



**Public Legal  
Information**  
Association of NL

# Information for Victims of Family Violence



## Contents:

- |   |       |
|---|-------|
| • Available Legal Options                 | P. 3  |
| • People Involved in the Justice System   | P. 9  |
| • What to Know Before Testifying in Court | P. 15 |
| • Sentencing Terminology                  | P. 21 |
| • Glossary of Terms                       | P. 24 |

Public Legal Information Association of Newfoundland and Labrador (PLIAN) is a non-profit organization dedicated to educating Newfoundlanders and Labradorians about the law. We provide public legal education and information services with the intent of increasing access to justice. PLIAN would like to extend a sincere thank-you to the Government of Newfoundland & Labrador through the Violence Prevention Initiative for its financial contribution towards the research, writing and printing of this booklet.

We hope this booklet will be a helpful tool to victims of family violence living in Newfoundland and Labrador. PLIAN would like to acknowledge the many people who have contributed to this project. Everyone's contributions are greatly appreciated.

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**This publication contains general information only, and is not intended to provide legal advice. For legal advice, contact a lawyer.**

## My partner is abusive. What legal options may be available to me?

No one has the right to hurt or threaten another person. If your spouse or partner threatens or harms you, there are legal options available. In this section we will discuss some of these. This list is not exhaustive. You may want to consult with a lawyer to discuss possible civil action. If you pursue one option, you are still free to pursue the others.

You can:

1. Call the Police to pursue criminal charges
2. Apply for an Emergency Protection Order (EPO)
3. Apply for a Peace Bond

**The most important thing must be the safety of you and your children.**

### **Criminal Charges:**

The police investigate complaints of family violence. They should be contacted immediately. They will ask for a statement and the names of witnesses. After a complaint is made to police, the accused may be arrested. He or she may also be interviewed.

The decision to lay a charge normally rests with the police.<sup>1</sup> If, on reasonable grounds, the police believe a person has committed a crime, they may lay a charge. This is a decision which will be made by the police after consideration of the evidence.

<sup>1</sup> In some cases, private individuals can lay charges. However, this happens rarely. We will not be focusing on that option in this publication.

If the accused has been arrested, he/she might be released from custody if a promise is made by the accused to follow certain conditions set out in a court order. The document which releases the accused from custody is called a *recognizance or undertaking*. It is a court order which **MUST** be followed by the accused. If a condition is broken, another criminal charge could be laid. If you are aware of a breach, you should immediately contact the police. Breaching a court order is considered to be very serious.

Once the police lay a charge, a lawyer called the Crown Attorney decides whether to proceed with the charge in court. The Crown Attorney will not simply withdraw charges at the request of the complainant. There are many factors to consider when making the decision of whether charges will be dropped. That is not a decision which the police or the victim makes.

If a charge proceeds to court, the person charged (the accused) will be asked to enter a plea to the charge (guilty or not guilty). If the accused pleads guilty, then he/she will be sentenced either on that same date or on a future date. If the accused says not guilty, then a trial will be scheduled for a future date.

Victim Services has a detailed booklet entitled, *Introduction to Court* which contains helpful information. It is available on the Violence Prevention Initiative website ([www.gov.nl.ca/vpi](http://www.gov.nl.ca/vpi))

## Emergency Protection Order (EPO):

As of July 1, 2006, the *Family Violence Protection Act* is law in Newfoundland and Labrador. This legislation provides another option to help adult victims of family violence and their children in emergency situations. You can apply to court for an Emergency Protection Order (EPO). An EPO is a court order that can be normally granted within 24 hours in cases of family violence.

To get an EPO you need to live or have lived in a conjugal (married-like) relationship or had a child with the person who is being violent. This includes married, common law, and same sex couples. It can allow police to remove that person from the home, take away any firearms or weapons, give you temporary custody of the home and the children, and any other conditions the court thinks necessary.

The police can make an application for an EPO for you 24 hours a day. The police need your consent to make the application. If you apply for the EPO yourself, or have it done by a lawyer, you can only apply during regular court hours to the Provincial Court. Application forms are available from the Provincial Court or online at the Provincial Court website (<http://www.court.nl.ca/provincial/>). The telephone number for the Provincial Court serving your region can be found in the provincial blue pages of your local telephone book under the heading of "Courts".

