



Type of law:  
**CRIMINAL LAW**

A 2018 Alberta Guide to the Law

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# Running a Criminal Trial In Provincial Court



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# Running Your Criminal Trial

In Provincial Court



1

## The Crown's Case

- Must prove beyond a reasonable doubt that you committed the offence
- Will put forward evidence and legal arguments
- If they do not provide enough evidence to prove the case, you will be acquitted (found not guilty)



2

## Your (the Defence's) Case

- If the Crown provided enough evidence to continue the trial, you have the option to enter evidence and question witnesses
- Provide evidence or legal arguments that raise a reasonable doubt about your guilt or that establish legal defences



#3

## The Judge's Decision

The judge will decide on the evidence whether you are guilty or not guilty  
If you are found guilty the next step is sentencing



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## INTRODUCTION

This pamphlet is for people who have been charged with a crime and wish to run their own trial in Provincial Court. It is written from the perspective of an accused. This is only a short overview of the trial process and is not meant to replace legal advice.

If you cannot afford a lawyer and you do not want to run your own trial, you can apply to Legal Aid or Student Legal Services for assistance. Contact Legal Aid if you are accused of an indictable offence. Contact Student Legal Services if you are accused of a summary conviction offence.

## Vocabulary

### I. Judge

The Judge sits at the front of the room at a raised desk. The Judge usually wears a black robe with blue trim and will be facing you. The Judge is always called "Your Honour" (or "Sir" if he is male or "Ma'am" if she is female) in Provincial Court.



It is the Judge who decides if you are guilty or not guilty. If you plead guilty or are found guilty after a trial it is the Judge who decides what your sentence will be.

### II. Prosecutor

The Crown Prosecutor presents the case for the government. The Prosecutor usually sits facing the Judge at the table closest to the witness stand. (This will vary from courtroom to courtroom). The Prosecutor may be called "the Prosecutor", "the Crown", "Crown Counsel" or by his or her actual last name (e.g. Ms. Smith).

The Prosecutor's job is to prove that you committed the offence. The Prosecutor's job really begins if you plead "not guilty" and there is a trial. The Prosecutor questions the witnesses (the Police and others) who may have seen something or know something about the offence.

### III. Court Clerk

Sitting in front of the Judge, the Court Clerk calls the Court to order, passes exhibits (physical evidence such as papers) to the Judge, calls the witnesses and writes down the Judge's orders.

### IV. The Accused

If you have been accused of doing something you are often called the "accused" instead of by your name. When your case is called, you will sit at a table facing the Judge. Sit at whichever one the Prosecutor is not already sitting at.



## V. Witnesses

If there is a trial, there will be Crown witnesses brought to Court by the Prosecutor, and defence witnesses that you bring to Court. Witnesses for both the Crown and defence are brought to Court to tell what they know about the offence. What they say under oath is their evidence.

Witnesses are often not allowed in the courtroom while the trial is in progress until it is time for them to give evidence. You might give evidence yourself but, as the accused, you have the right to choose not to testify. You also have the right to be in the courtroom at all times. Witnesses give evidence from the witness box at the front of the courtroom. The witnesses can sit in the public seats when they have finished giving evidence. If you give evidence, you will use the witness box too.

## VI. Public



Court proceedings and files are generally open to public access. There are rows of seats at the back of the courtroom. Before your case comes up, it might be a good idea for you to go to a courtroom and watch what happens. That will give you an idea of what to expect when it's your turn.

## The Basic Procedure

Remember: you are considered innocent until proven guilty beyond a reasonable doubt and it **is up to the Crown** to prove your guilt. If the Crown does not do this, the Judge will acquit you (which means he or she will make a legal decision that you are not guilty).

A trial is held if you have been accused of committing a crime that you say you did not do. You are charged by the Canadian government. The government is called the Crown in criminal proceedings. The lawyer working for the Crown is called the Crown Prosecutor.

There are seven basic steps in every criminal trial:



1. The case is called.
2. The trial begins.
3. An exclusion order of witnesses that are testifying at the trial will be made.
4. The Prosecutor presents the case for the Crown.
5. You present your case. (You are called the Defence.)
6. Both the Defence and the Prosecutor sum up their cases. (These are called submissions.)
7. The Judge makes a decision.

These steps always follow this order, one after the other.



### **1. The Case is Called**

You will be sitting in the public seating area in the courtroom. The Court Clerk will call your name; when this happens stand and go to the "accused's table".

### **2. The Trial Begins**

The Judge will ask you if you are ready to begin the trial. Stand and say: "*Yes, Your Honour*". The Judge will ask the Prosecutor the same question. If both are ready, the trial will begin. You can sit down and the Crown will begin with its case.

