

GOING TO COURT IN ALBERTA

CAMROSE POLICE SERVICE

TRAUMA AND CRIME SUPPORT SERVICES

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If you have never been involved with the Canadian Criminal Justice System you may find the process confusing and scary. From the time of the crime to the end of the trial you will see many different people in many roles and hear terms you may or may not know. You also have rights which you should make yourself aware of and options if you are denied those rights.

This booklet will give a brief outline of the process and some of important people and terms you may come in contact with as you move along through the system.

If you need support during this process, **Camrose Police Service Trauma and Crime Support Services** will be able to provide that support.

A Crime Occurs

If you are a victim of a crime, witness a crime occurring, or suspect a crime has occurred, call your local police service. If people or property are in immediate danger call 911.

After a crime is reported, the police will begin their investigation. Their role is to investigate whether a crime occurred; collect evidence of the crime; and gather statements from victims or witnesses. If at the end of their investigation the police feel there are reasonable grounds that a suspect committed a crime charges are laid.

Reasonable grounds for arrest or search – any reasonable person placed in the same situation as the officer would find that a crime has occurred and the person identified is the person who committed the crime. A reasonable person is a person who considers all available circumstances and facts surround the event and decides. This moves suspicion into credibly based belief.

Arrest – if the police lay charges the person will be arrested but not always go to jail. If it is felt that the accused will attend court and is not at risk to the public the police provide a “*appearance notice*” indicating the charges and when the accused should be in court. If the accused is felt to be a flight risk, or a danger to others, then the person is kept in jail until court (*remanded*).

The Crown Prosecutor

After the police investigate a complaint, they hand their findings over the Crown Prosecutor’s Office for review. The Crown Prosecutor’s jobs include:

- Determining appropriate charges
- Conducting discussions with defense counsel
- Preparing witnesses to testify in court
- Examining and cross-examining witnesses in court
- Presenting arguments respecting conviction and sentencing

The crown prosecutor may not pursue charges if the evidence is not strong enough for conviction. This could mean further investigation is needed or new information has to come forward to continue with court. It does not mean you are not believed.

Types of Offences in Canada

Summary convictions – these are cases usually heard in Court of Justice (provincial). The offences are less serious in nature and are punishable with fines, short-term imprisonment, or probation. The court is located in the same area where the offence took place. The accused are not usually remanded unless caught in the act. There is a one-year limitation period on most summary conviction offences. (Section 785 of Criminal Code).

Indictable Offences – more serious offences that carry severe penalties up to and including life in prison. Trial is heard in King's Bench Court. There is no limitation period for an indictable offence.

Hybrid Offences – the court can prosecute as a summary conviction or indictable offence based on severity and circumstances of the offence. The most common types of hybrid offences are robbery or fraud.

Types of Court in Canada

1. Civil Court

Civil Court vs Criminal Court in Canada

Nature of the Dispute

In civil court the dispute is between individuals or groups. You are suing someone else. It is a private matter.

In criminal court, the case is between "the people" represented by the Crown and the accused. It is a violation against everyone not just you. It is a public matter.

Who Initiates the Court Action?

In civil court an entity sues another entity.

In criminal court if there is sufficient evidence, the agents of the Crown lay charges and start the process of proving guilt or innocence of the accused.

Proof of Innocence or Guilt

In civil court "*the balance of probabilities*" that an offence occurred is used to determine the guilt/innocence.

In criminal court, the accused is presumed innocent until found guilty. The burden of proof is with the Crown and must be "*beyond a reasonable doubt.*"

Time limitations

Time limitations exist in civil court after which no proceeding can be started. In criminal court there are no time limitations (*Statute of limitations*) on some serious offences and there are some limitations for some offences.

Penalties

In civil court, monies are awarded paid to the person against whom the offence was committed.

In criminal court "*fines*" are paid to "society" and some penalties are prison. The victim of the crime may receive "*restitution*" for damages.