Normally, the judge will decide if an EPO will be granted within 24 hours of receiving the application. An EPO is temporary and will not last for more than 90 days. An EPO is a court order.

The Violence Prevention Initiative website contains information on this topic. The Provincial Court of NL's website also contains information on the EPO process (<http://www.court.nl.ca/provincial/>).

### **Peace Bond:**

A peace bond is a court order that places specific conditions on an individual's behaviour. It will include various conditions that must be followed. These conditions may include: to keep the peace; not to communicate with you in any manner; or not to possess a firearm. (Not an exhaustive list)

There are limitations on peace bonds which curb its ability to effectively address family violence. Limitations include:

- Peace bonds are not monitored by the police.
- The police only become involved after a bond is broken.
- The process of getting a peace bond put in place can be lengthy.

There are two types of peace bond applications which can be made:

Application because you fear another person may do you or your family some personal injury;

Application because you fear another person may damage your property.

Normally all peace bond applications are made to the Provincial Court. The telephone numbers for the Provincial Courts across the province are:

St. John's	(709) 729-1004
Harbour Grace	(709) 596-6141
Placentia	(709) 227-2002
Clareville	(709) 466-2635
Grand Bank	(709) 832-1450
Gander	(709) 256-1100
Grand Falls- Windsor	(709) 292-4212
Corner Brook	(709) 637-2323
Stephenville	(709) 643-2966
Happy Valley- Goose Bay	(709) 896-7870
Wabush	(709) 282-6617

If you make an application to the court for a peace bond because of a family violence situation, the court may refer you to the police.

Once an application is filled out and provided to the court, a *summons* must be served on the person named in your application. That person must appear in court on the date and time specified in the summons. You must also appear in court on that date. At that time, if the person named does not agree to the terms of a peace bond, then the matter will be scheduled for a hearing at a later date.

At that hearing, you will testify, as well as your subpoenaed witnesses. Make sure you bring any evidence you have which will support your case. The accused and his/her witnesses will also have an opportunity

to testify. The Judge will decide, based on the evidence presented, whether a peace bond should be put in place. There is no fee for applying for a peace bond and the order can be valid for up to 12 months.

If the person ordered to follow the peace bond breaks a condition, you should immediately report it to the police. They may decide to lay a charge. If the charge is proven in court, the punishment may include jail time.

Victim Services has a detailed brochure entitled “Applying for Peace Bonds in NL” which contains very detailed information. The Provincial Court of NL’s website also contains information on peace bonds (<http://www.court.nl.ca/provincial/>).



## People You may Meet in the Adult Criminal Justice System

As a victim of family violence, you will meet many different people who work within the criminal justice system. This section answers some commonly asked questions by complainants of family violence.

### **What does complainant and accused mean?**

The complainant is the person who makes the complaint to the police that a crime has been committed. It is usually the person who has been hurt or harmed. The accused is the person who is has been alleged to have committed the harm.

### **I have just been assaulted by my boyfriend and want to lay charges immediately, whom do I contact?**

Contact your local police emergency number. Investigations begin when police either see a crime committed or are told a crime has taken place. Police investigations take different amounts of time depending on the type of case. You can contact the investigator periodically for updates on the case's progress. The decision to lay a charge normally rests with the police. If, on reasonable grounds, the police believe a person has committed a crime, they may lay a charge. This is a decision which will be made by the police after consideration of the evidence.

Once a charge is laid by police, it is the Crown Attorney's decision whether or not the charge will proceed to court.

## **What is a Crown Attorney?**

A Crown Attorney is sometimes called a Crown Prosecutor. Once the police lay a charge, the Crown Attorney decides whether to proceed with the charges in court. That decision will be based on two things: whether based on the known evidence, there is a reasonable likelihood of a conviction; and whether it is in the public interest to proceed. If the Crown Attorney says yes to both, then the charges will proceed in a criminal court. If the answer is no to either (or both) questions, then the Crown Attorney will not proceed with the charge(s).

## **Is the Crown Attorney my lawyer?**

No, the Crown Attorney is not your personal lawyer. He/she is the government lawyer who acts on behalf of all members of the public. In Canada, offences are seen as crimes against society. The Crown Attorney is required to prosecute cases fairly, and treat all parties in a case, including the complainant, witnesses and the accused, in a fair manner.