### **3. The Exclusion Order**

An Exclusion Order is when the Defence or Prosecutor asks the Judge to make witnesses leave the courtroom while the other witnesses are testifying. Each witness has evidence to give and should be able to give it without the risk of being influenced by what another witness has said.



For this reason, all of the witnesses are usually out of the courtroom until each one is called to testify.

If the Prosecutor is going to call more than one witness and hasn't applied to the Judge for an exclusion order, you should be sure to do this. You should say: "*Your Honour, I would like to request an exclusion order*".

You should tell your witnesses ahead of time about the exclusion order, so they will know what to expect. If you are also going to testify, the exclusion order does not apply to you. As the accused, you have the right to remain in the courtroom.

### **4. The Crown's Case (Presented by the Prosecutor)**

You are innocent until proven guilty beyond a reasonable doubt. The Prosecutor is trying to prove that you are guilty. In order to prove that you are guilty the Prosecutor must show:

- a) That the offence was committed (meaning, the actual physical act occurred). This is called the *actus reus*;
- b) That the offence was intended (meaning, you meant to do the criminal act). This is called the *mens rea*;
- c) The identity of the guilty party (meaning, that it was you that committed the offence in question);
- d) The time, date, and place of the offence.

### **I. Prosecution's Examination of its Own Witnesses**

Each Crown witness stands in the witness box, swears to tell the truth, and is asked questions by the Prosecutor. Often the main Crown witness is the police officer who handled the investigation. However, written evidence, such as a breathalyser test certificate, or a drug analysis certificate may be used against you. They will be introduced by a witness and then the Prosecutor will apply to the Court to have these documents or other pieces of physical evidence marked as exhibits in the case against you. After each Crown witness finishes giving evidence through the questions asked by the Prosecutor, you will have a chance to ask your questions. This is called cross-examination.



### **II. Cross-Examining the Crown's Witness**

Whether or not you should cross-examine each witness depends on what evidence the witness gave when questioned by the Prosecutor. You are not required to cross-examine all or any of the Crown's witnesses. Keep in mind that the reason for cross-examination is to bring out evidence that is helpful to the Defence.

You want to:

- weaken the evidence given by the Crown's witnesses,
- discredit the witness, or
- draw out facts that help your case.



It is important to listen carefully to each Crown witness and ask questions to show that the Crown witness is not sure of the facts or that the evidence is weak. Cross-examination is a time for you to ask questions. If you try to make speeches or arguments, the Judge will stop you.

There are two other important things to remember when you cross-examine:

- take your time to do it right and do not argue with the witness;
- do not lose your temper or say that a witness is lying.



When you cross-examine a witness, the way you ask your questions is very important. While the Prosecutor is bound to let the witness tell their story in their own words, your questions can suggest the answer you want. This way you can better control, to an extent, what the witness says. Questions of this kind are called leading questions, and they are commonly used in cross-examination. For example, if the crime was committed by someone driving a blue car, and you know that your blue car was not the only one at the scene, you could ask the witness the following leading question. *"Isn't it true that there was more than one blue car at the scene of the accident?"*



Be careful. You do not want to have the witness repeat something they are sure of and is damaging to your case. You want to point out weak spots in the evidence. For example, if the witness claims to have seen something clearly at 10:00 pm on February 19th, all you want to do is have the witness admit that it was dark at the time. This raises doubt that the witness actually saw what he claims he saw.

If you are claiming that a different version of the event took place, and you will try to prove it with evidence, you must tell the witness this version in cross examination. For example, if a witness testifies that they saw a car weaving from lane to lane and your testimony is that the car did not weave, you must ask the witness, *"Isn't it true that the car did not weave?"* You have to give the witness your version so that they have the chance to disprove it. If you don't, your testimony (if you choose to testify) will carry less weight (meaning, it will be less convincing). You do not have to get the witness to agree with you, you only have to put your story before them. Remember- if you are not calling any witnesses, you do not have to do this.



### III. Redirect

After you have finished the cross-examination of the witness, the Crown is able to ask further questions to clarify anything that has come up for the first time through your questions. This is called a "redirect."

### IV. Conclusion of the Crown's case

After all the Crown witnesses have been examined, the Judge will ask the Prosecutor if there is any further evidence to call. The Prosecutor will indicate that there are no more witnesses for the Crown or that the Crown is closing its case.

## 5. **The Defence's Case (Presented by You)**

Until now, the Judge has heard the Crown's entire case and has only heard you cross-examine the witnesses. Now is your opportunity to give your evidence. You can present your defence through your own witnesses, as well as your own testimony. Keep in mind that you do not have to call evidence if you do not wish to. If the Crown has not presented enough evidence to

prove the case beyond a reasonable doubt, you will not need to call any evidence because the Court should acquit you. Also remember that the Prosecutor can cross-examine your witnesses as you did with the Crown's.