2. Court of King's Bench

This is the Superior Trial Court for Alberta. It hears civil (over \$50,000) and criminal matters; appeals from the Court of Justice; and Surrogate matters such as probate and estate matters.

In criminal law, King's Bench usually hears indictable offences such as murder, manslaughter, and drug trafficking. In our area, the Court of King's Bench is located in Wetaskiwin, Alberta.

3. Court of Justice (Provincial Court)

This court handles most of the criminal and regulatory offences in Alberta. It also hears civil cases up to \$100,000; family issues, youth court, and traffic cases. Sentences are usually less than 2 years.

4. Family Court

Hears applications for child and spousal support, parenting arrangements, private guardianship, and all child protection cases. Family court does not have jurisdiction in matters of divorce or property, which go to King's Bench.

5. Youth Court

Hears cases involving youth aged 12 to 17 years. The actions of this court are governed under the Youth Criminal Justice Act. This recognizes youths must be responsible for their actions but should be treated differently from adults. The ideals behind this court are that youth can learn from their mistakes, understand consequences, mature, and make amends

6. Traffic Court

Deals with any offence covered in provincial and municipal statutes and regulations and few federal laws. These can be other matters beyond traffic violations. Can be heard by a Justice of the Peace.



Concepts of the Canadian Criminal Justice System (CJS)

The CJS is an Adversarial System: The Crown Prosecutor and the defense lawyers are competitors representing different parties. The Crown is trying to prove guilt while the defense lawyer challenges what the Crown Prosecutor is presenting. This process protects the rights of the accused.

The accused is innocent until proven guilty. It is the responsibility of the Crown to prove that the accused committed the offence he/she is charged with beyond a reasonable doubt. The accused merely has to show doubt in their guilt not innocence.

The Crown Prosecutor does not represent the victim. It is important to know, that the Crown Prosecutor is not your lawyer. The Crown represents the Government of Canada (and thereby the People of Canada) in prosecuting acts that fall under the Criminal Code of Canada, Youth Criminal Justice Act and the provincial statute.

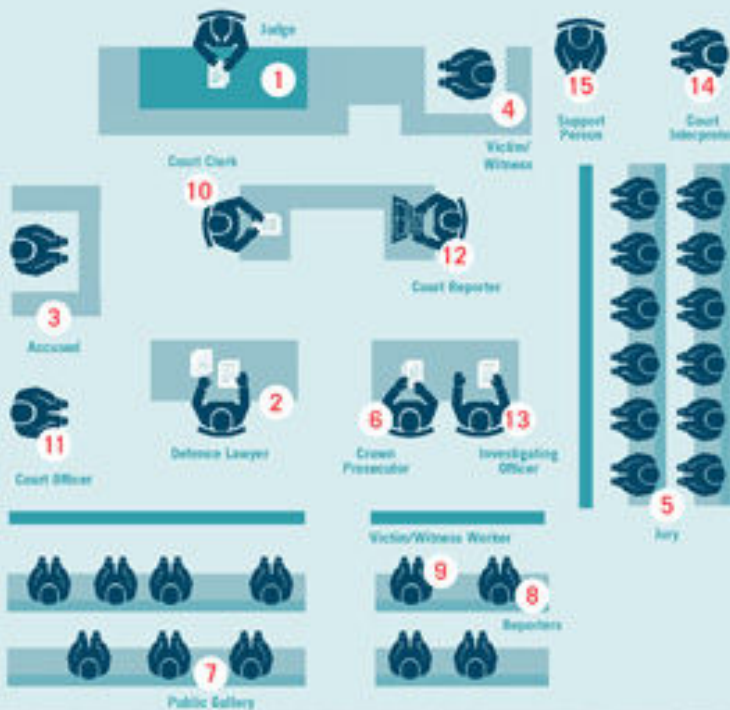
Reasonable doubt: This concept is probably the most difficult one to understand as a victim of crime. Reasonable doubt is a constitutional right. To be found guilty, the evidence must show there is a greater than probably or likely that the person is guilty. Absolute certainty is not needed. Evidence must be acceptable to a degree of comfort; and a reasonable person should not have a common sense-based or sound doubt of the validity of the evidence. The defense lawyer's role is to introduce doubt in the acceptance of facts presented based on a lack of evidence or a failure of the evidence. The accused has the right to remain silent.

