any jail sentence fairly readily, but that has recently changed, and your lawyer will have to assess your eligibility for enhanced credit. The chance of obtaining enhanced credit for pre-trial custody depends upon a number of factors, among them the conditions of the institution in which an accused person spent his pre-trial custody.

Disclosure

- ✎ Disclosure refers to the package of evidence and other information that the Crown Attorney's office is obligated to provide an accused person. These include witness statements, police officer notebook entries, documents, photographs, videotapes, audiotapes and other evidence.
- ✎ The Disclosure package includes a synopsis prepared by police which summarizes the offence. This is not considered evidence for trial, but is used to form the evidence for a guilty plea proceeding. Sometimes it is necessary for a lawyer to negotiate certain details to be removed or modified from the police synopsis to more accurately reflect what actually happened.
- ✎ In most cases, the accused person receives disclosure on the first court date. In more complicated cases, some disclosure may be given initially and then developed more fully with time. The timing of disclosure is important because a substantial delay in disclosure may breach an accused person's right to a trial within a reasonable time limit. Any such breach may lead the court to stay the proceedings so that the Crown cannot continue with the prosecution.
- ✎ Disclosure is fundamental because it give an accused person an idea of the evidence to be tendered by the Crown and indicates to the defence lawyer the type of evidence necessary to counter the Crown's evidence.

Remands

- ✎ Remands are court appearances that occur before a trial, peace bond or guilty plea proceeding is held.
- ✎ When an accused has been remanded to appear on a particular date, it simply means that the case is adjourned to the next date.
- ✎ For example, when an accused person appears in court for the first time on a charge, disclosure is usually provided and then the accused person is remanded to appear in court two or three weeks later to allow for the review of that disclosure and consultation with defence counsel.

Pre-trial Conferences

- ✎ Defence counsel meet with a lawyer from the Crown Attorney's office. This type of pre-trial conference is usually referred to as a resolution meeting. The Crown Attorney and defence counsel try to resolve the case and this is where defence counsel may be able to provide information to try to have the charges withdrawn, stayed, resolved on a diversion or peace bond, or where there is little else that can be accomplished, to try to reduce the number of charges and lock the Crown Attorney into a more favourable sentencing position. The importance of having privately retained counsel for this process cannot be understated.
- ✎ All discussions held are on a without-prejudice basis. This means that any information defence counsel provides cannot be used against you. However, defence counsel takes great pre-caution not to tip the Crown Attorney off as to the evidence an accused person may use in defence against the charge. This precaution must be balanced by the need to provide some information to cast an accused person in a favourable manner.

- ↪ If a case cannot resolve or it is likely to proceed to trial, a judicial pre-trial conference may be held. This is another discussion between the Crown Attorney and defence counsel, but a judge participates. Again, it takes place on a without-prejudice basis, so that if you ultimately proceed to trial, the trial judge will not be aware of the discussions that took place. A judge's input can be invaluable and may even lead to a charge being favourably resolved after the judicial pre-trial conference.

Withdrawal and Staying of Charges

Unconditional Withdrawal

- ↪ In some cases, there is insufficient evidence to warrant continued prosecution and the charge may be withdrawn. In other cases, defence counsel may be able to convince the Crown Attorney to withdraw the charge on the strength of defence evidence.

Diversion

- ↪ In some cases, where the charge is not as serious, it may be possible to resolve the criminal charge on a diversion. This means that the accused person would have to accept responsibility for the act, but not plead guilty to it, and complete certain requirements.
- ↪ Requirements may include performing community service, writing an essay, making a charitable donation, writing an apology letter, taking counselling, making restitution by returning or paying for stolen or damaged items, or other such activities or combination of activities as negotiated with the Crown Attorney's Office. Upon providing proof that the diversion requirements have been satisfied, the Crown Attorney will withdraw the charge or ask that the charge be stayed.
- ↪ Examples of charges that may be resolved by way of diversion are an alleged theft of inexpensive items, mischief involving nominal damage to property, simple possession of a small quantity of prohibited substances such as marijuana, and so on.

Peace Bonds

- ↪ In certain cases, it is possible to negotiate a peace bond in exchange for a charge being withdrawn.
- ↪ A peace bond is a promise to the court, and, in fact, an order of the court, that an accused person keeps the peace and be of good behaviour for a period of up to 12 months. Other conditions may be attached. These may include no contact with the complainants that brought the criminal charge forward or contact with their written revocable consent only. There may be a provision to take counselling or perform community service. There may be an arrangement made with the Crown Attorney's office that counselling and or community service or another act be performed in advance of the Crown Attorney resolving the criminal charge by way of peace bond. Each case and each accused person is different and must be considered individually.
- ↪ If a peace bond is breached, a hearing would be held and, if the breach is established, the accused person would forfeit a certain amount of money to the Crown.

Guilty Pleas

- ↪ When it seems likely that a defence against charges is highly unlikely, the accused person may wish to plead guilty to the charge.
- ↪ In such a case, it is wise to make this determination early, usually after all of the disclosure has been made available. Courts consider an early guilty plea a sign of remorse, which may make the sentence less harsh.

Trials

- ↪ If there is a defence to a case and the Crown Attorney refuses to resolve the matter to the satisfaction of the accused person, a trial would be held.
- ↪ The Crown Attorney may call any number of witnesses to testify against an accused person, such as complainants, witnesses to an alleged crime, police officers and others. The Crown may also tender documentary, photographic, videotaped or audiotaped evidence. Defence counsel may challenge the admissibility of evidence, if appropriate, and will certainly challenge Crown witnesses as to their evidence through questioning called cross-examination.
- ↪ The Defence then decides whether to call any evidence such as witness or expert evidence.
- ↪ Sometimes, the Crown counsel may be entitled to enter reply evidence in response to the cross-examination.
- ↪ At the conclusion of the case, the judge will make a decision. If a judge finds an accused person “not guilty”, the person has been acquitted. If the judge makes a finding of guilt, it is the sentence itself that will determine whether the person will have a conviction registered against them. For example, absolute and conditional discharges are not convictions even though there has been a finding of guilt.

Sentencing

- ↪ After a finding of guilt is made at a trial or guilty plea proceeding, the judge will determine the appropriate sentence. This is done after the Crown and defence counsel make submissions about the appropriate sentence. A number of factors are considered and sometimes sentencing can be a complicated exercise depending upon the nature and number of charges, the accused person’s circumstances, the number of co-accused persons involved, the harm done to victims or property, and so on.
- ↪ A judge has to balance a number of factors: general deterrence, specific deterrence, rehabilitation and integration of the accused into the community, risk of recidivism (committing crime again), and so on.

Appeals

- ↪ Both the accused person and Crown Attorney may be able to appeal a judge’s finding of guilt and subsequent sentence. There is only a short time to put the appeal together, so if you wish to appeal a court decision, you should retain counsel immediately. An appeal lawyer may also be able to secure bail pending appeal.

Pardons

- ↪ A criminal record can be a huge impediment in your life. It may affect your ability to travel to other countries, obtain employment, perform volunteer work, and may create other restrictions and inconveniences to you. You should consider applying for a pardon as soon as you become eligible.
- ↪ If a charge was a summary conviction offence or the Crown elects to proceed summarily, a person may be eligible to apply for a pardon three years after the conclusion of a sentence. For indictable matters, the eligibility waiting period is five years after the conclusion of a sentence.
- ↪ It is a mistake to think that youth convictions are erased from a person’s criminal record. A pardon may still be necessary.
- ↪ It is best to obtain legal advice about your individual situation, but don’t wait too long as you should apply as soon as you are eligible to do so.