### **Choosing to Testify**

You will have to decide whether to give evidence yourself. You do not have to. If you do, you will stand in the witness box and describe what happened. The Prosecutor will cross-examine you and try to show your evidence is weak or untrue.



If you are going to give evidence, you are the first defence witness. Remember, if you enter the stand to give evidence, the Prosecutor can cross-examine you. At this point, the Prosecutor may be able to ask if you have a criminal record. You must answer the questions unless the Judge says not to. If you do not give evidence, the Prosecutor cannot discuss your record before the Judge unless you are found guilty, and then it only becomes a factor in sentencing.

As with other witnesses, before testifying you will have to take an oath. While under oath, you must tell the truth.

Giving misleading evidence or testimony you know to be untrue is called perjury. The penalty for perjury is very serious and may result in a jail term for up to 14 years.

### **Advantages of giving evidence yourself**

- It is the only chance you have to give the Judge your side of the story and tell what you feel happened.
- You may have been the only "witness" to the offence.
- You may have seen something no one else saw or could see.
- You may know facts about the offence no one else knows.
- You may be able to show that you could not have committed the offence with which you are charged.
- What you say happened may be totally different from the story of the Prosecutor's witnesses.
- The Judge can assess whether you are a truthful, honest person.



### **Disadvantages of giving evidence yourself**

- The Prosecutor will have a right to cross-examine you.
- The Prosecutor will point out any weak spots in your evidence.
- If you have a criminal record the Prosecutor will be able to ask you questions about it (if you do not give evidence the Prosecutor cannot mention your record during the trial).

- The Prosecutor may ask you about things you do not want to talk about, but you will have to answer.
- Remember, you do not have to give evidence yourself. It is up to the Prosecutor to try to prove that you are guilty. If the case against you is not that strong, there may be no need for you to give evidence.

### Other Defence Witnesses

You may want to call your own witnesses. One of the most common mistakes made by people acting for themselves is to want to give evidence when they are questioning the witnesses they have called. You must allow your witnesses to tell their own story in their own words. You may guide them somewhat but you cannot ask leading questions (which suggest the answer you want) as you may in a cross-examination. For example, your questions should not suggest that you want a particular answer. E.g. you say: "*How fast was I driving?*" **NOT** "*I was driving over 50 km/h, wasn't I?*"



The Prosecutor can cross-examine each witness after you have finished your questions. Just as you did with the Crown witnesses, the Prosecutor will try to show weak spots or points that your witnesses aren't sure of. Before the trial, tell your witnesses about being cross-examined by the Prosecutor. Warn them that the Prosecutor may try to confuse them or make them angry. Make sure they understand that it is not personal, that they should just stay calm, take their time and answer truthfully and patiently. It is also important to note that the witnesses can be asked whether or not they have a criminal record. Remember to tell your witnesses that they may be asked to leave the court room while other witnesses are testifying.

You may also have an opportunity to ask your witness additional questions after the Prosecutor has finished his cross-examination. However, this is limited to questions about things which came up for the first time during the cross-examination by the Prosecutor. When all your witnesses have testified, tell the Judge that you have no more witnesses to call.

### How Do You Pick a Good Witness?

Your witness must have actually seen or heard what happened. Generally, a witness cannot talk about what other people said or told her while she is on the stand. For example, "*Well Jim told me the police didn't arrive until 10:00 p.m.*" is not an acceptable answer. This is called hearsay. Also, the Court is not interested in the beliefs or opinions of the witness, only the facts. Whoever you call to the stand must have witnessed something and be prepared to give evidence under oath in Court.



## Subpoenas (pronounced supEENas)

If you have any doubt that your witnesses will come on the trial day, go to the Provincial Court Criminal desk at the courthouse at least two weeks before the trial and ask for Subpoenas. Fill out the Subpoena (one for each witness) and ask to have it authorized by the Court Clerk. Once the Clerk has signed the subpoena, you will have to take the document and serve it on the witness yourself. (Remember you have to physically give the subpoena to the witness, you cannot just leave it on their door).



## Voir dire

At some point during the trial the Judge may direct that the Court enter into a *voir dire*. This is simply a mini-trial within the main trial and it is generally used to decide whether or not a particular piece of evidence should be allowed into the main trial. Often the evidence in question is a statement you gave to the police.

Generally, what needs to be determined is whether your statement was voluntary or not. *Voir dire*s usually involve complicated issues and it will likely be necessary for you to get advice from a lawyer. If you cannot afford a lawyer, then contact Lawyer Referral Service or Student Legal Services.

