



## Webinar 3: Handout 1

### Communication Access to Legal and Justice Services in Canada

#### Common Criminal Legal Terms

**Absolute discharge:** This means that even though the accused was found guilty, the court does not register a conviction against him, with the result that he does not have a criminal record.

**Accused:** This is the word used to identify the person who has been charged with committing a criminal offence. Before he is charged, he may be known as the “suspect.” During the trial proceedings, the accused is commonly called the “defendant.” If he is found guilty, he may then be called the “perpetrator.”

**Acquittal:** When the accused is found not guilty of the charges against him, he is given an acquittal.

**Adjournment:** Court cases are often postponed to a later date – this is called an adjournment. Either the Crown Attorney or the accused can request an adjournment. People often ask for an adjournment to give them time to find a lawyer or to prepare their case.

**Bail:** When someone is charged with a criminal offence, he can be released by the police directly from the police station if he promises to appear in court on a specified date. When the charge is more serious, the person will only be released after there has been a bail hearing in court. At this time, the accused person’s lawyer will tell the court why the accused person should be released from custody and the Crown Attorney will tell the court if there are any concerns about releasing the person.

Usually, the person will be “granted bail,” which means he can be released. There will probably be some conditions on the person’s behaviour and actions – he may have to abide by a curfew, live in a certain place, report to the police, hand his firearms over to the police, not drink, etc. In cases of partner assault and sexual assault, the accused will not be allowed to have any contact with the victim. Sometimes, he will have to have a person stand up in court and agree to take responsibility for his behaviour. This person is called a surety and may have to promise the court to pay money if the accused person breaks his bail conditions.

Bail is sometimes called “judicial interim release.”

**Beyond a reasonable doubt:** Different standards of proof are required by different courts. Criminal courts demand the highest standard of proof of any court. This is because a finding of

guilt can result in the accused losing his or her liberty by going to jail. In order for an accused to be found guilty, the evidence must establish “beyond a reasonable doubt” that he or she is guilty. In other words, there must be no reasonable explanation for what happened other than that the accused did it. If there is any other reasonable explanation, the accused will not be found guilty.

**Complainant:** In the language used by police, lawyers and other criminal court officials, the victim of a crime has different names at different stages of the process. First, she is the victim. She becomes a “complainant” when she goes to the police and gives a statement about that has happened. Once a charge is laid and the case is passed to the Crown Attorney, she will become known as the “witness.”

**Conditional discharge:** Sometimes, when a person is found guilty, he is required to fulfill certain conditions as part of their penalty. This could include such things as completing a drug rehabilitation program or participating in a male batterers’ program. If the person is successful in completing the conditions, he is “discharged” or let go and will have no criminal record for this offence. If he is not successful, the judge can withdraw the discharge and enter a criminal conviction against him.

**Court:** This is the place where trials take place and court-related services have their offices.

Criminal trials take place in the criminal court, which is a provincial court. The criminal court also has offices for the Crown Attorney, Justices of the Peace, judges, duty counsel and the Victim/Witness Assistance Program, as well as an office where fines can be paid. There are usually also holding cells in the building, where people who are in custody are kept when they are not in the courtroom.

**Criminal Code:** The *Criminal Code* is a very large book that lists, defines and describes everything that is a crime in Canada. It applies in every province and territory in the country. Anyone found guilty of an offence that is listed in the *Criminal Code* has committed a criminal act. Other sets of laws that control the behaviour of people in Canada include the *Youth Justice Act*, *Narcotics Control Act* and the *Firearms Control Act*.

There are many illegal acts that do not fall within the scope of the *Criminal Code*. These activities are often governed by provincial laws and will vary from province to province. People can be found guilty of them and be sentenced to penalties that include jail time.

The kinds of acts that fall within provincial authority tend to be of a less serious nature than those that fall under the authority of the federal *Criminal Code*.

**Criminal trial:** When someone is charged with a criminal or provincial offence, the case begins proceeding towards a trial.

Along the way, there are many opportunities for the case to be worked out without going to a trial. For instance, the accused person might plead guilty, the Crown might withdraw the charges or the defence lawyer and the Crown might work out a plea bargain.

However, if this does not happen, the case will eventually go to a trial, at the end of which the accused will either be found guilty or not guilty. Following this phase, if the accused has been found guilty, a hearing is held to determine the appropriate penalty.

**Cross-examination:** This is one of the kinds of questioning for a witness in a trial. It is done by the lawyer on the other side of the case. In a criminal trial, the accused is cross-examined by the Crown and the victim is cross-examined by the defence lawyer. The main purpose of cross-examination is to test the credibility of the witness – to see whether their story is believable. It is very difficult to be cross-examined, as the lawyer can often make the witness feel as though she is stupid or lying.