## **When my husband was arrested, he was allowed to speak to duty counsel. What is duty counsel?**

Duty counsel is the lawyer appointed by the Newfoundland Legal Aid Commission to give legal advice to the accused either at the time of arrest, and/or on the day when they enter their plea (when they say if they are guilty or not guilty).

**The police say I may be called as a witness. What does that mean?**

A witness is someone who testifies in court because they have some information about the case.

**Do I have to attend every court appearance?**

You may if you want, but you only have to attend court if you receive a subpoena to attend, or the judge says that you that you must attend. You will be given notice of any court appearances you must attend.

**My ex common-law partner threatened to hurt me, and has been charged. Why is he/she allowed to have a lawyer for free?**

Your ex is likely being represented by a lawyer from the Legal Aid Commission. This Commission ensures that people who cannot afford a lawyer, will have a lawyer if they meet certain conditions. Your ex must have applied and been approved for legal aid based on criteria set by the Commission (including financial and other considerations).

**What does a judge do?**

A judge is the person with the authority to hear and decide criminal cases. If the person charged (the accused) has pleaded guilty, the judge will decide what punishment should be imposed. If the accused pleads not guilty, a trial will be held. If there is a jury, the jury will decide whether the accused is guilty or not. If it is a judge-alone trial, the judge will make that decision. Whether the accused is found guilty by the judge or a jury, it is the judge who will decide the punishment.

During the court proceedings judges have to make sure that the rules of the court are being followed, and that evidence is properly presented by both sides (the prosecution and the defence).

### **What should I call the judge in court?**

It will depend on which court you are in. In provincial court, the judge is called Your Honour. In Supreme Court, the judge may be called Justice, or My Lord (if male), or My Lady (if female). However, it is ok to refer to the Judge as Sir or Ma'am.

### **What is a court clerk?**

This is the court staff member who announces when the Judge appears in the courtroom. The clerk wears a black robe like the one worn by the judge. Before a person can testify, the clerk will ask the witness' name, address, also ask the witness to take an oath to tell the truth. The clerk also ensures that the court proceedings are properly recorded by audio equipment, and may handle documents and evidence which are presented in court.

### **What is a Sheriff's Officer?**

A sheriff's officer is responsible for escorting prisoners and court security in some courts in Newfoundland and Labrador. In some regions, the local police escort prisoners instead.

## **My husband was charged with hitting my son in front of me. Will my son and I have to testify in front of a jury like we see on tv?**

It depends on a number of factors including the type of offence your husband was charged with, how he pleads to the charge, and in the event he pleads not guilty, whether he requests that the trial be heard by judge and jury. If he requests a jury, you and your son will likely have to testify in front of a jury of up to 12 people. The jury members will listen and watch as you testify, but will not ask you questions. The lawyers or judge will ask you questions. The jury's purpose at the trial is to decide whether the accused is guilty of the offence.

## **What does defence counsel mean?**

Counsel is another word for lawyer. The job of a defence counsel is to represent the interests of the accused, and to advocate on behalf of their client.

## **I received some information from Victim Services. What is it?**

This is a program run by the provincial Department of Justice which can help complainants through the criminal process. The program is free, and voluntary. The choice to participate is yours. Services they provide include:

- general information about the criminal justice system to help you understand how it works;
- updated information on what is happening with your case; pre-court preparation so you can participate more meaningfully in the court process;
- help with preparing a Victim Impact Statement, if you wish to

- complete one;
- identifying and referring you to specialized community resources, if you need them; and
- providing emotional support and short-term counselling as you prepare to go through court.

**My ex-boyfriend has been found guilty of assaulting me and was sent to jail. The court case is now over. So, how will I know when he's going to be released?**

Victim Liaison Officers who work within prisons can provide victims of crime with information about offender release dates. Contact your local Victim Services office to get more information about this program. Offices are located in St. John's, Carbonear, Clarenville, Gander, Grand Falls-Windsor, Marystown, Corner Brook, Stephenville, Port Saunders, Happy Valley-Goose Bay and Nain. If you are looking for your local contact number, it can be found in the provincial blue pages of your local telephone book under the heading of Victim Services.

