FONDATION BARREAU DU QUÉBEC

REPRESENTING YOURSELF IN COURT

In CRIMINAL and PENAL Matters

BOOKLET 3

9 STEPS TO GUIDE YOU

REPRESENTING YOURSELF IN COURT

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WARNING

This document provides general information and does not constitute a legal opinion. Its contents should not be used to attempt to respond to a particular situation.

In this document, the masculine includes both men and women, depending on the context.

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FOREWORD

Given the increasing number of individuals choosing to represent themselves in court, without a lawyer, the Fondation du Barreau du Québec has decided to make the general information in this guide available to these individuals to help them better understand the main steps of the judicial process and allow them to make informed choices regarding the steps they should take.

This third guide of a series is intended more specifically for people facing **criminal** or **penal proceedings**. It seeks to explain and demystify the different steps of a proceeding, and assist individuals who choose to represent themselves in court. Although they should not use it as an exhaustive source of information, we hope this guide will help them understand what their choice involves.

In criminal and penal matters, an accused's freedom or future is almost always at stake. A person who decides to represent himself in court should be aware of all the consequences of his decision.

In the same series:

REPRESENTING YOURSELF IN COURT in Civil Matters, published in the 2nd quarter of 2009.

REPRESENTING YOURSELF IN COURT in Family Matters, published in the 3rd quarter of 2010.

REPRESENTING YOURSELF BEFORE AN ADMINISTRATIVE TRIBUNAL. Tribunal administratif du Québec, Commission des lésions professionnelles, Régie du logement and Commission des relations de travail, published in the 1st quarter of 2013.

The words and expressions in **bold type and in colour** in the text (the colour varies depending on the chapter) refer to definitions you will find in the glossary at the back of this guide.

REPRESENTING YOURSELF IN COURT
In Criminal and Penal Matters

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HERE YOU ARE, ALONE BEFORE THE COURT

You should know that **criminal** and **penal cases** are matters of public order. As a result, you will be prosecuted by the State or "The Queen", not by a private party. Final decisions about how the case will proceed are generally made by the State's representative alone.

The complainant cannot withdraw his complaint on his own. The final decision rests with the prosecution.

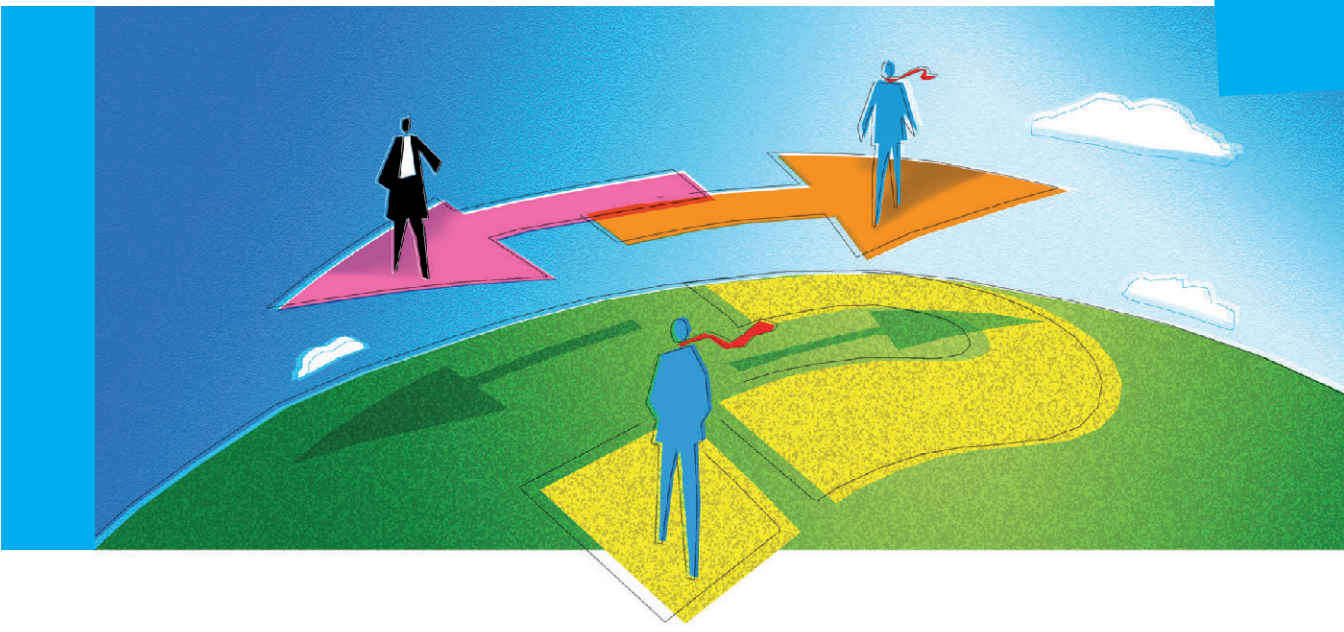
When you're accused, you can be represented by a lawyer. You can also choose to represent yourself—it's your right.

Before deciding to represent yourself, you should ask yourself certain important questions:

- Do you know why you're being accused?
- Do you know why you have to appear in court?
- Do you understand the documents you've received?
- Do you know what's at stake if you're convicted?

If you answer NO to any of these questions, you may not understand the consequences of representing yourself in a criminal or penal matter.

SHOULD YOU
HIRE A LAWYER?



1.1 YOUR RIGHT TO BE REPRESENTED BY A LAWYER

You have a choice: be represented by a lawyer before the court, or represent yourself. No one other than a lawyer can speak or act for you before the court, not even a family member.

You have the right to choose the lawyer who will represent you, whether or not you're eligible for **legal aid**. However, the lawyer must accept the mandate.

To find out whether you qualify for legal aid, contact your local legal aid office or visit the *Commission des services juridiques* web site at **www.csj.qc.ca**.

If you're eligible for the legal aid program, you have a choice of being represented by a lawyer who works for a legal aid office or by a lawyer in private practice who accepts legal aid cases.

If you don't qualify for legal aid because of your income, or because the services you need are not covered by the program, you can consult a lawyer in private practice to find out how much he would charge to represent you, for all, or part, of the **proceedings**. Don't hesitate to discuss possible arrangements regarding the lawyer's fees. In some cases, a lawyer may agree to work for a fixed amount or accept other terms adapted to your financial situation. You could also just consult a lawyer. For more information about limited mandates, visit the Bar of Quebec's website.

You don't know a lawyer? Groups or associations of lawyers provide referral services or lists of lawyers practicing in **criminal** or **penal matters**. ▶ See Available Resources at the end of this guide.

1.2 SHOULD YOU HIRE A LAWYER OR NOT? QUESTIONS YOU SHOULD ASK YOURSELF

Representing yourself before the court is not an easy thing to do. Before making this decision, think about the consequences of your decision. You might be responsible for the alleged act without necessarily being guilty of a crime. You may wrongly believe that you're liable for a crime simply because you've been charged. On the other hand, a defence you think is valid, might not be.

Here are a few points to consider in deciding whether a lawyer's assistance would be useful.

THE HELP OF A LAWYER IS ESPECIALLY USEFUL IF:

- You have trouble understanding the rules that apply before the court;
- You don't feel comfortable speaking in public;
- You are in conflict with some of the Crown's **witnesses** and the situation has become very emotional;
- You don't understand the seriousness of the alleged offences and the consequences of a guilty **plea**;
- You don't know what defences are available to you;
- You have trouble identifying what witnesses, or **evidence**, will be useful for your defence; ▶ See 5.3
- You have to determine whether an **expert witness** should be consulted; ▶ See 6.4.5
- You don't know whether you can avoid a **criminal record**;
- You want to **appeal** your case. ▶ See Step 8

Under the Criminal Code, in certain cases you're not allowed to represent yourself for a part of the proceedings. If this is the case, the court will let you know, and a lawyer will have to represent you for this stage of the case.

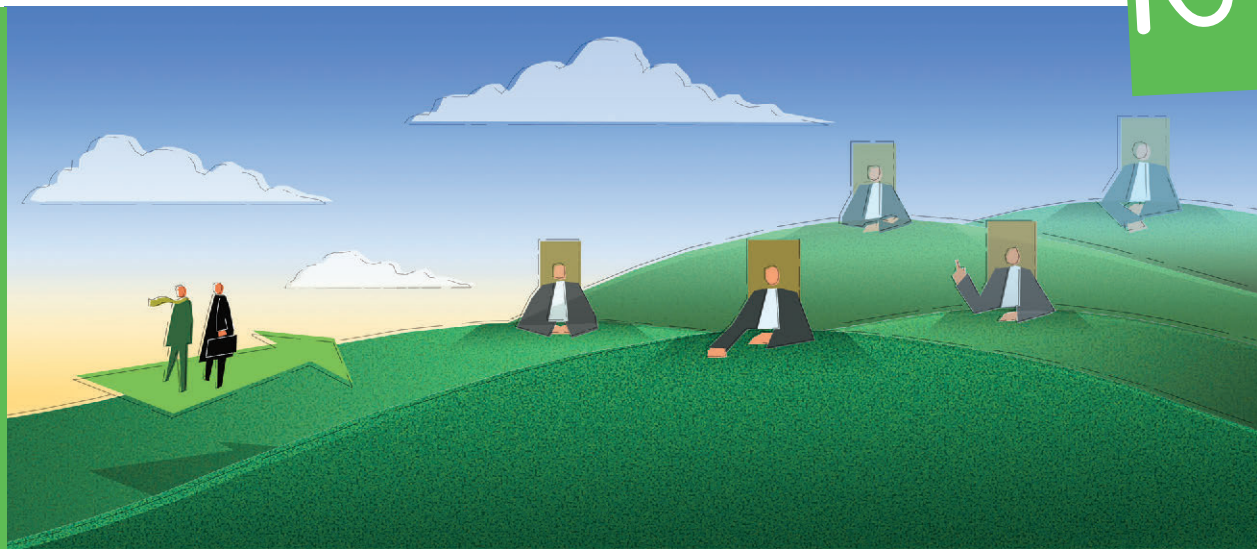
IF YOU THINK YOU CAN REPRESENT YOURSELF IN COURT, ASK YOURSELF WHETHER:

- You can understand all the evidence;
- You can understand texts that include legal terms;
- You can remain calm in the courtroom, even during examinations or when you are being criticized;
- You have enough time to spend on your case;
- You're comfortable talking to the Crown attorney, and speaking to the judge;
- You know all the possible consequences if you're convicted.

REMEMBER

- You have the option of representing yourself or being represented by a lawyer;
- If you're thinking of representing yourself, you're responsible for finding out what you need to know;
- If you decide to represent yourself, you can consult a lawyer, even for a few hours, at the beginning of the proceedings, or any time you find it necessary to do so;
- The **rules of procedure** apply to everyone equally, and the judge can't give you special treatment just because you represent yourself. It is therefore important to understand the rules, and follow them.

HOW THE COURTS ARE ORGANIZED



The courts are organized like a pyramid. At the top there's the Supreme Court of Canada, followed by the Quebec Court of Appeal, the Quebec Superior Court, the Court of Québec, and, finally, the municipal courts.

2.1 THE SUPREME COURT OF CANADA

The Supreme Court is the highest court in Canada's judicial system. It is the final **appeal** court in the country, the last court to which you may apply. Its jurisdiction covers all legal matters, including **criminal and penal matters**. The Supreme Court consists of 9 judges and only sits in Ottawa.