**Crown Attorney:** The Crown Attorney is the lawyer who represents the state in a criminal trial. Crown Attorneys prosecute criminal cases; they argue against the defence. Crown Attorneys are public employees and are responsible to the government. They do not represent the victims of the offence. This can be confusing to a victim who may feel that the Crown Attorney is her own lawyer. While the Crown Attorney will respect the wishes and concerns of the victim as much as possible, her/his first priority is to represent the interests of the community/state.

Each geographic district has one Crown Attorney and a number of Assistant Crown Attorneys, who handle most of the criminal cases.

**Defence lawyer:** This is the lawyer who represents the accused person in a criminal trial.

**Duty counsel:** This is a lawyer provided by the government to assist people at no cost who do not have their own lawyer and who qualify financially. For instance, in criminal court, an accused who does not have a lawyer can use duty counsel to assist with a bail hearing, a guilty plea or an adjournment. Duty counsel cannot conduct a trial for someone.

**Examination in chief:** This is one of the ways witnesses in a trial are questioned. It is done by the lawyer on the same side as the witness. In a criminal trial, the accused and his witnesses are examined in chief by the defence lawyer and the victim and any witnesses on her side by the Crown Attorney. This examination allows the witnesses to give their detailed story of what has happened.

**Guilty:** In a criminal case, the accused may decide to plead guilty, which is admitting he is responsible for the act. If he does not, there will be a trial, at the end of which, depending on the evidence, he may be found guilty.

**Hybrid offence:** Some criminal charges can be tried as either a summary or an indictable offence. These charges are called hybrid offences. The Crown Attorney decides how to proceed, which is called an election.

**Incarceration:** When a person has been convicted of a criminal offence, there are a number of possible penalties that can be imposed by the judge. Incarceration, which means the person must spend a period of time in either a provincial jail (if the period of time is less than two years) or a federal prison (if the time is two years or more) is the most severe. Frequently, individuals found guilty are punished by being placed on probation, by having to pay a fine and/or by having to serve what is called a conditional sentence. This means that they are under a form of “house arrest” – they are not in jail but their movements are limited and other conditions may be placed on their activities.

**Indictable offence:** Charges that are considered more serious are called “indictable.” The maximum penalties are higher. The accused has more options available to him in terms of how the case proceeds, including the right to a trial by jury.

**Intermittent sentence:** When someone convicted of a criminal offence receives a jail sentence of 90 days or less, he may be allowed to serve it on weekends, which is called an intermittent sentence.

**Judge:** A judge may be either federally or provincially appointed. Judges, who must be lawyers, have the authority to hear criminal cases and decide on the outcomes – in criminal court, judges decide whether or not the accused person is guilty and what penalties are appropriate for people who are found guilty. Criminal court judges also may rule on bail, although most bail is handled by Justices of the Peace.

**Justice of the Peace:** These people, who do not have to have had legal training, are provincially appointed and have fewer areas of responsibility than do judges. In addition to handling most bail cases, JPs issue warrants and hear provincial offences cases and decide on the outcomes.

**No contact order:** This is an order of the court, either criminal or family, that prevents one person from having any contact with another. Often, this is a condition of a bail order. Other kinds of no contact orders include probation orders, peace bonds and, in family court, restraining orders.

**No publication order:** In some kinds of criminal trials, including any involving children or sexual assault, the judge can make an order preventing the media from printing information that could identify the victim. These orders are also known as “publication bans.”

**Parole:** Someone who has been given a prison sentence of two or more years can apply to be released from prison after serving only part of his sentence. If successful, he will be released

on parole. A parole officer will be assigned to that person, who may have conditions similar to bail conditions imposed on him. In other words, he will not be in prison, but will not be completely free either. The conditions may lessen over time if there are no problems, but if he breaches any of the conditions, he can be re-arrested and returned to prison for the rest of his sentence. His parole, and the conditions on his behaviour, continues until the end date of his sentence.

**Peace bond:** This is an order obtained in criminal court that can require one person to stay away from another, as well as to keep the peace and be of good behaviour. Peace bonds can last a maximum of 12 months. Breaching a peace bond can lead to a jail sentence of up to 12 months.

**Plea bargaining:** In criminal cases, the Crown Attorney and the defence lawyer meet several times to discuss what should happen. Sometimes, the Crown Attorney will agree to reduce the charge(s) to a less serious one or to reduce the penalty if the accused person agrees to plead guilty. This process is sometimes called plea bargaining or Crown resolution meetings.

