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# BASIC CRIMINAL PROCEDURE

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- There is a standard procedure for Criminal trials that is set out in the *Criminal Code of Canada*.
  - Below you will find definitions and explanations for a few terms, procedures and rules commonly used in a criminal trial.
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## 1. THE JUDGE

- If you do not understand then you should ask questions. The Judge will explain the legal procedures and help you to present your case.

## 2. DISCLOSURE

- The Crown must give you all the information they have about your charges. This includes copies of police reports, statements of witnesses, your criminal record, and statements that you made.
- If relevant information is missing then send them a letter asking for it.
- If you remain unsatisfied then at your arraignment or trial confirmation hearing ask the judge to order the Crown to give you the missing information.

## 3. INFORMATION

- The *Information* is a court document that lists the crimes that the Crown intends to prove against you. Each alleged crime is called a count. For example, the first crime alleged will be numbered 1 and called "count 1."

## 4. ELEMENTS OF THE CRIME

- A crime has several parts or elements. For example, an assault is:
  - (a) a voluntary application of force
  - (b) against an unconsenting victim.
- The Crown must prove that:
  - (a) All the elements of the crime occurred;
  - (b) You committed the crime; and
  - (c) You intended to commit the crime.

## 5. PRESUMPTION OF INNOCENCE

- You are presumed innocent. You never have to prove your innocence.  
At all times the Crown must prove you are guilty.

## 6. BURDEN OF PROOF

- The Crown must prove your guilt beyond a reasonable doubt. A reasonable doubt is a doubt based on reason or fact. This is not an imaginary, speculative or frivolous doubt. It is more than a likelihood or probability of guilt but not so much as proof of guilt to an absolute certainty.

## 7. THE TRIAL BEGINS WITH THE CROWN PRESENTING EVIDENCE

- The Crown must prove your guilt so is first to call witnesses.
- After Crown counsel has questioned its witness then you can question or cross-examine that person.

## 7. CROSS-EXAMINATION

- The purposes of cross-examination are:
  - (a) To weaken credibility by showing that the witness:
    - *is biased*. For example, is a friend of the victim or has other reasons to give inaccurate testimony;
    - *made statements that are different from what the witness said in Court*. If you have a written statement from the witness then you must ask if he or she made the statement, read out the part of the statement that contradicts what the witness said, and ask if he or she gave those answers to those questions. The contradiction must be significant. For example, if a witness testified that an event occurred at about 10:00pm, but said 10:01pm in his statement, this, normally, would be insignificant. Also, the contradiction must be fair; you cannot take statements out of context to make your point; or

- *could have not observed what he or she said she observed.*

For example the witness may have been without eye-glasses, it may have been too dark, or too far for the witness to see what was claimed;

**(b) To confront the witness with the defence version of the events**

**when you disagree with what was said.** If you do not confront then it will look like you agree with that version and the judge will be suspicious if you contradict the witness later.

**(c) To bring out evidence favourable to you.** For example, the witness may confirm that it was too dark to see or the other witness wasn't wearing his glasses or had been drinking.

## **8. AFTER THE CROWN PRESENTS ITS CASE**

- After the Crown has called all its witnesses and put in all its evidence then:
  - a) If there is no evidence on an element of the crime then you should ask the judge to dismiss that allegation; or
  - b) If you think there is not enough evidence to prove the crime[s] beyond a reasonable doubt then tell the judge that you will not present evidence because there is not enough evidence to prove you are guilty. (The disadvantage of this choice is that you cannot present evidence if the judge disagrees with you); or
  - c) You present evidence by calling witnesses. You question your witnesses first and then the Crown may cross-examine them.
  - d) **You do not have to testify.** But you may choose to testify on your own behalf. The advantage is that you will be able to directly tell the judge what happened. The disadvantage is that Crown may cross-examine you to weaken your testimony. This cross-examination may include bringing out your criminal record, but only to test your credibility, not to show that you are apt to commit crimes.

- e) You must be prepared for your case but if you are taken by surprise by a witness or some evidence then ask for an adjournment so you can properly prepare.

## **9. SUBMISSIONS**

- ❑ After the evidence has been presented you and the Crown will tell the judge reasons why you should or should not be convicted. If you presented evidence then you will go first.
- ❑ The judge will decide on the evidence given during the trial. New evidence given during submissions will not be considered.

## **10. JUDGMENT**

- ❑ The judge will decide whether you are guilty. If you are acquitted then the proceeding is over and you can leave. If you are convicted then you will be sentenced.