2.2 THE COURT OF APPEAL

The highest court in Quebec is the Quebec Court of Appeal. Criminal appeals are heard by this court, which normally sits as a bench of three judges. **Witnesses** are only heard exceptionally, with the court's permission. **Hearings** are held in either Quebec City or Montreal.

2.3 THE SUPERIOR COURT

This court is present in all courthouses in Quebec. The Superior Court hears trials involving a **jury**, and appeals for certain types of charges. It also hears appeals of summary proceedings. (▶ See 4.1) This is also the court that decides whether the accused will be released on bail when the charges concern the most serious crimes, such as murder.

2.4 THE COURT OF QUÉBEC

Most of the steps of a criminal matter take place before the Court of Québec, including the appearance, interim release hearing (bail hearing), preliminary inquiry, trial and **sentencing** arguments. However, interim release hearings (bail hearings) are held before the Superior Court for the most serious crimes.

This court is made up of judges who hear various matters, including criminal and penal cases. The judges of this court also sit in all the courthouses in the Province of Quebec.

2.5 MUNICIPAL COURTS

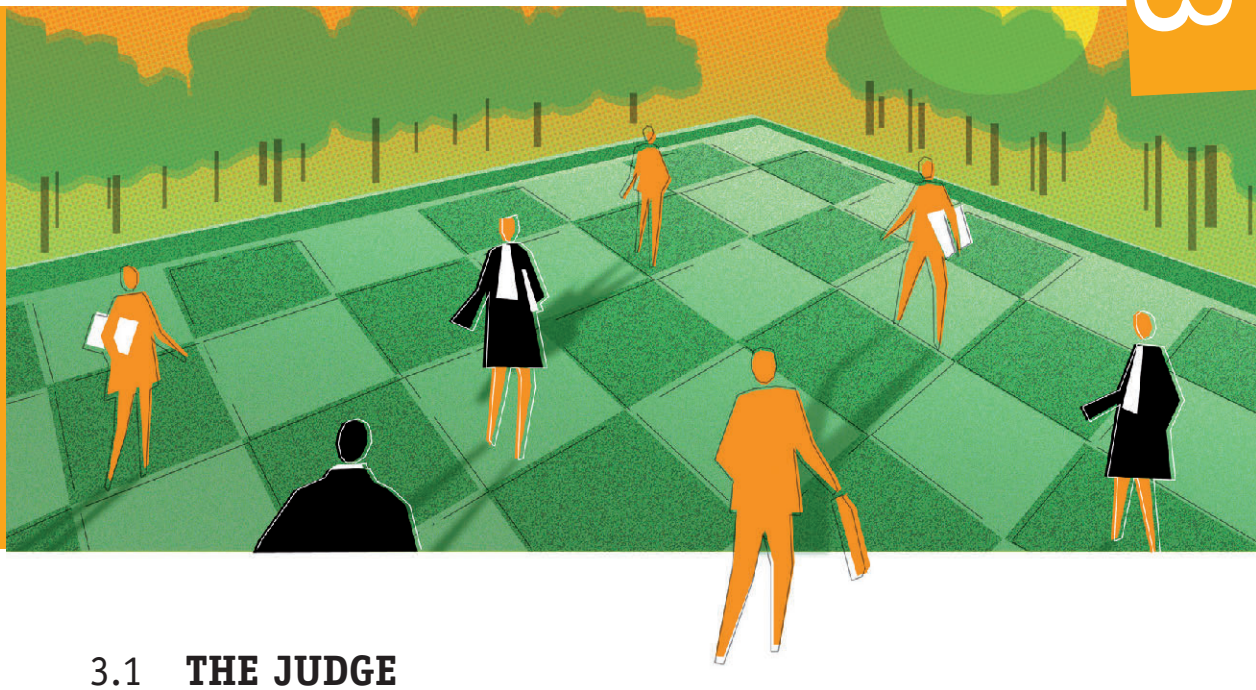
Municipal courts are found throughout most of the province. They are presided by municipal judges. In penal matters, they have jurisdiction over municipal by-laws and offences under certain Quebec laws, such as the *Highway Safety Code*. Some municipal courts may hear cases involving **summary conviction offences**.

REMEMBER

All of these courts have the power to take away your freedom when the law provides for arrest or incarceration;

Visit the web site of these courts for more information.

THE ROLE OF EVERYONE INVOLVED



3.1 THE JUDGE

The judge hears the parties and is responsible for ensuring that the trial is conducted properly. He decides on disputes about the law, and takes the facts of the case into account.

The judge must be impartial, and demonstrate independence at all times. He applies the law and the **rules of procedure** in the same manner for all parties. He must treat the parties fairly, being careful not to favour one over another.

If you represent yourself in court, the judge will explain to you how the trial will be conducted, and what each person's role is. The judge is not the adviser or personal guide of any one of the parties. If you represent yourself, you shouldn't count on the judge to give you advice during the trial.

Remember, you must not communicate with a judge to discuss your case other than during court hearings.

3.2 THE LAWYER FOR THE PROSECUTION

The lawyer for the prosecution, commonly known as the "Crown attorney", is a legal professional who is a member of the *Barreau du Québec* (Quebec Bar) and trained to act before the courts.

Normally the State prosecutes you in a **criminal** or **penal matter**.

In Quebec, the Director of Criminal and Penal Prosecutions (DCPP) is appointed by the government to prosecute criminal and penal matters. He appoints lawyers to represent him across the province. Also, some municipalities have their own prosecutors for criminal and penal matters. Federally, the Public Prosecution Service of Canada (PPSC) is appointed by the federal government to prosecute certain criminal and penal offences created by federal laws.

The lawyer for the prosecution is required to follow strict rules and is subject to the authority of the **trustee (syndic)** of his professional corporation who has the power to investigate and oversee him.

When performing his duties, a lawyer must be polite and courteous toward the court, the parties, the **witnesses** and the court staff, in accordance with his *Code of Ethics*, the law and the **jurisprudence (case law)**.

The attorney for the prosecution is the State's representative. He must primarily:

- Examine the files submitted by the police;
- Act as the prosecutor for any offence relating to the *Criminal Code* and any federal and provincial penal laws (such as the *Fisheries Act or the Highway Safety Code*);
- Bring the appropriate charges in the file or, in some cases, decide not to bring any charges. He may also decide that charges should be dropped;
- Assess all of the **evidence**, in the file and present it objectively to the court at trial;
- Argue cases before all levels of courts.

In our legal system, the lawyer for the prosecution is your adversary. You must understand that you can't count on him to help you with your case.

He nonetheless has certain obligations towards you. For example, he must give you all information in his possession, even if that information is favourable to you. This is the obligation to **disclose evidence**. ▶ See 9.6

3.3 THE DEFENCE LAWYER

The defence lawyer is a legal professional who uses his skills and knowledge to represent and advise his clients. Although the legal rules may appear complex and sometimes incomprehensible to you, for a lawyer they're the tools of his trade. Before the courts, a defence lawyer performs all of the duties required to see your case through to the end.

The defence lawyer may, for example:

- Analyse the applicable law, and determine whether the charge is valid;
- Periodically help the accused assess what is at stake, his chances of success, and the possible risks;
- Draft proceedings, and fill out the appropriate forms;
- Discuss and negotiate with the lawyer for the prosecution;
- Represent the accused before the court;
- Contradict the prosecution's evidence;
- Cross-examine the prosecution's witnesses;
- Present the accused's defence, where applicable, and examine the witnesses for the defence;
- Attempt by all legal means to have the accused acquitted;
- Attempt to obtain for the accused the most lenient **sentence** possible;
- Advise the accused as to what steps should be taken or what strategy should be adopted;
- Dissuade the accused from saying or doing things that could harm his defence.

The defence lawyer is a member of a professional corporation, the Quebec Bar, whose mission is to protect the public. The Bar requires that lawyers abide by strict rules, including that of acting competently and in the best interests of their clients.

Just like the lawyer for the prosecution, the defence lawyer must periodically take professional development courses, and comply with a code of ethics. He is also subject to the authority of the Bar's trustee (syndic), who receives requests for investigations, namely from dissatisfied clients, or clients who believe they have been poorly represented by a lawyer. The syndic has investigative and oversight powers which allow him to assess the validity of the claims made against the lawyers, and impose penalties on the lawyers when applicable.

3.4 THE COURT CLERK'S OFFICE

The court clerk's office is the place where court records are kept. The court office staff coordinates various administrative services relating to those records.

The role of the staff at the court clerk's office is limited to giving you general information and receiving certain proceedings.

For example, the court clerk's office staff may:

- Tell you about the types of forms you need, how to fill them out and the related costs;
- Tell you where the various departments and staff are, if necessary;
- Explain certain basic aspects of procedure to you, such as how to summon or assign, a witness.

However, the personnel at the court clerk's office may not under any circumstances:

- Give you legal advice regarding your case;
- Advise you about the legal actions you may file with the court;
- Advise you about the defence you should present;
- Recommend a lawyer for you;
- Give you advice regarding the evidence, which you should present, or the witnesses whom you should have testify;
- Give you legal advice about your rights, following a decision rendered by the court.

3.5 THE SPECIAL CONSTABLE

The special constable in courthouses in Quebec acts as a **peace officer**. His role is to maintain order and safety in courtrooms and in the courthouse in general..

The special constable has the power to arrest people like a police officer, but only at the courthouse.

3.6 THE COURT CLERK

The court clerk is the person who sits in front of the judge and takes notes. He keeps a record of all of the important steps of the proceedings. This record is known as the minutes or "procès-verbal" of a hearing.

Depending on the courthouse, the court clerk is responsible for information technology and digital recording during the hearing. His work is essential to the smooth conduct of proceedings before the court.

3.7 THE COURT CRIER

The court crier is the person responsible for opening the court session and performing certain services for the court.

3.8 THE INTERPRETER

A criminal trial is conducted in your choice of French or English. For an accused who does not speak the language of the trial, an interpreter is provided. An interpreter translates for the court what is said by a witness who does not speak the language of the trial.

In all cases, the fees if the interpreter are paid by the State.

3.9 RULES OF CONDUCT BEFORE THE COURT

When you go to court, be respectful, polite and show restraint toward the judge, the other party, the witnesses and the court staff.

Certain rules of conduct must be followed in the hearing room, such as:

- Always be polite and respectful;
- Always be appropriately attired; if you're not, the judge can refuse to listen to you and ask you to go change your clothing (wearing shorts, mini-skirts, camisoles or short T-shirts is not acceptable in court; you also cannot wear a cap, a hat or sunglasses);
- Turn off your cell phone before entering the hearing room (do not put it on vibration mode because it could interfere with the recording of the proceedings);
- Don't use a camera or recording device;
- Don't bring food or drinks into the courtroom;
- Don't chew gum;
- Rise when the judge enters and leaves the hearing room and remain standing until he has sat down or left his seat;
- When you speak to the judge, address him as "Your Honour";
- If you are speaking in French, use "vous" to address the judge, the lawyer for the prosecution, the court clerk and the witnesses;
- During the hearing, listen carefully, and don't cut other people off, except to object to a question;
- Ask the judge for permission to speak;
- Except when you're examining a witness, speak directly to the judge, not the other party;
- Avoid arguing with the other party. Remain calm and in control of your emotions.