## **6. Submissions**

When you have finished your case, both you and the Prosecutor will have a chance to say some final things to the Judge. These are called submissions. Your submissions will come first if you have called any evidence. If you have not called evidence, then the Prosecutor will go first.

In your submission, you sum up all the points in your favour. Things to remember about giving your submission:

- Keep it brief
- You cannot give any new evidence during your submission; you can only talk about things which were said by the witnesses in their testimonies.
- You also want to point out the weaknesses in the Prosecutor's case.
- Remind the Judge of any evidence that the Crown witnesses seemed unsure about.
- Point out where the Crown witnesses did not agree with each other or contradicted themselves.
- Tell the Judge why your witnesses gave the believable evidence. This is your last chance to show that the Crown has not proved that you are guilty.

The Prosecutor will be making submissions in which the aim will be to try to show the Judge that the evidence proves that you are guilty beyond a reasonable doubt.

## 7. Decision

The Judge considers all the evidence which has been presented from both sides and decides if you are guilty or not guilty. Sometimes the Court will adjourn for a few minutes before giving the decision.

### Not Guilty

If the Judge says that you are not guilty then you are free to go. In this situation, you have no criminal record for this charge. You have been acquitted.



### Guilty

If the Judge decides you are guilty then you have been convicted. The next step is sentencing, where the Judge tells you your penalty (usually a fine or time in jail). However, before you are sentenced you will be given a chance to speak. This is called speaking to sentence.



When you speak to sentence you should tell the Judge anything about yourself and the crime which might lead the Judge to give you a lighter sentence. You might want to include:

- your personal circumstances (age, employment, family)
- any changes you are making in your life to avoid committing future offences or any circumstances around the offence that might make the judge more lenient (e.g. stole to feed family, on medication etc.).
- any time you have spent in pre-trial custody as this will also be taken into account when the sentencing is done.

For more information on sentencing, please see Student Legal Services' pamphlet, 'Guilty Pleas and Sentencing'.

You can ask for an adjournment to have the sentencing later that day or on another day. However, the Judge doesn't have to give you an adjournment and is unlikely to do so without a good reason. You should be ready to speak to sentence on the day of your trial.

## WHO CAN I CALL FOR MORE HELP OR INFORMATION?

### Legal Resources

<b>Alberta Courts Website</b>	<a href="http://www.albertacourts.ca">www.albertacourts.ca</a>
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<b>Provincial Court Clerk (Edmonton)</b>	<b>Criminal Division Ph: 780-427-7868</b> <b>Traffic Division Ph: 780-427-2743</b>
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<b>Legal Aid Society of Alberta</b> 10320 102 Ave NW, Edmonton, AB	<b>Ph: 1-866-845-3425</b> <b>Website: <a href="http://www.legalaid.ab.ca">www.legalaid.ab.ca</a></b>
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Free legal information lawyers who may represent you for a reduced rate.

<b>Lawyer Referral Service</b>	<b>Ph: 1-800-661-1095</b>
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Referrals to up to 3 lawyers that may be able to help you.

<b>Student Legal Services - Criminal Law Project</b> #203 - 9924 106 Street, Edmonton, AB	<b>Ph: 780-425-3356</b> <b>Website: <a href="http://www.slsedmonton.com">www.slsedmonton.com</a></b>
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Law students who provide assistance with most criminal matters that don't involve jail time.

<b>Elizabeth Fry Society</b> #900 - 10242 105 Street, Edmonton, AB	<b>Ph: 780-422-4775</b> <b>Website: <a href="http://www.efryedmonton.ab.ca">www.efryedmonton.ab.ca</a></b>
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Court workers explain court procedure and terminology, provide legal referrals, and offer practical assistance and support to those appearing in court.

<b>Native Counseling Services</b> 14904 121A Avenue, Edmonton, AB	<b>Ph: 780-423-2141</b> <b>Website: <a href="http://www.ncsa.ca">www.ncsa.ca</a></b>
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Court workers provide information on the nature of the criminal charge, rights, and court procedure. Assistance and support with the necessary documents, legal Aid applications, and other help.

<b>Crown Prosecutor (Edmonton)</b> 6 <sup>th</sup> Floor, Brownlee Building, 10365 97 Street, Edmonton, AB	<b>Ph: 780-422-1111</b> <b>E-mail: <a href="mailto:edmontonprosecutions@gov.ab.ca">edmontonprosecutions@gov.ab.ca</a></b> <b>Website: <a href="http://www.justice.gov.ab.ca/criminal_pros/default.aspx">www.justice.gov.ab.ca/criminal_pros/default.aspx</a></b>
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The lawyers representing the government during a criminal trial: you can contact them if you have questions about the trial.