## What you need to know before testifying in court.

Many people have never stepped foot inside a courtroom, let alone testified in one! It may seem like a very scary and intimidating place to potential witnesses. Plus, talking about your personal family issues in front of complete strangers may not be something you ever thought you'd have to do in your lifetime. But as a victim of family violence, you may indeed have to do this. This section is intended to provide general information with respect to some questions frequently asked by potential witnesses who testify in adult court.

**My husband was charged with assaulting me. The investigating police officer just served me with a subpoena to appear in court to testify. What sort of court is it?**

A criminal trial is conducted in criminal court, rather than a family or civil court. Criminal proceedings are different. Married couples get divorced in a family court. Family court proceedings are normally closed to the public. Criminal court, however, is normally open to the public. The standard of proof is also different in a criminal trial. The allegation of a crime has to be proved beyond a reasonable doubt. The level of proof is different for a civil trial, such as if you were suing someone for an unpaid loan.

**Why is criminal court normally open to the public? Strangers shouldn't know my business!**

In Canada, offences are seen as crimes against society. Our justice system

needs to be open and transparent so that people can see that justice is being properly served. There are certain cases when the judge may agree that the public should be excluded from some of the trial, however, that is only for cases which meet certain criteria.

### **Do I have to go to court?**

Yes, if you have been served with a subpoena to appear in court, you must appear at the time, date, and location specified in the document. If you don't appear, the judge may issue a warrant of arrest against you. You could be arrested by police, and held in jail until you appear in court to testify.

### **After I gave my statement to the police, I remembered that I didn't tell them about the threatening phone messages that I saved on my cell phone. Can I just bring the messages to court on the trial date?**

It is important that you provide all information to the police that relates to the case. If you remember something after you give your statement, be sure to contact the police immediately. Do not wait until the trial. The accused is entitled to know the case against him/her and is entitled to review all relevant information which is being used in the case against him/her. If the evidence is not supplied in a timely manner, the case could get postponed, or the charges might even get thrown out.

It is important to document events as they happen, so that if you end up in court, you can have a list which you can use to refresh your memory about times and dates. This list and documentation should be provided to the police.



**I am very nervous and am afraid to attend court. Is there anyone who can help me prepare for appearing in court?**

Victim Services workers are available to assist complainants. They can help explain the court process and can attend court with you, if you request it. Victim Services offers this service, free of charge, to adult and child witnesses. This program is offered through the provincial Department of Justice.

**My friend knows how nervous I am about testifying and suggested I have a glass or two of wine to relax before I go to court. I don't think it's a good idea, what do you think?**

You're right. That is a terrible idea. If the judge, lawyers, or police notice that you have been drinking, the proceedings could be halted, or the charges might even get thrown out. The judge might decide to put you in jail until you sober up, and are able to testify properly.

**I haven't seen my police statement since I gave it to police. Am I allowed to review it before I testify?**

Contact the Crown Attorney who is assigned to your case to request to review your statement prior to the trial.

**What do I wear to court?**

It is important to be well-groomed. Not everyone can afford a suit for court. So don't panic if you think you have nothing to wear. Dress comfortably, but also conservatively.

**I am afraid I will panic, or become emotional, when I testify. How do I calm down?**

The way you are feeling is entirely normal. Even police officers sometimes get nervous before they testify. You may want to practice relaxation exercises before you testify (such as concentrating on breathing deeply and slowly).

Bring a support person to court who will sit with you before you go into court. Talk with your support person about anything EXCEPT the evidence you will be giving in court. You should not discuss the case particulars with anyone, except the Crown Attorney, who may want to meet with you before you testify.

**What should I do after I show up at court?**

You should arrive early at court, and try to locate the Crown Attorney after you arrive to let him/her know that you have arrived. The Crown Attorney may have already met with you in advance of the trial date. It is still a good idea to let the Crown know you've arrived.

**What if I just don't say anything when I am asked questions by the lawyers?**

You cannot refuse to answer questions while you are testifying. You could be held in contempt of court, which is very serious, and you may be put in jail.

**What if I start crying?**

Don't worry if you cry in court. People cry all the time. In fact, most witness stands have a box of tissues close by. If you need to take a moment to gather yourself together, ask the judge for a break.