Make sure to be in court when the hearing is set to begin. Court usually begins with the "calling of the role", a review of the cases scheduled for the day, unless the judge decides otherwise. Even if you're required to be present at a specific time, this doesn't mean you will be heard at that time, so when you go to court, plan to spend the whole day there, since several cases are often scheduled for the same day.

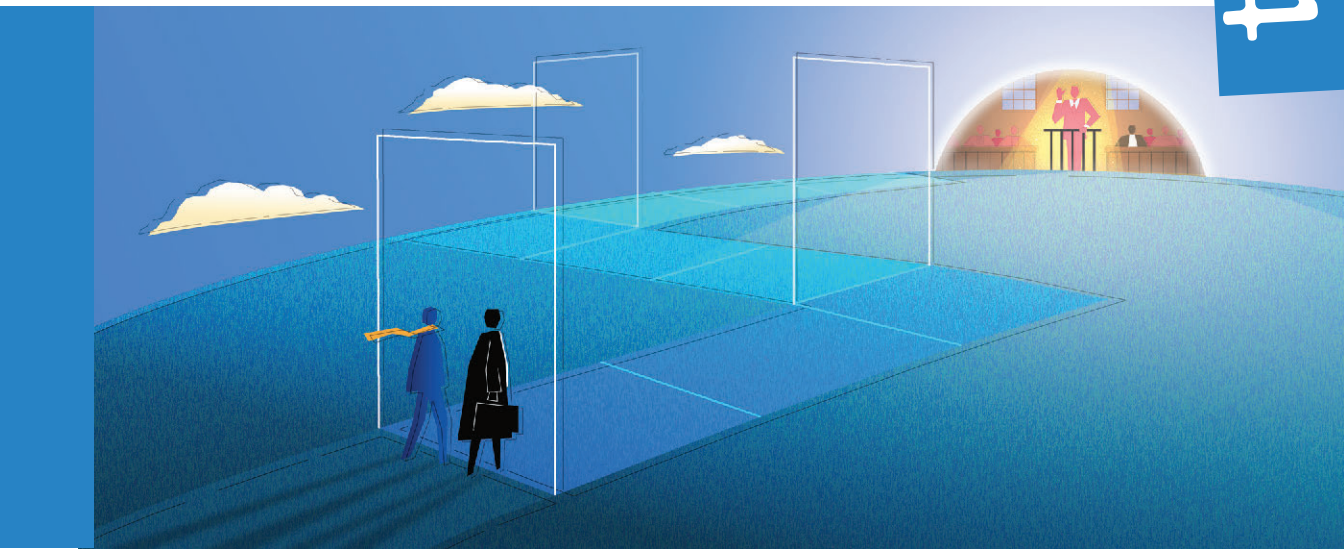
Court **hearings** are public. This means that anyone may attend them unless the judge decides otherwise. ▶ See 6.2

All testimonies given at a court hearing are recorded and preserved. This includes comments made during and after the decision.

REMEMBER

- Consider the limits of the role of each individual involved in the legal process;
- Be courteous toward everyone involved. They must act the same way toward you;
- Always be properly attired when you're in court;
- Make sure you're available for the entire day.

THE STEPS BEFORE TRIAL



4.1 TYPES OF OFFENCES

The charge brought against you may be an **indictable offence**, a **summary conviction offence** or a penal offence. In criminal law there are two types of offences.

Indictable offences are the most serious offences and they involve complex proceedings. In some cases, you'd be entitled to a preliminary inquiry before your trial whereas for certain offences you'd be entitled to a trial by **jury**. The **punishment** is harsher for indictable offences than for summary conviction offences. The State may accuse you of an indictable offence any time, regardless of how much time has passed since the event giving rise to the charge. Murder and armed robbery are examples of indictable offences.

Summary conviction offences are offences for which the legal procedure is simpler and the sentences less severe than for indictable offences. They may nonetheless involve incarceration. The prescription for this type of offence is generally from six months to three years. When these periods of time have expired, the State may no longer prosecute you. Disturbing the peace is an example of a summary conviction offence.

All convictions for a criminal offence, whether punishable by indictment or on summary conviction, may lead to a **criminal record**.

The purpose of **penal offences** is also to punish harmful conduct, but these do not constitute criminal offences. They are also called regulatory or statutory offences. The *Highway Safety Code*, which regulates the speed on highways, a municipal by-law prohibiting access to a park after 10:00 p.m., and the prohibition against hunting without a licence are examples of penal offences. Convictions for these types of offences do not lead to a criminal record, but the prosecutor will have access to your previous convictions for similar offences.

When you are prosecuted for a criminal or penal offence, rules of evidence and procedure apply. Knowing them can make the difference between an acquittal or a conviction which can lead to imprisonment.

4.2 BEING SUMMONED TO COURT

4.2.1 THE STATEMENT OF OFFENCE

In penal matters, the legal process begins with the issuance of a **statement of offence** which will be left for you (ex: a ticket for parking illegally, left on your car or delivered in person by a **peace officer**). It may also be delivered to you by mail. This document contains the notes taken by the agent who observed the alleged offence, as well as the amount of the **fine**. An answer form is attached to it to indicate whether you wish to plead guilty or not guilty to the charge.

If you plead guilty, you don't have to go to court and you must pay the fine indicated. If you plead not guilty or contest the penalty, you must mail the answer form within the specified time. You will receive a notice of **hearing** telling you the date and place of your trial. You must be ready to proceed on that date, and you must notify your **witnesses**. If you don't respond to the statement of offence, a trial will be held in your absence and, if you're found guilty, the amount of the fine may increase significantly.

4.2.2 THE SUMMONS, PROMISE TO APPEAR, APPEARANCE NOTICE OR RECOGNIZANCE TO APPEAR

In criminal matters, you will be summoned to appear personally before the court to respond to the charge brought against you. The appearance is the first step of the legal process. (▶ See 4.3) When you appear, you will either be free or detained.

A notice requiring you to go to court may have been delivered to you by a peace officer when the police first intervened. You must go to court, otherwise an **arrest warrant** may be issued against you, and you could remain in jail. This document may even include release conditions you must follow, such as the obligation to give your fingerprints and be photographed, as provided for in the *Identification of Criminals Act*. These conditions are determined by the police officer.

KEEP IN MIND

The conditions of release imposed by the police officer remain in effect until the end of the proceedings, unless the court changes them.

You may also receive a document called a "Summons" by **bailiff**, from a peace officer or by mail. In all of these cases, you must go to court on the date indicated. This is not the date of your trial, so you won't need your witnesses at this time. This type of document may also include another date requiring you to have your fingerprints and photograph taken. Detailed conditions may also be imposed on you in the summons or promise to appear.

4.2.3 THE ARREST

If a peace officer arrests you, and does not release you, you will appear before the court as a detainee. During this appearance, the charges brought against you will be indicated in a document. This document may be an "information" or an "arrest warrant".

4.3 THE APPEARANCE

The appearance is the first step in a case before the court. This is when you may be called upon to plead guilty or not guilty. In some cases you'll have a choice as to the type of trial — before a judge sitting without a jury or before a judge and jury.

This is also the stage when the prosecution will provide you the **disclosure of the evidence**. (▶ See 9.6) This **evidence** comes from the police investigation, and the attorney for the prosecution will have determined the charges brought against you based on this evidence.

If you plead not guilty, the court will postpone the case to a later date, called the "pro forma" date. This will give you time to study the evidence, evaluate what's at stake for you and reconsider whether you should represent yourself at your trial.

If you plead guilty to all the charges, the judge will hear submissions on **sentencing**.
▶ See Step 7.

KEEP IN MIND

➲ Even if you plead not guilty at the appearance, you can still change your **plea** at any stage of the proceedings but the reverse is not true. It can be difficult to withdraw a guilty plea;

➲ It is in your interest to read all of the evidence in the file before entering a guilty plea, and find out all the consequences of such a plea;

➲ Simply entering a guilty plea can have consequences on your everyday life, including your immigration status, the possibility of purchasing or carrying a firearm, your insurance costs, your job or your ability to travel outside the country or drive an automobile.

4.3.1 AN ACCUSED WHO IS NOT IN CUSTODY

The appearance will be relatively short if you are not in custody. Once your plea of not guilty is entered, you will be able to leave court. If you choose to plead guilty, the judge may hand down the sentence immediately or postpone it to a later date. You have a legal duty to find out when your case will be back in court. The court can give you this information. The date is set by the judge.

4.3.2 AN ACCUSED WHO IS DETAINED

If you're arrested and the police officers did not release you, you must be brought before a judge as quickly as possible. This can be done by video conference or by conference call in certain regions. Other than in exceptional circumstances, the Criminal Code requires that you appear within 24 hours of being arrested.

If the prosecution objects to your release, the court must go to the interim release step, also known as the "bail hearing".

4.3.3 THE INTERIM RELEASE, OR "BAIL" HEARING

➢ Objectives and principles of release

This is when the judge determines whether you will be released or remain in custody for the rest of the proceedings. This step is crucial to how your case will unfold.

The purpose of this stage is different from that of the trial. It is not an attempt to find out whether guilt will be proven **beyond a reasonable doubt**, but whether you can remain released during the proceedings. The fundamental principle of this step is that you will be released unless the prosecution proves that keeping you in custody is warranted. However, you are the one who will have to convince the judge that you should be released if, for example, you have failed to comply with release conditions in the past.

➢ The criteria for release

The judge will consider the following three factors in deciding whether or not to release you:

- Will you present yourself in court when you're ordered to?
- Are you likely to commit offences or obstruct the course of justice?
- Will public trust in the judicial system be undermined by your release?

➢ The rules of evidence during the interim release hearing

The prosecution has the right to present evidence, even **hearsay**, about your criminal record, character and lifestyle. The judge and the attorney for the prosecution will be able to ask you certain questions, other than ones related to the offence. For example, you might be asked the address of the place where you will be living during your release, but you cannot be asked whether you were at the crime scene.

If you decide to speak, you could be examined and cross-examined about the facts by the Crown prosecutor. Such testimony could be used under certain circumstances.

You can also testify, or call witnesses, in order to convince the judge that he can release you and that you will abide by all the conditions that are imposed.

Hearsay evidence is accepted at an interim release hearing.

➢ Conditions of release

The judge may decide to release you but impose certain conditions, such as:

- keeping the peace and being of good behaviour;
- living at a fixed address;
- being at that address at specific times (curfew);
- not driving a vehicle;
- notifying the court of any change of address;
- attending court when your presence is required;
- not possessing a weapon;
- not contacting the complainants and witnesses;
- not being within a defined area;
- not going to certain addresses;
- not consuming drugs and alcohol;
- following any therapy considered relevant to problems from which you are suffering;
- not leaving Quebec;
- depositing your passport with the police authorities or with the court;
- providing a sum of money or property as security.

If you do not comply with the conditions imposed by the court, you could be charged with a new criminal offence, and kept in custody for the rest of the proceedings.

Your release or detention will have very important consequences on how your case unfolds.

4.4 THE PRELIMINARY INQUIRY

4.4.1 ITS PURPOSE AND EFFECTS

For certain types of charges, you are entitled to a preliminary inquiry.

A preliminary inquiry is held at the request of either party, and the judge cannot refuse the request. The preliminary inquiry is normally conducted before a Court of Québec judge, who must determine whether the evidence against you is sufficient to justify the holding of a trial.

The purpose of a preliminary inquiry is not to determine whether you are guilty or innocent, but to evaluate the evidence submitted against you. As of your appearance, you will be entitled to examine this evidence; the preliminary inquiry will give you the opportunity to review it further. You may choose to cross-examine witnesses at the preliminary inquiry.