Time lines are not the same as the movies! The court does not get a plea and go ahead with a trial all in one go. In Canada the steps of the court process are lengthy with time given for all parties to be properly prepared. This is to try and limit later issues with appeals around technicalities and loss of the accused rights. Trials can occur 2 to 3 years after the event.

IN THE COURTROOM

1/2

This picture is one example of what a courtroom may look like and the people the victim may see inside.



For more information, visit canada.ca/victims

Disclaimer: This infographic contains general information only and is not intended to replace advice from a professional.

Canada

So Many People – What do they do?

1. **Judge** – the authority in the court. He Judge hears the evidence and decides the sentence (outcome) of the trial. If there is a Jury, the judge will instruct them in the meaning of the law and their duty to review the evidence provided. The judge is referred to as “Your Honor” and everyone stands when the judge enters or leaves the courtroom.
2. **Defense Lawyer (Duty Counsel)** – represents the accused. The role of the defense lawyer is to raise doubt in the evidence and to make sure the rights of the accused are protected. The defense lawyer will cross-examine witness and present evidence that will contradict the evidence present by the crown.
3. **Accused** – the person who alleged committed the crime. Until found guilty the accused is considered innocent.

4. **Witness** – testifies in court as it has been determined they have information related to the crime and the person who committed the crime. The witness is subpoenaed to appear in court. Failure to obey a subpoena is an offence.
5. **Jury** – a person accused of an indictable offence may opt for a trial by Judge and Jury. The jury is a group of people (5-12) who are members of the general public. They consider the evidence presented and will decide a “guilty or not guilty.” Juries may be sequestered so as not to talk to members of the public during the trial. As the law states “jury of your peers” there has been new efforts to assemble juries reflective of the accused culture and status.
6. **Crown Prosecutor** – represents the Crown and presents evidence supporting the charges brought against the accused.
7. **General Public** – courts are public places and unless the Judge orders otherwise members of the public are allowed. People in court should remain silent while the proceeds occur.
8. **Reporters** – reports are allowed in the courtroom unless the Judge has ordered a publication ban.
9. **Victim/witness** -usually witnesses sit in court after they testify. This is to ensure the integrity of their testimony.
10. **Court reporter** – creates a transcript of everything that happens in the courtroom.
11. **Court clerk** – manages the administrative work of the court
12. **Court officer** – usually a sheriff, but any law enforcement person who maintains the security of the court
13. **Investigating officer** – the law enforcement person who investigated the crime and will present the evidence gather by the police
14. **Court Interpreter** – as needed
15. **Support Person** – Trauma and Crime Support Services do attend court and provide support to victims and witnesses.

Court

After the person is charged and arrested the court process begins. The person will have been given a summons or subpoena to appear in court for their first appearance. This is usually soon after the Crown has laid charges.

Arraignment Process in Alberta

1. **First Appearance** – The accused may or may not be in the court physically. The charges and the accused’s rights are formally read. The judge asks the accused if they understand. The judge may at this hearing set bail, appoint an attorney and schedule future court dates. A plea can be given at this time.
2. **Plea** – the accused should have a lawyer in place and the judge may delay the plea if this has not happened. When the accused is ready, they will plead guilty or not guilty. If the plea is guilty the next step is sentencing with no trial. If the plea is not guilty the court starts preparations for the trial. A separate date may be set for discuss as to trial dates and duration.
3. **Disclosure of evidence** – the defense will receive the information the prosecution has against them.
4. **Trial date is set** – The judge will now set a date for the trial to start. Duration of the trial is estimated.
5. **Bail** – if the client is remanded, they may ask for bail during the Arraignment Process. During the bail hearing the Crown offers evidence and factors of why the accused should remain in custody until trial. The court considers the offence, witness and victim safety, and public safety in considering release.