**I am afraid that I won't understand the lawyers and their questions. What should I do?**

If you don't understand a question, make sure you tell the judge. The lawyer may be asked to re-phrase the question, or the judge may explain it further. Don't be embarrassed to say you don't understand. Legal language can sometimes be confusing to people who don't work in the legal system.

**What happens if a lawyer says objection while I am testifying?**

If one of the lawyers says objection while you are testifying, stop talking. The judge may want to hear from each of the lawyers before the judge decides whether you can continue talking about what you were talking about.

**My 10 year old child has to testify against my husband. Are there any special provisions for my child as a witness?**

The Criminal Code of Canada does allow for special consideration to be given to young witnesses. Examples include: a child may be allowed to testify with a support person beside him/her; the public may be excluded from the courtroom while the child is testifying; the child might be al-

lowed to testify behind a screen or outside of the courtroom via closed circuit television instead. These special provisions may be allowed in cases of alleged sexual crimes against the young witness. It is the judge's decision. There are many factors which the judge must consider before allowing one or more of these testimonial aids to be used. If your child has to testify, you should discuss these possible options with the prosecuting Crown Attorney.

Victim Services has developed a children's program for child victims/witnesses and their families. Contact your local office to inquire about the services offered for children. Offices are located in St. John's, Carbonear, Clarenville, Gander, Grand Falls - Windsor, Marystown, Corner Brook, Stephenville, Port Saunders, Happy Valley - Goose Bay and Nain. If you are looking for your local contact number, it can be found in the provincial blue pages of your local telephone book under the heading of Victim Services.

## Explanation of Different Types of Adult Sentences and Terms

As a victim of family violence, you may wonder what the accused “will get” if they are convicted. The Judge has to consider many different factors when making this decision. This section is intended to provide some general information with respect to the some different criminal sentencing options and terminology relating to adult court.

**Sentence-** This is the punishment the judge imposes after an accused has been found guilty.

**Absolute Discharge** - The accused is found guilty by the judge, but there is no official conviction, and no criminal record. This is the lightest sentence available, and is normally only used for a less serious, first time offence. The accused is free to leave after sentence is imposed without any conditions or restrictions. It is not normally used for cases involving family violence.

**Conditional Discharge** - The accused is found guilty, but no conviction is registered. However, the accused is ordered to obey certain conditions set out in a probation order for a specific period of time. If the conditions are not followed, he/she can be convicted of the original offence and sentenced accordingly. But if the offender obeys the conditions, then he/she will have no criminal record.

**Fine** - This is a sentence in which a convicted person is ordered to pay a specific amount of money as a punishment. The fine is paid to the court, and usually has to be paid within a specific period of time.

**Restitution** - The Court may order the offender to pay financial costs directly associated with the offence to a victim.

**Probation** - Once an individual has been found guilty of an offence, the judge may sentence the offender to probation. Probation allows the offender to serve their sentence in the community as long as they abide by certain conditions. Such conditions may include keeping the peace, attending school, meeting curfew, refraining from unlawful behavior, etc. If they fail to follow these conditions, they can be charged for failing to follow the terms of the court order.

**Conditional Sentence** - This type of sentence is commonly referred to as house arrest. It is considered by the justice system to be a form of imprisonment, however, instead of going to a jail the accused is allowed to serve their sentence in the community as long as they follow certain conditions. The accused normally has to stay within their home, except for specifically named exceptions. If the accused does not follow the conditions, they may have to serve the remainder of their sentence in prison.

**Jail Sentences**- If the Judge imposes a jail sentence the offender is sent to prison.

**Intermittent Sentence**- When a person has been sentenced to a jail term of 90 days or less, the judge may allow him/her to schedule the

jail time around work commitments. For example, some offenders will serve the jail term on weekends, while others who work on weekends, may be allowed to serve the sentence on specific weekdays. Intermittent sentences are not automatic. The judge must be convinced that such a sentence is appropriate. It is sometimes granted to accommodate full-time work commitments.

**Sentencing Circle-** A sentencing circle is a process which may be available to an Aboriginal accused. The process is aimed at trying to repair the harm that was committed by bringing together the person who caused the harm, the victim, and the surrounding community to discuss the crime and its consequences. The accused, victim, Judge, Crown Attorney, defence counsel, and some other community members meet prior to any sentence being imposed. The parties present normally sit in a circle formation. The judge will make his/her sentencing decision after hearing what those present have to say.