The judge or the jury in cases where there is one, may decide whether you are innocent or guilty at the trial, not at the preliminary inquiry stage.

It is rarely in your interest to testify, or to present your defence at the preliminary inquiry since everything said at the preliminary inquiry is transcribed and may be used against you at trial.

4.4.2 WHAT HAPPENS AT THE PRELIMINARY INQUIRY

At the preliminary inquiry, the judge has the power to:

- Release you from the charges brought against you, if there is a complete lack of evidence about an essential element of the offence;
- Summon you to trial;
- Add other charges stemming from the same facts.

When the prosecution receives new evidence along the way, it must disclose it to you as soon as possible.

4.4.3 REVIEW OF RELEASE OR DETENTION ORDERS

At the preliminary inquiry, if you are in custody, you may ask the judge to release you, or to review your release conditions. The prosecution may also ask for you to be imprisoned, or have your release conditions reviewed. This hearing is held before the judge who heard the evidence at the preliminary inquiry.

4.5 NEGOTIATION

You can talk to the prosecution and try to negotiate the charges or a specific sentence in return for pleading guilty. Such discussions may take place at any time during the legal proceedings. Negotiations are not subject to any particular formality and are separate from any stage of the proceedings. It is a voluntary process which you can choose to take part in or not.

If an agreement is reached, you will plead guilty and submit joint recommendations regarding your sentence to the judge. When you plead guilty, you give up your right to go through a proper trial. It is therefore important to think carefully about this decision.

You should be aware that a judge is not bound by the joint recommendations the parties may submit, but that doesn't make such recommendations any less important. On the contrary, joint recommendations are an important guideline for the court and they must be taken seriously unless they are clearly inappropriate under the circumstances, against the public interest or would bring the administration of justice into disrepute.

REMEMBER

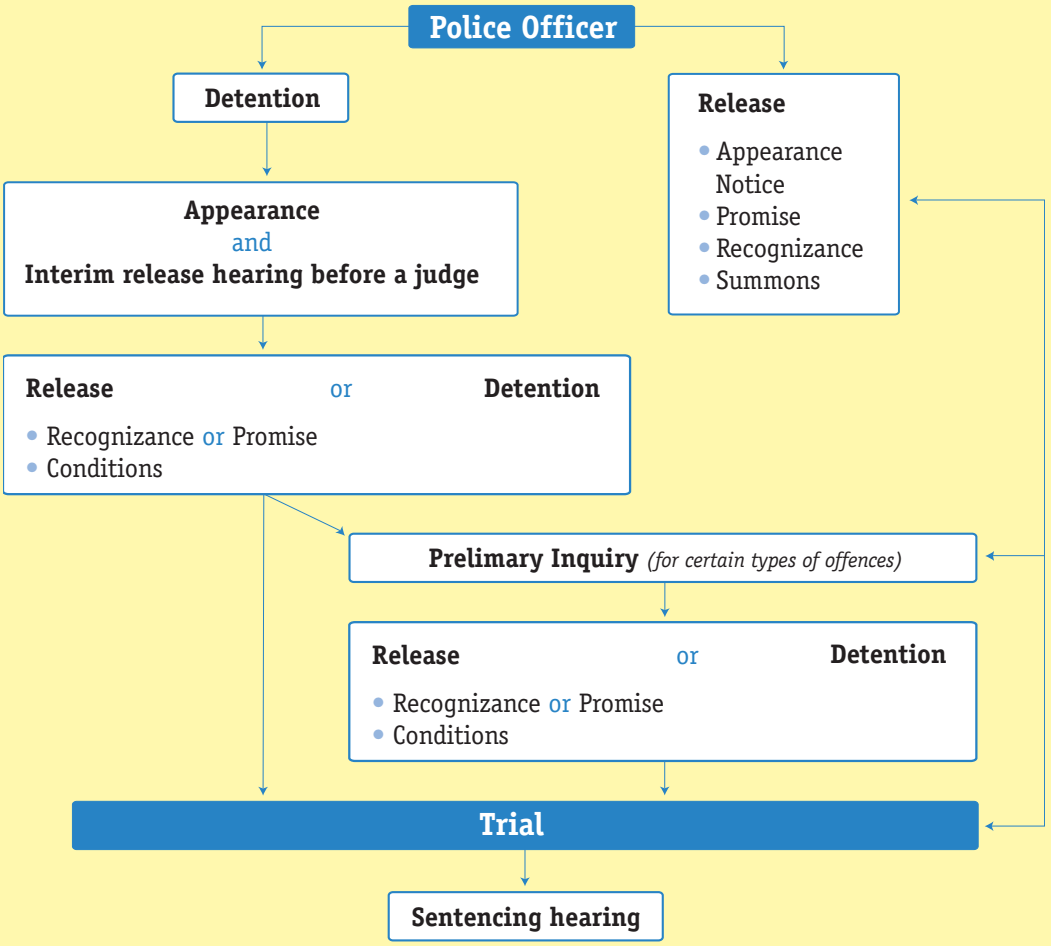
Before asking for a preliminary inquiry to be held, carefully consider your decision. In certain cases, the prosecution may ask that the charges against you be increased, if the evidence at the preliminary hearing justifies such a request.

Typical stages of a criminal law case

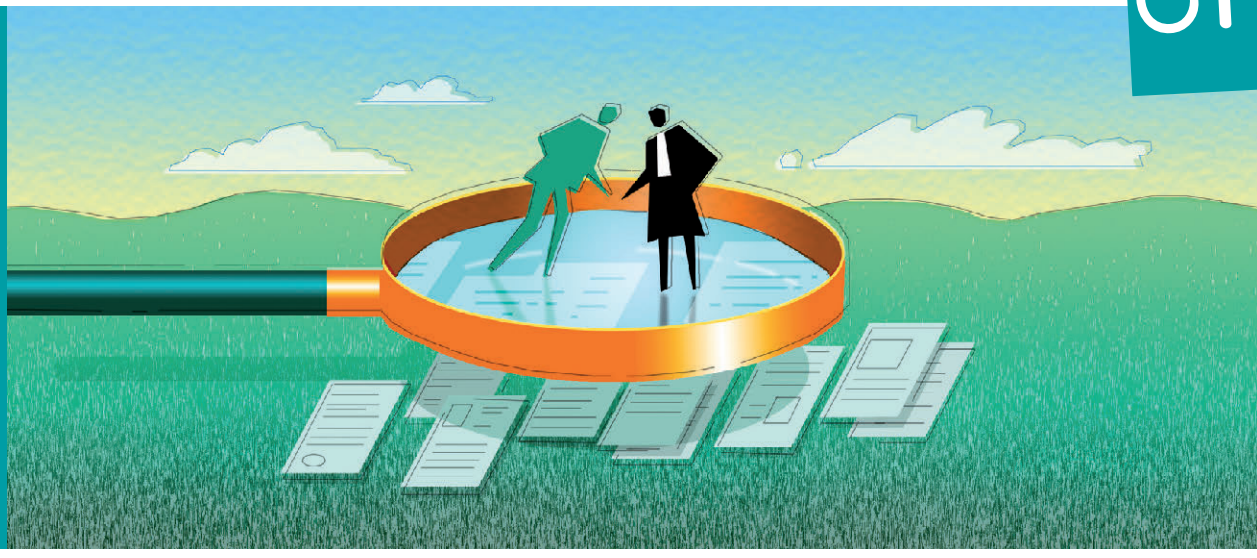
KEEP IN MIND

You can plead guilty any time before judgment.

Criminal proceedings after an arrest



PREPARING
FOR TRIAL



If your case goes to trial, you will have to invest time and energy to prepare. Preparation for trial is an ongoing process, which begins as soon as you're told that you have been charged for it.

When a date is fixed for your trial to proceed, you must ensure that your case is ready. Here are a few important steps to consider before going to court.

5.1 REVIEWING YOUR CASE

You must ensure that your case has all the necessary and relevant elements to allow you to challenge the prosecution's theory and establish your defence.

To do so, it is important to review your file. Here are the main steps:

- Carefully re-read the **evidence** given by the prosecution;
- Make sure you know and understand the rules of evidence which will apply at trial;

- Make sure your file is well organized so that you don't have to look for documents while you are speaking to the court;
- If you plan to file documents into evidence, make extra copies for the judge and the prosecution;
- Carefully keep all the documents and evidence that may relate to the charge. You may have to use them at trial. Take them with you to court.

As this is the last stage before you go to court, you may want to consult a lawyer before the trial so he can analyze and determine with you:

- What points of law you will have to put forward to support your position;
- How to file and submit your evidence and arguments;
- The rules of evidence you will have to follow;
- How to prepare the **cross-examination** of the **witnesses** for the prosecution.

You don't have to disclose your defence to the prosecution or the judge before the **hearing**. You will be the only one who knows your strategy. There are certain exceptions with respect to an alibi defence or **expert witness**.

5.2 THE WITNESSES FOR THE PROSECUTION

You should carefully prepare the cross-examination of the witnesses for the prosecution using the written statements received during the **disclosure of the evidence**. This will be your opportunity to ask these witnesses questions in order to weaken their reliability or credibility, and to bring out contradictions with prior statements or with testimony which they gave previously. (▶ See 6.4.3) In some cases, the judge can appoint a lawyer for the cross-examination. ▶ See 6.4.2

5.3 IDENTIFYING AND ASSIGNING YOUR WITNESSES

At trial, you must respond to the prosecution's arguments and establish the facts of your defence. In addition to the documents you plan to use, you may choose to testify and call witnesses.

To identify the witnesses you may need, ask the following questions:

- What witnesses could partially or fully contradict the prosecution's evidence?
- What are the essential facts of the defence which you want to present before the court?
- Who has personal knowledge of those facts, and who can come to court to explain them?
- Who wrote or signed the documents you plan to submit to support your arguments?

When you have identified the people whose presence is necessary at trial, you should summon them in accordance with the applicable rules, which sometimes means that the witness is entitled to a certain amount of advance notice. It is preferable to notify and assign your witnesses far enough in advance to ensure that they will be present.

You also have to pay your witnesses a stipend to cover their travel, food and lodging costs and to compensate them for their time. Find out from the criminal and penal court office how much you have to pay your witnesses.

5.4 PREPARING YOUR WITNESSES

At trial, you will want to ask your witnesses questions which will permit them to explain their version of the facts clearly to the court. It is therefore very important to adequately prepare for this before trial.

You must meet your witnesses in advance to prepare them to testify. This preparation avoids unpleasant surprises at trial. A witness may have a less favourable version than you expected, or he may contradict another of your witnesses. During any preparation of witnesses, remember that the witness has a duty to tell the truth. You must not attempt to influence his testimony in any manner whatsoever.

In addition to serving as a kind of rehearsal for you and your witnesses, this preparation is also an opportunity to ensure that all of the points you want to make in court will be addressed by your witnesses.

Writing out your questions is a good way to ensure that you don't forget any important points at trial.

5.5 RESEARCHING THE APPLICABLE LEGAL PRINCIPLES

At the end of the trial, the judge must assess all of the facts established in the evidence submitted by the parties and make a decision according to legal rules.

Keep in mind that even though you might be convinced that you have a great defence, the law may not support it.