**Pre-sentence report:** Once an accused has been found guilty, the judge may order a pre-sentence report (PSR). A probation officer meets with the person and others to write a report that describes his personal situation to help the judge decide on an appropriate penalty. The report may make recommendations; for example, that the person gets counseling for a drug problem or that he not live with his family for a period of time.

**Probation:** When a person convicted of a criminal offence is released into the community without going to jail, he is on probation. Sometimes, people first serve a short jail sentence and then are released, but are still on probation. During this time, the person will likely have to follow conditions similar to bail conditions. If he breaches them, he can be arrested and sent or returned to jail.

**Subpoena:** This is an order from the court requiring a person to appear in criminal court to testify in a trial. If the person fails to go to court on the date in the subpoena, a police officer may come to get her right away or a warrant may be issued for the person's arrest.

**Summary offence:** A summary offence is a crime that is considered less serious and for which the maximum penalties are lighter. The accused has his trial in front of a provincial court judge, with no option to have a trial by jury. Generally, if convicted, the accused can receive a fine of not more than \$2,000 and/or a jail sentence of no more than 6 months. However, if the conviction is for criminal harassment or sexual assault, the maximum penalty is 18 months in jail.

**Summons:** This is a legal document requiring an accused person to appear in court on a specified date.

**Surety:** This is a person who agrees to be responsible for the behaviour of the accused while he is out of custody on bail.

**Suspended sentence:** Sometimes, a judge will order a jail sentence and then suspend it, which means the person does not actually have to go to jail, as long as he follows certain conditions. If he does not follow the conditions, the judge can send him to jail to complete the original sentence.

**Testify:** This is when someone, in court, gives evidence under oath; that is, tells her story about what she has seen and/or heard.

**Victim Impact Statement:** This is a written statement that the victim can prepare after the accused has been found guilty. In it, she talks about the effects on her of what the accused has done.

**Victim/Witness Assistance Program:** This is a program in the criminal court to support and assist victims and witnesses. The workers meet with victims to explain how the court process works, keep them informed of the progress of their case and accompany them to court if this is what the victim wants.

**Voir dire:** This is sometimes called a “trial within a trial.” It is a hearing to determine whether certain evidence or witnesses are admissible at trial, and can take place both before and during a trial. If there is a jury, it is removed from the courtroom while the voir dire takes place.

**Warrant:** This is an order from the court that gives the police the authority to arrest someone or, in the case of a search warrant, to search a person or a place.



## **Webinar 3: Handout 2**

### **Communication Access to Legal and Justice Services in Canada**

#### **Communication Intermediary Oath/Affirmation**

Taking the oath or making an affirmation is an assurance to the court that you will perform to the best of your skill and ability and that you will be honest in your dealings with the court.

Before you begin supporting someone to communicate in court, you may be asked to swear an oath or give an affirmation stating that you will provide communication support to the best of your ability. If you are not asked to take the oath or affirmation, you should volunteer to take it before proceeding to the stand to assist the witness in communicating. The court may insist on this to satisfy itself that the translated testimony that you provide is truthful and honest, in the same way witnesses have to take an oath/affirmation that their testimony will be truthful and honest. Failure to take the intermediary oath or affirmation before testimony has led to the declaration of a mistrial in cases of language interpreting services. It is therefore essential to draw attention to the fact that you wish to be sworn in or affirmed.

As there is no oath for communication intermediaries at this time, the following proposed oath could be negotiated with the end-user prior to the proceeding.

The oath may be sworn on the Bible, the Quran, or another holy book, or a solemn affirmation may be made without using any holy book. You will be asked to proceed to the witness box and state and spell your full name for the record. Be sure to speak loudly and clearly.

For the oath, you will be told to take the holy book in your right hand or to hold up your right hand if you are affirming.

The clerk will then read the oath or affirmation to you, as follows:

Do you swear/affirm that you will accurately convey all questions put to the witness (es) and his/her/their answers thereto, and all such matters and things as shall be required of you, to the best of your skill and understanding, (so help you God)?

(If you are affirming, the clerk will not say "so help you God.")

The wording of the oath or affirmation may vary slightly, depending on the court. The communication intermediary replies, "I do so swear/affirm."

In some cases, however, the presiding judicial official (PJO) may ask you to swear yourself in or make an affirmation. If so, you could state the following:

I swear/affirm that I will accurately convey all questions put to the witness (es) and His /her/their answers thereto, and all such matters and things as shall be required of you, to the best of my skill and understanding, (so help me God).