Trial Process

1. **Trial** – the evidence is present to the court. After all the evidence is present the Crown Prosecutor and Defense Lawyers will sum up their position. The Judge or the Judge and Jury will decide on the verdict and present that to the court. This step can take up to several days.
2. **Sentencing** – if the accused is found guilty, a date is set for sentencing. At that time the judge will explain what the sentence is and why that decision was reached.
3. If the accused is found not guilty, they are set free.
4. **Appeal** – the defense may appeal the verdict or the sentence. It is usually based on facts of law, documents, or technicalities.

Sentencing

The purpose of sentencing in Canada is to denounce and deter criminal behavior, separate offenders from society, to rehabilitate the offender, promote a sense of responsibility for the crime; and to have the offender make amends for their actions.

Sentences are based on several factors. The seriousness of the offence and the circumstances surrounding the offence and the accused's degree of responsibility in the crime. There are aggravating factors which will increase the sentence (brutality, previous offences of similar nature, or lack of remorse). Mitigating factors will decrease the sentence (1st offence).

Your voice is heard in the sentencing through the presentation of **Victim Impact Statements** and **Requests for Restitution**. These are documents you should prepare early in the process and submit to the court so they are ready for the sentencing hearing.

If you are called to be a witness

Preparing to go to court

If you receive a subpoena, you must attend court. If you do not attend you can be charged. You can prepare ahead of time to make yourself feel more comfortable.

- Tour the courtroom. Trauma and Crime Support Services can assist you with a courtroom orientation. You can see where you have to be the day you testify, find where you park, and where you will wait.
- Observe a case so that you can see how the process unfolds.
- Plan for delays when arranging child care, transportation, or time away from work.
- Eat something before court. Check with courthouse to see if you can have snacks with you. (these cannot go into the courtroom).
- Bring something to occupy yourself quietly – book, knitting, video game (no sound). Again, these cannot go into the courtroom.
- Bring any medications you need for a day.
- You are allowed to bring a support person. If you need support, call Trauma and Crime Support Services
- Bring your subpoena
- You have a right to review your statement before going to court. Contact your local police or Trauma and Crime Support Services.
- Dress appropriately and prepare for temperature changes in the courthouse.
- Collect any materials, letters, videos, photos, etc. requested in the subpoena.

If you cannot attend let the Crown know as soon as possible.

Giving Evidence

When you arrive at the courthouse, locate the room you are to be in. Report to the lawyer that summoned you or the court clerk that you are present.

You are required to give an oath based on your religious beliefs, give a solemn affirmation to tell the truth, or swear on an eagle feather. You may let the lawyer or clerk know which you prefer before the trial.

You will be waiting outside the courtroom until you are called to testify. After you testify and are excused you can leave the courtroom or stay to hear the rest of the trial.

Address the judge as “Your Honor.”

You are allowed a testimonial aid if needed.

- You can testify over CCTV or behind a screen so as not to be seen by the accused.
- If you cannot stand to testify let the Crown know beforehand and arrangements can be made to have you sit.
- You can ask for members of the public not be present in the courtroom.
- Hearing adaptation, or translator are all allowed
- If the accused is representing themselves, witnesses can ask for a lawyer to be appointed for cross examination.

If you do not hear or understand a question ask for clarification. And you can take your time answering the questions. Answer to best of your ability and only include information you directly witnessed or have knowledge of. It is okay to say that a statement made to you is incorrect. You can say “I don’t know.”

Types of Sentences

Absolute discharge – lowest level adult sentence given. after a finding of guilty, no conviction is registered and no conditions are set. The case is finished.