It is up to you to find out what the law is, and read about the principles applicable to your case. You should obtain as much information as you can about the laws which apply to your situation. You may also wish to read various legal **doctrine** texts which can help you understand the applicable law. It is also useful to read decisions the courts have rendered in the past dealing with situations similar to yours. In legal lingo, these decisions are called "**jurisprudence**".

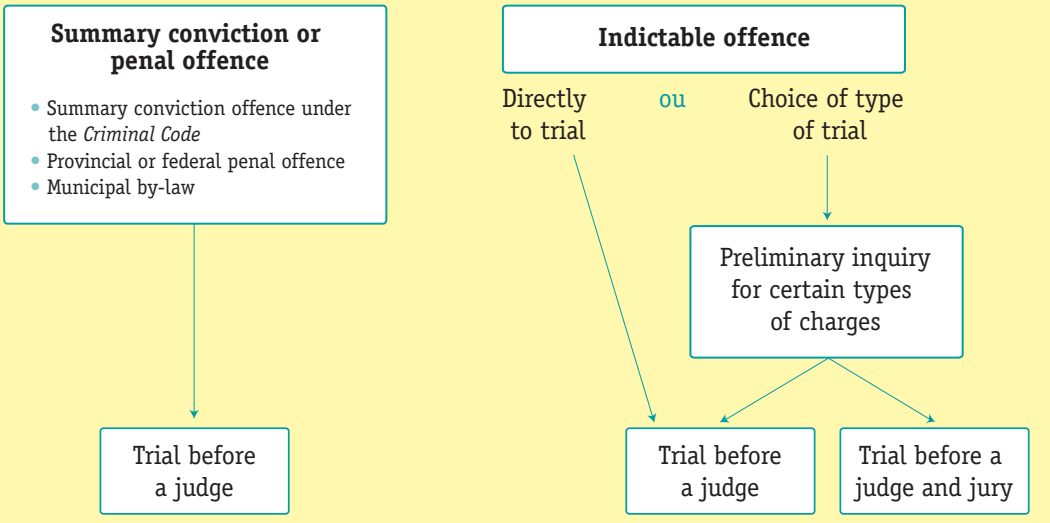
➲ Doctrine can be found in bookstores specializing in legal texts and on the Internet (for example, at **www.caij.qc.ca**);

➲ Court decisions can be found on certain free web sites such as **citoyens.soquij.qc.ca** and **www.canlii.org**.

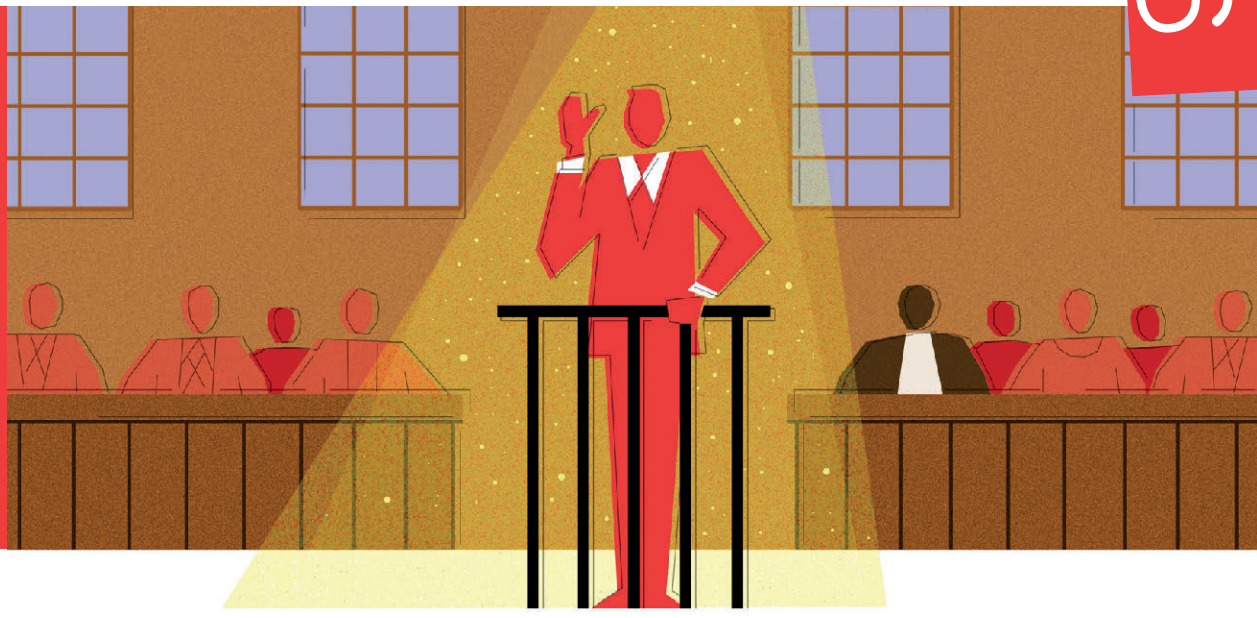
REMEMBER

- Make sure that you're able to determine the points of law that are being disputed;
- Carefully prepare your cross-examinations, your testimony and that of your witnesses;
- Search databases and find decisions that are favourable to you.

Criminal proceedings according to type of offence



CRIMINAL TRIALS



6.1 JUDGE ALONE OR JUDGE AND JURY?

Most charges brought before the criminal courts are heard by a judge sitting alone. However, for some charges, a person may also choose to be tried by a judge and **jury**. When you appear, the court will tell you whether or not you have this option.

You are not required to make this choice when you appear, and it is recommended that you only make this decision once you know all the **evidence**.

6.2 A PUBLIC TRIAL

The *Canadian Charter of Rights and Freedoms* guarantees every person the right to a public trial.

During the proceedings which take place before the trial, it is possible to ask for a publication ban. This is the case at the bail **hearing** (▶ See 4.3.3) and during the preliminary inquiry. (▶ See 4.4) In these circumstances, the judge must order a publication ban on these proceedings. Even if a publication ban has been granted, the media may still mention your name, and the nature of the charge but they do not have the right to publish details of the evidence submitted to the court.

In certain cases, even if the trial is public, the judge may issue an order prohibiting the media from publishing any information which could allow the victim to be identified. For example, when the name of the accused would disclose the victim's identity, the judge can order the accused to only be identified by his initials.

6.3 THE ACCUSED'S PRESENCE

You must be present at all stages of a criminal proceeding. If you are absent, the judge may issue an **arrest warrant** ordering the police to bring you before the court. For some offences, the court can convict you even in your absence.

6.4 PRESENTATION OF THE EVIDENCE

6.4.1 THE BURDEN OF PROOF

The prosecution is always required to prove your guilt **beyond a reasonable doubt**. The prosecution has this burden because you are presumed innocent until proven guilty. In certain circumstances, the burden of proof is shifted to the accused in order to prove a specific point. For example, if you claim that the police breached your rights and freedoms guaranteed by the *Charter* when you were arrested, you have to prove it. The same is true when there are presumptions such as the presumption of care and control of a vehicle or forcible entry. Although this burden of proof is not as onerous (difficult) as the burden of proof beyond a reasonable doubt, you must nonetheless submit enough evidence to support your claims. ▶ See Step 9

6.4.2 PRESENTING THE EVIDENCE

➢ **The evidence for the prosecution**

At the beginning of the hearing, the prosecution or the defence can ask that the **witnesses** to be heard by the court leave the hearing room. This is to prevent their testimony from being influenced by the other witnesses' testimony. This procedure does not apply to the accused, who remains in the courtroom. **Expert witnesses** may also attend trial. ▶ See 6.4.5

It is up to the prosecution to prove your guilt beyond a reasonable doubt. The witnesses for the prosecution are the first to be heard. When its witnesses are called, the attorney for the prosecution asks them questions about the facts of the case. These questions cannot be leading questions. A party can never ask its own witnesses leading questions. ▶ See 6.4.3

Once the attorney for the prosecution has finished asking questions of its witnesses, you have the right to cross-examine them. During the **cross-examination**, you can ask leading questions to the witnesses for the prosecution.

Under certain circumstances, the judge could prohibit you from cross-examining certain witnesses yourself, such as the victim of a sexual offence or a minor or handicapped witness. In that case, the cross-examination will have to be conducted by a lawyer. The court must give you the opportunity to choose a lawyer to conduct the cross-examination. If you don't find one, the court will name a lawyer for you.

The lawyer named by the court won't represent you and what he is hired to do will be limited, although he will be bound by professional secrecy.

➢ The evidence for the defence

Once the prosecution closes its case, you must decide whether you will submit any evidence at all, and, if so, whether you wish to testify. At your trial, you may decide not to testify.

To determine whether or not to present a defence, you must analyze the evidence presented to the court. Does it constitute evidence beyond a reasonable doubt of all the elements of the offence? If you need time to assess this, you can let the judge know.

Any witness called by the defence will be examined by you first, and then cross-examined by the prosecution. The same rules as those mentioned above apply with respect to the examination and cross-examination of your witnesses. At this stage, leading questions may therefore only be asked by the prosecution in cross-examination. (▶ See 6.4.3) In some cases, the prosecution may be allowed to present evidence to refute new elements raised by the defence.

KEEP IN MIND

An admission you make before the court, even inadvertently, can be used as evidence.

6.4.3 **TESTIMONY**

Testimony is divided into two steps: the examination and the cross-examination. The party who calls a witness examines him first, then the other party can cross-examine him. There can also be another examination when new subjects were discussed during the cross-examination.

Testimony is essential at a trial. Before hearing the witnesses, the judge does not know all the facts of your case. He does not have the **disclosure of the evidence** or the testimonies given previously. The judge must carefully analyze all the testimony he hears. He must assess the credibility, consistency and relevance of the facts. Testimony is essential to the decision the judge has to render.

➢ Examination in-chief

When you examine one of your witnesses, you must ask "open" questions, that is, questions which use words such as who, what, where, when, why and how. Here are three examples:

- How were you dressed?
- Why were you wearing a jacket?
- What colour was it?

➢ Cross-examination

When the prosecution has finished examining one of its witnesses, it is your turn to cross-examine him. At this point, you may ask leading questions. This means that your question can suggest an answer. A leading question is generally short and covers a very specific point. Here are three examples:

- You were wearing a jacket, weren't you?
- Did you put on your jacket to go to a wedding?
- Is it true that your jacket was black?

During the cross-examination, you must ask questions, not argue with the witness. It is important to remain calm and collected.

	Examination	Cross-examination
Type of questions	Open	Leading
Reminder	Who? What? Where? When? How? Why?	Short and very specific questions.
Goal	Establish the facts of your defence.	Attack a witness' credibility or reliability. Show that the witness is mistaken about certain facts. Bring out certain important facts that are favourable to your arguments.
Examples	What colour was your jacket?	Was your jacket black?

6.4.4 ADMISSIBILITY OF EVIDENCE

The rules for determining whether evidence is admissible are varied and complex. For example, **hearsay** evidence is rarely accepted by the court. Certain special rules apply, such as regarding proof of the complainants' conduct and reputation.

➢ The relevance rule

The evidence submitted to the court must be relevant to the charges brought against you. It must be useful to the court to help it determine whether or not you're guilty of the offence. In criminal court, a person is accused of a specific offence, on a specific date. The evidence presented by both parties must be directly related to the alleged offence and be admissible.

The attorney for the prosecution must assign witnesses or file relevant documents. You can object if you think the attorney for the prosecution has called a witness who has nothing to say about the offence or a witness who presents a document which is irrelevant.