**Victim Fine Surcharge-** A victim surcharge is imposed in addition to any other punishment for an offender convicted or discharged of a *Criminal Code* offence or an offence under the *Controlled Drugs and Substances Act*. The victim surcharge is 15% of any fine imposed and where no fine is imposed, the surcharge is \$50 for summary conviction offences and \$100 for indictable offence convictions. Where imposition of the surcharge would cause undue hardship, the offender may request that the sentencing judge waive the victim fine surcharge.

## Glossary of Terms

The criminal law process may seem complicated and overwhelming to victims of family violence. You may hear terms mentioned that you don't understand or have never even heard of before. You are not alone. These terms are unfamiliar to many people. We hope that through providing this information, you will become better informed about the concepts and terms you may encounter in adult criminal court.

**Abuse-** Abuse can take many forms: physical, sexual, psychological, emotional, and economic. Many forms of abuse are criminal offences.

**Accused** - The person charged with committing an offence.

**Acquittal** - The accused is found not guilty.

**Adjournment** - The court case is temporarily delayed by the court to another time or date for continuation. It is also sometimes called a postponement. The judge decides if a matter can be adjourned.

**Allege** - To suggest that something happened or that a person committed a crime.

**Appeal** - A written document is filed to request that a decision made by a court be reviewed by a higher court. The person seeking to appeal must have proper grounds to appeal. This means there must be a legal reason to appeal (for example, the judge made a mistake when applying the law to the case). An appeal is not a new trial and no witnesses are required to give evidence. It is simply a review of the



previous case.

**Appearance Notice** - A form issued by a police officer requiring the appearance of an accused to answer to a charge in Court. The Appearance Notice outlines the date, time and location of Court. Failure to appear may result in a Warrant of Arrest being issued for the accused.

**Arraignment** - This is the first court appearance for the accused in Supreme Court. The charges are read to the accused by the judge. The accused then enters a plea of guilty or not guilty. If a not guilty plea is made, the actual trial will take place separately at a later date which is set by the court. The complainant does not have to appear at the arraignment, but they may if they want.

**Arrest**- This occurs when a police officer detains someone and says that the person is not free to leave until further notice. The police can arrest someone and keep them in police custody for a period of time while deciding whether or not to lay a charge.

**Assault**- Occurs when a person directly or indirectly applies force intentionally to another person, or attempts or threatens to do so, without that person's consent. The different types of this offence include common assault, assault causing bodily harm, assault with a weapon, aggravated assault.

**Bail Hearing** - also called judicial interim release or show cause hearing. When a person is charged with a crime and arrested by police, the police may determine that the accused should not be immediately released, but instead brought before the Court. If the Crown Attorney agrees

that the accused should not be released, then a bail hearing is held. This is a hearing before a judge to determine whether the accused should be kept in custody or released. The Crown Attorney will present evidence why the accused should be held in jail until the matter is finished in court. The accused's lawyer will normally try to explain to the court why the accused should be released. Witnesses usually testify in court during a bail hearing to help the Judge decide what to do.

**Beyond a Reasonable Doubt** - The level of proof required by the Court to find an accused guilty of having committed an offence. This means that in the Court's view, there is no reasonable doubt whether or not the individual committed the offence.

**Breach**- To disobey a court order. A person can be charged with a breach of a court order.

**Case Law**- The law based on the decisions of judges. Case law reflects how the courts interpret legislation, such as the *Criminal Code of Canada*.

**Charge** - A formal accusation by police officers or the Court that someone committed a crime.

**Committal to Trial** - A person is committed to stand trial in a higher court when a judge finds there is sufficient evidence to order the accused to trial.

**Complainant** - The person who says that a crime has been committed

**Confession** - A statement made by the accused admitting guilt. If the

confession is made to a person of authority, such as a police officer, the Crown Attorney must first prove that it has been made freely and voluntarily before it may be allowed in court as evidence.

**Contempt of court-** Interfering with the administration of justice or ignoring the rules of the court. Showing unwarranted disrespect for the court, refusing to testify in court or failing to obey a court order are the most common types of contempt of court.