Conditional discharge – after a finding of guilt, no conviction is registered but there are conditions the offender must follow under a probation order.

Conditional Sentence (house arrest) – the sentence is for prison but outside a prison, usually in the offender’s home. Sentence must be less than 2 years. Conditions are jail-like, the person is monitored via electronic device and probation officer. The conviction is registered.

Intermittent Sentence – the offender serves his time in “chunks” of time instead of all at once to allow for work, school, childcare, or “significant responsibilities”. They may go to jail on “weekends.” When not in jail the offender is on probation. Has to be a sentence of 90 days or less.

Suspended Sentence – the offender is found guilty but released with conditions written in a probation order. The order can last 1-3 years. **Fines** – A amount of money is to be paid by the offender to the courts.

Life Sentence – murder in the 1st or 2nd degree. The offender serves 25 years before eligible for parole.

Complaints

If you feel you were not treated fairly during this process you can file a complaint:

[Complaints about the criminal justice process | Alberta.ca](https://www.alberta.ca/complaints-about-the-criminal-justice-process.aspx)

Mental Health in the Criminal Justice System

Mental health issues are considered by the courts in assuring a fair trial for the accused. For a victim. These considerations can feel unfair but these decisions are made to protect the rights of the accused and to prevent miscarriages of justice leading to the imprisonment of innocent people.

Fit-to-Stand-Trial: this is based on the state of mind of the accused at the time of the trial. The accused has to understand the purpose of the trial, understand the potential consequences of the trial, and can meaningful instruct a lawyer. This status requires the accused be supervised until fit. This is reviewed every 2 years.

Not Criminally Responsible: This status is based on the state of mind of the accused at the time of the crime. The person has to be determined to have been unable to understand the nature and consequences of their actions or understand their actions were illegal. This status acknowledges an illegal act was committed and the person is held in some type of custody, usually where treatment is provided. It is hoped that the person will eventually reintegrate into society with conditions. The person is reviewed regularly by the Review Board for assessment of possible return to the community. The victim or family of the victim have the right to know when the reviews are happening and to make a Victim Impact Statement to the Board.

Gladue Reports

In Canada First Nations People have been given the right under section 718.2 to have a Gladue Report prepared pre-sentencing. The Gladue Report is to recognize that First Nations People face systemic discrimination, racism in and out the CJS. This is reflected in the over-representation of First Nations People in prisons.

The report is prepared by caseworks and makes recommendations for sentencing trying to use sanctions beyond the traditional prison system. The report contains information regarding the accused history with residential schools, child welfare removal, physical or sexual abuse, health issues, FASD, anxiety, or substance abuse.

VICTIM OF CRIME BILL OF RIGHTS

RIGHT TO INFORMATION

Every victim has the right to information about

- Criminal justice system
- Services and programs available to them
- Right to file a complaint for an infringement of their rights under this Act
- Status and outcome of any investigation
- Location of proceedings in relations to the offence, when they will take place and their progress and outcome
- Reviews relating to a conditional released, timing and conditions of release; and any dispositions in regards to the accused

RIGHTS TO PARTICIPATION

Every victim has the right to convey their views about decision to made by appropriate authorities in the criminal justice system that affect the victim's rights under this Act and to have those views considered.

Every victim has the right to present a Victim Impact Statement to the appropriate authorities in the criminal justice system and have it considered.

RIGHT TO RESTITUTION

Every victim has the right to have the court consider making a restitution order against the offender. If the victim is not paid, have the right to have order entered as a civil court judgement that is enforceable against the offender.

RIGHT TO PROTECTION

Every victim has the right to have their security considered by the appropriate authorities in the criminal justice system. Have the right to be protected from intimidation and retaliation.

Every victim has the right to have their privacy considered

Every victim has the right to request their identity be protected if they are a complaint to the offence or a witness.

Every victim has the right to request testimonial aids when appearing as a witness in a proceeding related to an offence.