This rule also applies to any evidence you wish to submit to the court. The prosecution could object to you submitting evidence it considers irrelevant.

➢ Evidence obtained following a breach of a right guaranteed by the *Charter*

If you believe that your **constitutional rights** guaranteed by the *Canadian Charter of Rights and Freedoms* have been violated, it's up to you to submit evidence of the violation. If you're successful, the court may exclude the evidence the prosecution is attempting to introduce. ▶ See Step 9

6.4.5 TYPES OF EVIDENCE

➢ The witness

There are two kinds of witnesses: ordinary and expert.

An **ordinary witness** relates what he saw or heard about an element relevant to the charge. He generally cannot give his opinion about events he witnessed. The following are ordinary witnesses:

- a police officer;
- the complainant;
- a passer-by who saw the incident;
- a person who heard another person admit having committed a crime.

An **expert witness** is asked to testify because he has particular expertise, such as in medicine, science, finance, mechanics, physics or any other field. His role is to help the court clarify certain technical issues that are submitted to it. Contrary to an ordinary witness, an expert can give his opinion. The following are expert witnesses:

- a legal pathologist who explains the cause of death;
- an expert in reconstructing accidents who explains what caused the accident.

➢ Material or documentary evidence

A wide variety of documents or objects can be important at a trial. Material or documentary evidence may include:

- bank documents;
- contracts;
- school transcripts;
- medical reports;
- the weapon used for the crime;
- clothing;
- a fingerprint or DNA sample;
- photographs, videos or DVDs.

If you want to submit official documents in support of your defence, such as bank documents or experts' reports, the law requires that you notify the prosecution that you're planning to submit them before the trial begins. Find out what the procedural requirements are when filing such documents.

6.5 THE END OF THE TRIAL

6.5.1 ARGUMENTS

Once the hearing of the evidence has ended, the judge will ask the parties to tell him what their arguments are. The judge wants to know your point of view about the case.

If you presented a defence, you will argue first. If you did not present a defence, the prosecution will present its arguments first. The party who argues first can ask the judge for permission to rebut the other party's arguments.

There's no point repeating the entire trial at this point. Don't forget that the judge has already heard all the evidence and has taken notes. However, you should stress the facts which support your case. You can point out the contradictions in the testimony given, and the weaknesses in the prosecution's evidence.

During your arguments, you can also discuss the connection between the evidence and the legal rules which you think are relevant to the case. This is when you might choose to submit **jurisprudence** and legal texts in support of your claims. ▶ See 5.5

The judge can also ask you certain questions about your claims. Take the time to listen to him carefully, and answer as calmly and honestly as possible.

6.5.2 THE JUDGE'S INSTRUCTIONS TO THE JURY

In criminal matters, when a trial is heard by a judge sitting with a jury, the judge speaks to the jurors after each party makes his arguments and before the jury is asked to withdraw to come to a verdict. This procedure allows the judge to explain the law to the jurors so they can determine whether the facts of the case support an acquittal or a conviction.

6.5.3 DELIBERATION

In a trial by judge and jury, the jurors remain behind closed doors to discuss the decision to be rendered. As of this point they are "sequestered", that is, they no longer have any contact with the outside world and cannot read, hear or watch news accounts. This is called the deliberation. The jurors can take all the time they need to come to a decision, which must be unanimous. If the jurors do not agree on a unanimous verdict, the trial will have to be conducted again before a new jury.

In Canada, jurors' discussions and the reasons for their decision remain confidential.

In a trial before a judge alone, the judge may decide to hand down his decision immediately after both parties submit their arguments. The judge may also decide to take the case under advisement and set a later date for handing down his decision. The accused must be present on that date.

When a person is charged under a provincial law or municipal by-law, such as an offence under the *Highway Safety Code*, the judge may hear the parties' arguments and send his decision by fax or mail.

6.5.4 **THE VERDICT**

The judge sitting alone or the jurors in a jury trial, may render one of the following verdicts:

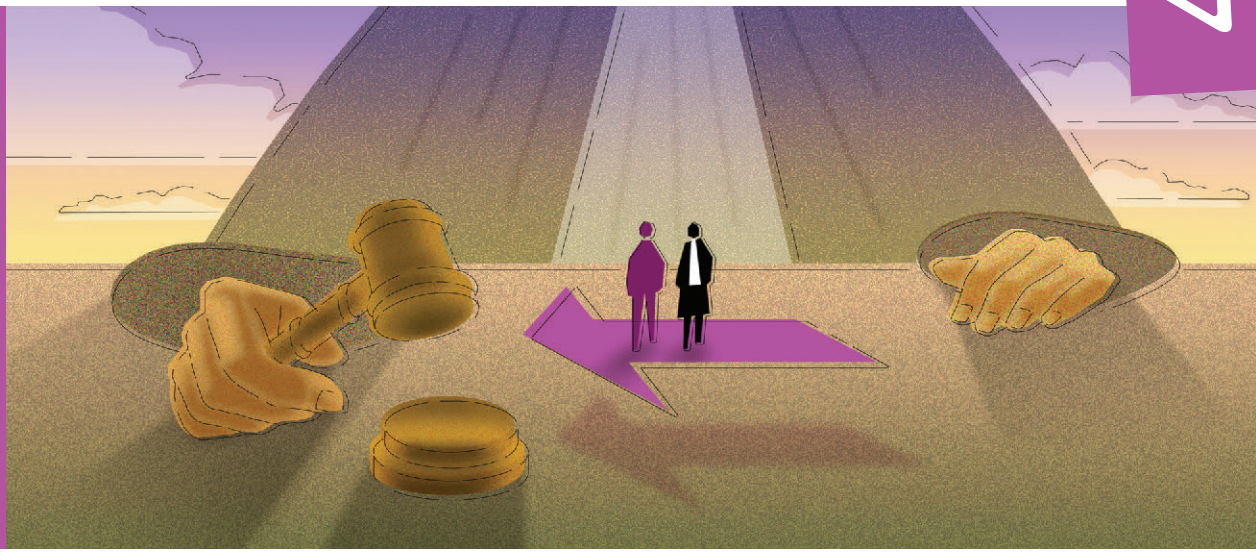
- find you not guilty;
- convict you;
- find you not guilty of the charge brought against you, but guilty of a less serious offence that is included in it;
- stay (suspend) the proceedings against you when your constitutional rights have been infringed.

If an accused was suffering from mental problems at the time of the offence, he may be held to be not guilty due to a mental disorder.

REMEMBER

- The judge does not know the facts of the case before the trial;
- It is important to remain calm and collected throughout the trial;
- You should not argue with a witness. Simply ask the witness your questions;
- It is not enough to know the facts of your case. You must also know the rules of evidence and procedure which will allow you to properly present your case before the court.

DETERMINING
THE PUNISHMENT



If a judge convicts you after a trial or if you pleaded guilty to one or more charges, the judge will decide on your **punishment**, commonly referred to as a **sentence**.

The judge takes different principles into account when he determines the appropriate punishment. Amongst other things, he must take into account the need to:

- reprimand the illegal conduct;
- dissuade offenders and other members of society from committing offences;
- if necessary, isolate offenders from the rest of society;
- promote the social reintegration of offenders;
- ensure the harm caused to victims or society is compensated;
- make offenders aware of their responsibility, including by recognizing the wrong they have caused the victims and society.

The judge bases himself on the punishment rendered in similar cases while taking account of the particular facts of your case. For some offences, the *Criminal Code* requires that the judge give you a minimum fixed prison sentence, in which case the judge cannot reduce your sentence even if he is sensitive to the particular facts of your situation. As a general rule, he can only deduct the preventive prison time served since the beginning of your case.

Before handing down a sentence, the judge holds a **hearing** during which you and the attorney for the prosecution put forward the mitigating or aggravating factors of the case.

Here are a few examples of **aggravating** factors:

- prejudice which motivated the offence;
- mistreatment inflicted on a minor child or a spouse;
- abuse of trust;
- the fact that you have a **criminal record**.

Here are a few examples of **mitigating** factors:

- a regular job;
- a change in your behaviour;
- your low degree of involvement in the crime;
- your rehabilitation;
- your cooperation with the police.

At this stage, you can even testify or call **witnesses** to attempt to convince the judge to impose the most lenient sentence possible under the circumstances. The prosecution can also call witnesses. The judge will listen to what the victims say about the effects the crime had on them. These statements are given after the guilty verdict is issued.

A wide range of punishments are available to the judge: discharge, a **fine**, a suspended sentence with **probation**, a conditional sentence of imprisonment and a fixed term of imprisonment.

7.1 THE DISCHARGE

In certain cases, the judge may choose not to convict you if he feels it is in your best interests and not contrary to the public interest, even if you pleaded guilty or were found guilty. In these circumstances, the judge will discharge you.

Discharge is the most lenient measure there is in **criminal matters**. It may be absolute or conditional.

7.2 THE FINE

The judge may decide that you should pay a fine. This sanction must be proportionate to the seriousness of the offence and your ability to pay, except where a minimum fine is provided for. At any rate, you can always ask for time to pay the fine.

7.3 THE PROBATION ORDER

The judge can also suspend the sentence, and issue a probation order requiring that you comply with certain conditions for up to three years. During this time, if you do not comply with your conditions, the judge may order you to return before him, and impose the sentence he would have imposed in the first place. Probation orders can include a suspended sentence or apply after the prison sentence is served.

Some conditions of a **probation order** are **compulsory**, including:

- keeping the peace and being of good behaviour;
- not communicating with certain individuals;
- not going to a specific place;
- appearing before the court when required to do so;
- notifying the court or the **supervisor** in advance of any change of name or address, and any change of employment or occupation.

Certain conditions may be **optional**, including:

- remaining within the jurisdiction of the court;
- abstaining from consuming drugs or alcohol;
- providing a DNA sample;
- abstaining from owning, possessing or carrying a weapon;
- providing for the support or care of your dependents;
- participating in an approved treatment program;
- participating in an ignition interlock program;
- complying with any other reasonable conditions the court considers desirable;
- reporting to a supervisor and meeting him as often as he requires;
- performing a certain number of hours of community service.

This list of conditions is not exhaustive. The judge has the discretion to impose other conditions.

A suspended sentence should not be confused with a conditional sentence of imprisonment.

7.4 THE CONDITIONAL SENTENCE OF IMPRISONMENT

The judge may also give you a conditional sentence of imprisonment, ordering you to serve your sentence "in the community", if he is satisfied that this would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing. However, a conditional sentence of imprisonment is not possible for all crimes and is limited to prison sentences of two years less a day.

A conditional sentence of imprisonment is punishment to which strict conditions are attached. A sentence in the community with conditions can be as strict and demanding as a sentence of a fixed term of imprisonment.

A conditional sentence of imprisonment imposes restrictions on your freedom, such as being required to stay home 24 hours a day other than to go to work or do other things necessary for your subsistence.

During your conditional sentence, you will be subject to thorough and rigid checking by probation officers who will ensure that you comply with all of the conditions imposed by the judge.

Non-compliance with your conditions can have very serious consequences. The judge who orders a conditional sentence of imprisonment can change the conditions or revoke his order, in which case you will serve the remainder of the sentence in prison.

7.5 IMPRISONMENT

A fixed term of imprisonment may be served in a prison or penitentiary, depending on its term. If the judge sentences you to less than two years in prison, you will serve time in a provincial prison but if the sentence is for two years or more, it will be served in a federal penitentiary.