**Conviction** - A person is found guilty of a criminal offence and gets a criminal record.

**Counsel-** This is another word for lawyer.

**Court Order-** An order by a Court which must be followed by the parties involved.

**Crime-** Any act punishable by law. Also called an offence.

**Criminal Code of Canada-** This is the law which states criminal offences which exist in Canada.

**Criminal Harassment-** This is an offence under the *Criminal Code of Canada*. It is often called stalking. This is a form of harassment which causes the person being harassed to have a reasonable fear for their safety or that of someone else. Different behavior which may qualify as criminal harassment include repeatedly following someone; repeatedly communicating with someone either directly or indirectly; watching another person; or behaving in a threatening manner towards them or their chil-

dren.

**Cross Examination**-The questioning of a witness by the opposing lawyer. The defence cross-examines the prosecution witnesses and the prosecution cross-examines the defence witnesses. The intention of cross examination is to clarify earlier testimony, and/or discredit the witness.

**Custody (criminal law)**- Refers to an accused being held in prison, or the police lock-up facilities.

**Custody (family law)**- Refers to the legal arrangements for post-separation or divorce parenting. Child custody usually refers to the responsibility for major decisions about the child's education and upbringing and the primary residence. One parent may have custody, the other parent may have access or both parents may have custody.

**Defendant** - A person against whom legal action has been taken. An accused is sometimes referred to as a defendant.

**Direct examination**- When a witness is asked questions by the lawyer who called the witness.

**Disclosure**- The person charged with a crime is entitled to receive a copy of the material which the Crown Attorney receives from the police. Certain material (such as diaries) may not be included. If the accused person wants a copy of such material, they would need to ask the judge to decide whether they can have it. The judge may hold a hearing to decide.

**Disposition** - The sentence (punishment) an accused person receives is his/her disposition.

**Election (Accused's)** - A person who is charged with having committed an indictable (serious) offence, with the exception of certain types of offences, has the right to choose whether they want to be tried by a Provincial Court Judge, a Supreme Court Judge alone or by a Judge and jury in Supreme Court.

**Evidence** - Documents, oral testimony, written statements, or objects identified by witnesses which are presented to the Court to try to prove certain facts.

**Ex Parte/In Absentia** - A matter heard ex parte is heard without the accused person being present.

**Family Violence** - Refers to physical, sexual, psychological, and financial abuse that takes place in the context of an intimate relationship such as within a family, or a common law relationship.

**First Appearance/Plea Day** - This is the first appearance day for any person charged with an offence. The judge will inform the individual what they are charged with and will also ask them if they want to enter a plea of guilty or not guilty.

**Guilty** - The decision by the Judge or Jury that the accused did commit the alleged crime. The accused may admit guilt by pleading guilty in Court.

**Hearsay-** This is information given to a witness by another person. The witness did not see the information first hand. The witness does not have personal knowledge of the original event. Hearsay is normally not admissible in court. If a witness speaks hearsay in court, a lawyer will normally object to stop the witness from saying it. The Judge will decide whether or not it can be said.

**Inadmissible-** Information or documentation which the judge says can't be used as evidence in court. For example, the judge may decide that an item can't be considered evidence because to do so would violate the rights of the charged person.

**Indictable Offence -** This is a more serious type of criminal charge and carries a higher penalty.

**Information-** This is the formal document which states the charge(s) before the Court.

**Jury Selection -** When people are selected from a larger group of potential jurors to serve on a jury for a particular trial.

**Laying of Charges -** Occurs when the police investigate a complaint and decide there are sufficient grounds to charge a person with a criminal offence.

**Oath—**A legally binding promise to tell the truth by swearing on the Bible or other religious document. A person who does not want to swear on a religious document makes an affirmation.

**Objection**— The Crown Attorney, defence lawyer, or the accused (if he/she is self-represented) has a right to raise an objection to evidence being offered to the court if they feel that the information should not go before the court. An example would be if the information is irrelevant. The Judge hearing the case will decide whether or not the objection is justified. If the Judge agrees, the information cannot be considered as part of the evidence.

**Offence** - A crime

**Pardon** - An adult who has been convicted of an offence may apply to have the conviction removed permanently from the record. They may apply for a pardon from a summary offence conviction three years after the sentence has been completed. They must wait five years from the completion of the sentence to apply for a pardon for an indictable offence. These applications are made to the National Parole Board.