Your eligibility for **parole** is subject to separate rules depending on whether you're serving your sentence in a provincial or federal institution.

Imprisonment not exceeding 90 days may in some cases be served intermittently, often on weekends.

7.6 VICTIM COMPENSATION

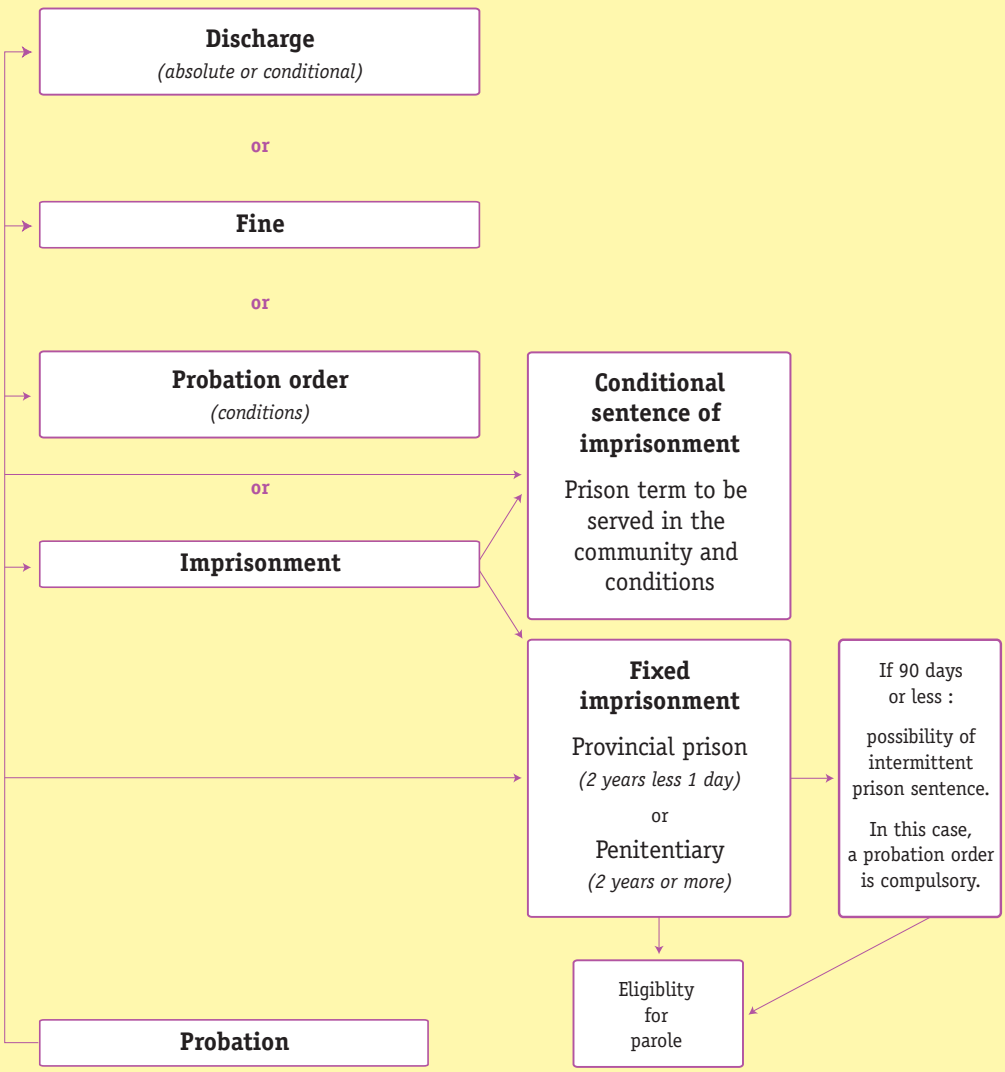
The court could order you to pay the victims compensation. Be aware that your financial means or inability to pay will not prevent the court from issuing such an order.

In addition to the sentence he imposes, the judge may or, in some cases, must render orders such as a prohibition against driving or possessing a firearm, or an obligation to give DNA samples or to be registered as a sexual offender. You will also have to pay a "victim surcharge" and certain costs, and you could be ordered to compensate the victims.

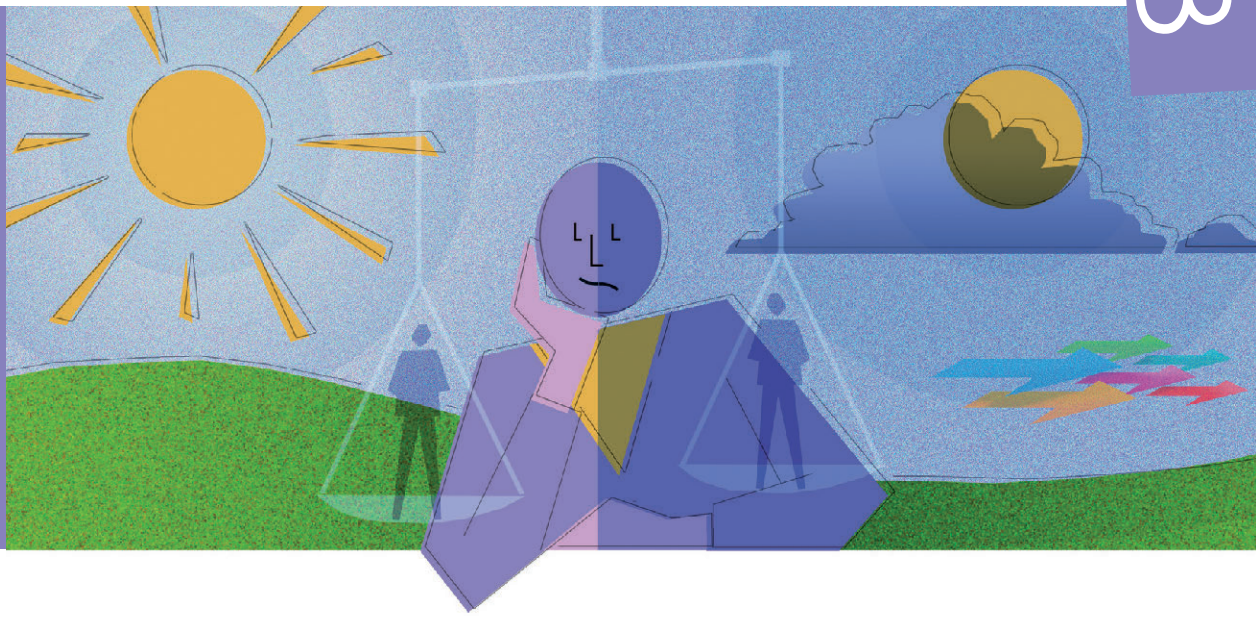
REMEMBER

- The judge imposes a sentence taking several factors into account. He considers the law, cases decided previously and the specific circumstances of each case;
- However, several offences include mandatory minimum prison terms. In these cases, the judge has no choice but to order the mandatory minimum sentence, regardless of the arguments you may make against it.

The sentence



APPEAL



In certain circumstances, you have the right to **appeal** the guilty verdict or the **sentence**.

It is important to note that the role of appeal courts is not to retry the case or hear the **witnesses** again.

KEEP IN MIND

If you decide to appeal a decision, you should obtain the transcript of everything that happened at trial. You will have to pay a fee for it. If you win, the appeal court may order the prosecution to reimburse you the fee.

8.1 THE DELAY TO APPEAL

You must appeal a verdict or a sentence in a **criminal matter** within 30 days after the rendering of the verdict or sentence. If you do not meet these deadlines, you will have to ask the court for permission to present your appeal, and explain the reasons for the delay.

Don't wait to be given the sentence before appealing your conviction because you could miss the 30-day deadline.

8.2 WHO CAN APPEAL THE CASE?

You have the right to appeal your case; however, in some cases, you must obtain the court's permission (called "leave to appeal") first.

The prosecution sometimes has the right to appeal both an acquittal and the sentence.

8.3 WHERE TO APPEAL?

According to the type of charge brought against you, the appeal will be heard by:

- the Superior Court for summary **conviction** and penal offences;
- the Quebec Court of Appeal for **indictable offences** and for appeals of Superior Court decisions prosecuted by summary conviction.

Following a first appeal heard in the Superior Court or the Court of Appeal, other recourses are possible depending on the nature of the alleged offence. These appeals normally require the court's permission.

8.4 STAYING THE EXECUTION OF THE JUDGMENT

Even if you decide to appeal the judgement, the filing of an appeal will not suspend the execution of the sentence. For example, in a drunk driving case where you lose your driver's licence for one year, and the judge orders you to pay a $1,000 fine, you will have to pay the fine and you won't be allowed to drive pending the appeal.

To avoid this situation, you can ask for the sentence to be suspended during the appeal proceedings, which can take several months. The same applies for an accused who receives a prison sentence. The law provides that the accused can ask to be released provisionally during the appeal proceedings.

REMEMBER

- The appeal must be filed within 30 days of the conviction or sentence;
- It is normally best to ask the court of appeal to suspend the judgement in first instance during the appeal hearing.

THE CANADIAN CHARTER: PROCEDURE AND BASIC PRINCIPLES

The *Canadian Charter of Rights and Freedoms* protects you by offering you "legal safeguards". If you believe that one of your **constitutional rights** has not been respected, you can ask the judge who presides over your trial to remedy the situation. For example, you could ask for your trial to be postponed to a later date, **evidence** to be excluded or the proceedings to be stayed. As a general rule, you are responsible for proving the violation of your constitutional rights.

There are no strict procedures for such motions. However, you should notify the court and the other party that you plan to argue that your constitutional rights have been infringed. In theory, this notice must be written and sent to the prosecution (by letter, e-mail or fax) before the trial, but the judge can decide otherwise. It would be useful to contact the prosecution's office to find out which lawyer is in charge of your file.

At the **hearing**, you can question police officers and have **witnesses** heard to show that your constitutional rights have been infringed.

9.1 PROTECTION AGAINST UNREASONABLE SEARCH OR SEIZURE

Section 8 of the *Charter* provides protection against unreasonable search or seizure. If your case involves a search or seizure, it is in your interest to find out what rules apply.

9.2 PROTECTION AGAINST ARBITRARY DETENTION OR IMPRISONMENT

Section 9 of the *Charter* protects against arbitrary detention or imprisonment, with or without a warrant. However, your arrest or detention must normally be based on reasons which suggest that you have committed a criminal offence. It is also in your interest to find out what rules apply.

9.3 THE RIGHT TO REMAIN SILENT

This right allows you to freely choose whether or not you wish to speak to the police. Sections 7 and 11 c) of the *Charter* guarantee your right to remain silent. The police must respect this choice. However, they may insist and continue to question you. If they do, it's up to you to remain silent. The judge cannot infer anything from your silence.

9.4 THE RIGHT TO A LAWYER

Section 10b) of the *Charter* ensures that anyone who is arrested or detained can be assisted by a lawyer without delay. The police must:

- inform you of this right promptly;
- give you a reasonable opportunity to contact a lawyer privately;
- find out whether there is duty counsel available if you do not know a lawyer;
- refrain from questioning you until you have been able to contact a lawyer.

9.5 THE PRESUMPTION OF INNOCENCE

You do not have to prove your innocence. The presumption of innocence is a fundamental principle of criminal and penal law which affects every step of the legal process. It requires in particular that the burden of proving your guilt lies with the prosecution. This evidence must be made in accordance with the law, before an independent and impartial court in connection with a public, fair and equitable trial. The prosecution must prove your guilt **beyond a reasonable doubt**.

9.6 THE RIGHT TO DISCLOSURE OF THE EVIDENCE

This right is covered by section 7 of the *Charter*. It ensures that the rules and procedures of trial allow you to respond to the prosecution's arguments and defend yourself. The court must allow you to defend yourself against all the legal means used by the prosecution.

To be able to respond adequately to the charges brought against you, you must obviously have on hand all the relevant information the prosecution has. This principle is known as the right to **disclosure of the evidence**.

As a result, the prosecution must give you all the evidence, whether it harms or helps your defence. This obligation is ongoing; the prosecution must give you the evidence it obtains during the proceedings, until the end of the trial. If you realize that the prosecution did not respect this obligation, you must notify the trial judge as quickly as possible and the judge will make the appropriate decision. There are some exceptions to the disclosure of evidence, including information that is protected by professional secrecy or the litigation privilege.

9.7 THE RIGHT TO BE TRIED WITHIN A REASONABLE TIME

Section 11b) of the *Charter* provides that any person charged with an offence has the right to be tried within a reasonable time. Its purpose is to accelerate the time before trial and reduce any harm you may suffer.

In the Jordan case, the Supreme Court set out the time limits for different types of trials. If those time limits are not met, it is assumed that the right to be tried within a reasonable time is infringed. The time limits do not include delays caused by the defence.

This presumption means that the prosecution has to show that a delay beyond the time limits was caused by exceptional circumstances beyond the prosecution's control. If it cannot, the proceedings must come to an end.

9.8 THE RIGHT NOT TO BE SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT

For some offences, the *Criminal Code* requires that the judge order you to a mandatory minimum prison **sentence**. In such cases the judge cannot reduce your sentence even if he would like to, given your particular situation.

However, a mandatory minimum sentence can be contested if it is grossly disproportionate to the offence. Section 12 of the Charter protects individuals against cruel and unusual **punishment**. In some cases, certain minimum sentences could be considered cruel and unusual punishment.

REMEMBER

It's up to you to prove that your constitutional rights have been infringed. The court will decide on the appropriate compensation.

AVAILABLE RESOURCES

There are many free legal resources that may be of use to you if you represent yourself in court. You can use them to find out general information about your rights as well as the rules that apply before the courts. Here are a few of them:

ASSOCIATION DES AVOCATS DE LA DÉFENSE DE MONTRÉAL (AADM)

aadm.ca

A web site for defence lawyers practicing in the Montreal area which provides their contact information.

ASSOCIATION QUÉBÉCOISE DES AVOCATES ET AVOCATS DE LA DÉFENSE (AQAAD)

www.aqaad.com

A web site for defence lawyers practicing across Quebec. It helps find a defence lawyer according to a specific region.

BARREAU DU QUÉBEC

www.barreau.qc.ca

The web site of the professional body for lawyers which provides information for both the public and lawyers relating to its main mission of protecting the public.

CHAMBRE DES HUISSIERS DE JUSTICE DU QUÉBEC

www.chjq.ca

A web site providing access to the list of bailiffs in Quebec.

COMMISSION DES SERVICES JURIDIQUES

www.csj.qc.ca

An organization which oversees the providing of legal aid to those who are financially eligible for it.

DEPARTMENT OF JUSTICE CANADA

www.justice.gc.ca/eng

A web site where you can find the Criminal Code, the Controlled Drugs and Substances Act, the Criminal Records Act and other laws.

DIRECTEUR DES POURSUITES CRIMINELLES ET PÉNALES

www.dpcp.gouv.qc.ca

ÉDUCALOI

educaloi.qc.ca

A web site that makes legal information available to the public in simple, easy-to-understand language and that lists other resources that may be useful about various areas of the law.

JUDGMENTS

citoyens.soquij.qc.ca ou **www.canlii.org**

Web sites where you can access the decisions of various courts free of charge.

MINISTÈRE DE LA JUSTICE DU QUÉBEC
www.justice.gouv.qc.ca
A web site where you can obtain sample proceedings, pamphlets and brochures to help you understand the law.

PUBLICATIONS DU QUÉBEC
www.publicationsduquebec.gouv.qc.ca
A web site providing access to the laws and regulations of Quebec, including the *Code of Penal Procedure* and the *Highway Safety Code*.

QUEBEC STENOGRAPHERS
www.barreau.qc.ca/fr/avocats/praticien/stenographes
A web site giving access to a list of stenographers.

RÉSEAU JURIDIQUE DU QUÉBEC
www.avocat.qc.ca
A web site which publishes legal texts in simple language, written by lawyers, judges and other legal professionals. It contains a "Frequently Asked Questions" section giving answers to common questions.

TRIBUNAUX JUDICIAIRES DU QUÉBEC
www.tribunaux.qc.ca

LEGAL INFORMATION OFFICES

Legal information offices are non-profit organizations normally found in the law faculties of various universities across the province. You can meet volunteer law students at these offices to obtain general information about the law and your rights. However, you should be aware that the students can inform you but not advise you. They do not replace the services of a lawyer. Contact the universities to find out where the legal information office nearest you is or call the following offices:

LAVAL UNIVERSITY
bijlaval.ca or 418 656-7211

MCGILL LEGAL AID CLINIC
licm.mcgill.ca or 514 398-6792

UNIVERSITÉ DU QUÉBEC À MONTRÉAL (UQAM)
www.cliniquejuridique.uqam.ca/?articleId=2 or 514 987-6760

UNIVERSITY OF MONTREAL
droit.umontreal.ca/en/services-and-resources/legal-aid-clinic/ or 514 343-7851

UNIVERSITY OF OTTAWA
commonlaw.uottawa.ca/community-legal-clinic/ or 613 562-5600

UNIVERSITY OF SHERBROOKE
www.usherbrooke.ca/etudiants/vie-etudiante/cles/cle-de-vos-droits/
or 819 821-8000, poste 65221

GLOSSARY

APPEAL – Review of a case by a higher court.

ARREST WARRANT – An order issued by a court directing police to arrest an accused or a witness and bring him before a judge.

BAILIFF – A legal officer whose role is to serve legal proceedings and enforce judgments.

BEYOND A REASONABLE DOUBT (EVIDENCE) – Threshold of evidence required to justify convicting an accused. The prosecution has the burden of proof. If there is a reasonable doubt in the mind of the judge or jury, the accused must be acquitted.

CONSTITUTIONAL RIGHTS – An individual's fundamental rights which the State is required to respect.

CONVICTION – A court decision finding the accused guilty of an offence.

CRIMINAL MATTERS – The criminal law stems mainly from the *Criminal Code* but is also found in other federal laws such as the *Customs Act* and the *Controlled Drugs and Substances Act*. It applies to anyone age 12 and over. It includes offences such as murder, sexual assault, theft and fraud. In criminal matters, convictions for offences usually give the person a criminal record.

CRIMINAL RECORD – A record of an individual's convictions for criminal offences.

CROSS-EXAMINATION – Examination of a witness by the other party.

DISCLOSURE OF THE EVIDENCE – The prosecutor must disclose all the information he has to the accused. There are very few exceptions to this rule.

DOCTRINE – Texts which set out or interpret the law.

EVIDENCE – A document, object, image or testimony which proves the existence of a fact.

EXPERT WITNESS – A person who, due to his skills and particular knowledge about a subject, gives his opinion on that subject.

FINE – A monetary penalty imposed by the court on a person found guilty of an offence.

HEARING – A session during which the parties make their representations before a court. Sometimes involves testimony of witnesses.

HEARSAY – The relating by a person of an event, words or actions which he did not personally witness but which he knows of because he heard someone else talk about them.

INDICTABLE OFFENCE – An indictable offence is a serious crime. The penalties imposed are generally significant, the legal procedure may be complex and a conviction usually leads to a criminal record. Murder, offences causing bodily harm and fraud are some examples.

JURISPRUDENCE (CASE LAW) – A set of judgments dealing with legal principles that are followed by the courts.

JURY – A jury is made up of 12 people (jurors) who must decide whether or not the accused is guilty. Their decision must be unanimous. In a trial by jury, the legal questions are decided by the judge whereas the questions of fact are decided by the jurors.

LEGAL AID – Service offered by the State to people who qualify and who request it. Such people are provided with the services of a lawyer free of charge or for a small fee.

OBJECTION – A verbal interjection made to the court to prevent the other party from asking a question or making a statement.

PAROLE – Release which occurs before a prison sentence is completed. The Parole Board orders it if the case allows it.

PEACE OFFICER – A person in authority responsible for maintaining public order.

PENAL MATTERS – Penal law outlaws conduct which is harmful for society in general and provides for penalties. It does not result in a criminal record, but previous convictions for the same type of offence may lead to a harsher sentence. In penal law, the State prosecutes the person who is accused.

PLEA – Declaration by an accused before the court that he is guilty or not guilty of the offence he is charged with.

PROBATION (ORDER) – A court order imposing conditions for a period of time given to a person convicted of an offence.

PUNISHMENT (SENTENCE) – A sanction imposed on a person convicted of an offence.

RULES OF PROCEDURE (PROCEDURE) – A set of rules governing the conduct of a proceeding before the court.

STATEMENT OF OFFENCE – A document which sets out the alleged penal offence.

SUMMARY CONVICTION OFFENCE – A conviction for this type of offence usually leads to a criminal record. The legal proceedings are less complex than for an indictable offence.

SUPERVISOR – A person who works with offenders to help with their social reintegration while ensuring that society is protected. He also prepares "pre-sentencing" reports which help the judge determine an appropriate sentence.

TRUSTEE (SYNDIC) – An organization that governs the practice of the legal profession. It ensures the public is protected by processing disciplinary complaints made against lawyers.

WITNESS – A person who relates under oath facts he personally saw, heard or observed.

NOTE : Certain words may be added to the glossary even though they do not appear in the guide since they are frequently used in legal language and documents.

REPRESENTING YOURSELF IN COURT
In Criminal and Penal Matters

Given the increasing number of individuals choosing to represent themselves in court without a lawyer, the Fondation du Barreau du Québec presents *Representing Yourself in Court*, a series of publications to provide such individuals with general information to help them better understand what is involved in the legal process and make informed choices about the steps to be taken.

STEP 1
SHOULD YOU HIRE A LAWYER?

STEP 2
HOW THE COURTS ARE ORGANIZED

STEP 3
THE ROLE OF EVERYONE INVOLVED

STEP 4
THE STEPS BEFORE TRIAL

STEP 5
PREPARING FOR TRIAL

STEP 6
CRIMINAL TRIALS

STEP 7
DETERMINING THE PUNISHMENT

STEP 8
APPEAL

STEP 9
THE CANADIAN CHARTER: PROCEDURE AND BASIC PRINCIPLES

The Fondation du Barreau du Québec is a non-profit organization which plays an important role in legal research. By supporting work of benefit to legal professionals and providing the public with tools for finding information, the Fondation contributes to the advancement of knowledge and helps build a better future.

To do its work, the Fondation du Barreau relies on the support of generous donors. A collaborative organization that is accessible to the public and aware of its needs, the Fondation du Barreau strives to bring people together.

To find out more about the Fondation or the publications it makes available to the public free of charge, and in particular its publications on the rights of the elderly, labour law and family law, visit its web site:

www.fondationdubarreau.qc.ca

FONDATION BARREAU DU QUÉBEC