**Parole**- The early release of a person from prison. The individual continues serving the sentence outside of prison but under supervision. The released prisoner must obey specific conditions of parole. If the conditions are violated the individual will be sent back to prison.

**Perjury** - This is when a witness or accused lies to the court when testifying. This is considered very serious. Such a person can be charged with the criminal offence of perjury and faces serious punishment if found guilty. Jail is often given for people convicted of perjury.

**Plea** - Accused's formal response to charges: guilty or not guilty.

**Plea Bargaining** - The Crown and defence may agree on a charge to which the accused will plead guilty or on the sentence that will be recommended to the judge. The judge has the final decision whether to accept the plea agreement or not.

**Postponement** - A postponement occurs when a matter is delayed by the court to a future date or time for continuation. This is sometimes called an adjournment.

**Preliminary Inquiry** - A hearing in Provincial Court in which a judge decides whether there is adequate evidence against an accused to go to trial. Preliminary inquiries are only available for indictable offences where the accused person has elected a trial in Supreme Court.

**Pre- Sentence Report**- After a person is found guilty of a crime, this report may be written and given to the court, Crown and accused before sentencing. The report includes information about the accused which helps the judge decide how to sentence him or her. Normally it is written by a probation officer who interviews the accused, as well as other people for the report.

**Pre-Trials**- This is a meeting between the Crown Attorney, the judge, the accused and his/her lawyer before a trial. The purpose is to help determine what the legal issues are, how much time is needed for trial and other issues that arise.

**Publication Ban**- In some criminal trials, including any involving children or sexual assault, the judge may make an order which prevents the identification of the victim outside of the courtroom.



**Remand**- When an accused is held in custody

**Reserve Judgment**- When the judge hearing the case takes time to re-search, study the law, or review the evidence presented at the trial before making a decision.

**Sentence** - The punishment given to an accused found guilty of committing an offence.

**Sentencing Hearing** - The presentation of evidence to the Court to help the Judge decide on the sentence to be given to an accused once they have been found guilty.

**Service**- Delivery of court related documents by one party to another.

**Statement** - When a person states that a crime has been committed, he or she may give a written or oral statement to the police.

**Subpoena** - An order of the Court telling a witness when and where he/she will be *required* to appear before the Court. If the witness fails to appear, the court may issue a warrant for their arrest.

**Summary Conviction Offence** - An offence of a less serious nature. The punishment for such offences are less than for indictable offences. A conviction for a summary conviction offence may still carry a jail term. A summary conviction charge is normally dealt with in Provincial Court.

**Summons** - An order requiring an accused to appear in court to answer to a charge. The summons outlines the date, time and location of the

court. Failure to appear may result in a Warrant of Arrest being issued.

**Suspect** - A person thought to have committed a crime.

**Testimony** - A statement made in court by a witness under oath.

**Trial** - A court hearing. In a criminal matter, the evidence is presented to determine whether an accused is guilty or not.

**Trier of Fact**- The Judge or Jury who decides whether the accused is guilty or not guilty of the charges before the Court.

**Undertaking to Appear**- A document signed by the accused, promising to appear in court at a specific time, date and place. The undertaking may also contain additional conditions such as requiring the accused to remain within the province, report to the police at specific intervals, or not communicate with certain people. Breaking these promises may result in further criminal charges.

**Verdict** - The decision of the Court after a trial as to whether an accused is guilty or not guilty.

**Victim** - The person(s) against whom a crime(s) has been committed.

**Victim Impact Statement**- A victim of crime is entitled to prepare a written statement which will be read by the Judge, the Crown Attorney and the defence counsel (and accused) if the accused is found guilty. This statement tells the court about the harm the victim suffered because of the crime committed against them.

**Voir Dire-** A special court hearing where a judge decides whether evidence can be presented at trial. It is often called “a trial within a trial” where the victim may be called to testify.

**Warrant of Arrest -** A written order issued by the court directing that an individual be arrested by police.

**Witness -** A person who testifies in Court because they have some information about a case. A witness is normally subpoenaed to Court.

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**Public Legal  
Information**  
Association of NL

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