

STEPS IN A CRIMINAL PROCEEDING

1. Interview and Investigation

The client meets with the lawyers or law clerks so that background information is obtained. There may be investigation outside of the firm by contacting investigators or asking the client to bring in background information, documents or take photographs.

2. Court Date

Whether the client is released on arrest on an Appearance Notice (just the date indicating the date of court) or whether he or she is released on bail conditions (whether there is a hearing to determine whether the client should be released) there is a First Appearance court date. This is solely to confirm with the court whether the client has a lawyer. The First Appearance is often done by the client attending court with a date setting letter which tells the Crown and judge that a certain lawyer has been engaged. Sometimes the lawyer speaks of the client requiring further time to arrange for a lawyer. The usual practice is for the client to attend on their own, but if the client wishes the lawyer or a law clerk to attend this can be arranged. However there will be additional cost to the client.

3. Obtaining Court Documents for Review

The lawyer contacts the court and often requests a copy of the "*Information*". This is the actual court document that lists the charge. It is a technical document and if not properly completed by the court officials or police the charge could be dismissed which would be to the client's advantage. It is also necessary to understand the precise nature of the charges and be able to speak with the judge about exactly what the charges are and their description.

4. Charge Screening Form and Synopsis

The police prepares a synopsis of the event. It is a short descriptive paragraph of the nature of the charges. This is a background information that is often read into the court system if the Accused decides to plead guilty. This is often given to the Accused at the First Appearance date.

The Crown Attorney often reviews the file looking at the synopsis and other general information available at a very early stage. The Crown Attorney indicates on this form their intention as to how to proceed and what type of sentence they may be seeking. This document is helpful in the lawyer assessing the case. This document may also be given to an Accused on the First Appearance date.

5. Full Disclosure

This refers to the full background information that a lawyer can request and the Crown and police must provide. It may include many pages of police officers' notes. There may be photographs taken by the police or witness statements. There may be videos of interviews or analyses of a scene of other items by experts. This material must be carefully reviewed for the lawyer to assess a case.

6. Criminal Code Review **and Legal Research**

The lawyer must be familiar with not only the Criminal Code charging sections but also the law in this area. This may involve some legal research. This background work must be completed before an opinion can be given to the client.

7. Opinion and Advice

The lawyer would meet with the client having reviewed the following:

1. The client's version of what occurred;
2. Copy of the Information from the court;
3. The synopsis and Charge Screening Form;
4. The disclosure material and review of the videos; and
5. Any legal research that has been completed.

At this point the lawyer is in a position to give an opinion as to whether a charge has been made out on the theory that the Crown's case is provable. This is also balanced with what the client says has occurred.

8. Further Court Appearances

Until the above material is available for the lawyer the case may go through the court on several court appearances which are similar to the First Appearance.

9. Crown Resolution Meeting

This occurs when the lawyer and a Crown Attorney representative speak. It could occur at an early stage at the court or it could occur on a telephone. However the court system often requires a Crown Resolution Meeting thus a lawyer, by one means or another, is obligated to have this meeting with the Crown Attorney.

At that time the Crown Attorney explains what sort of sentence they might be seeking and makes enquiries about how much trial time may be required if the matter proceeds to trial.

10. Judicial Pre-trial

This is a meeting not only with the Crown Attorney and lawyer, but also involves a judge. This judge would not be the trial judge. The judge gives his or her views about the case and may be able to assist the counsel in coming to some agreement about how the matter may be resolved, either by shortening the trial, guilty pleas, or even suggesting that the charges should be withdrawn.

Judicial pre-trials are necessary and must be attended if the trial has any areas of complications or if the trial will take more than a couple of hours of trial time.

11. Setting A Trial Date

This is sometimes done by a letter similar to a First Appearance. The client would go to court setting out the available dates of the lawyer to proceed with the trial.

12. Guilty Plea and Sentencing

If the client's decision is to plead guilty to the charge there would be a court date for the guilty plea to be taken by the judge from the client. The first part of a guilty plea includes the following:

- a. The charge being read;
2. The Accused entering a guilty plea;
3. The general facts being read in (which reflects the synopsis discussed above); and
4. The Crown Attorney puts into evidence any criminal record of the Accused.

The balance of the sentencing may occur at this date, unless it is complex or the judge requires what is a Pre-Sentence Report. This is detailed background history of events and interviews completed by a probation officer. This document is filed with the court at the next court date which is probably 5 or 6 weeks later.

13. Submission at Time of Sentencing

The lawyer may file documents which support the Accused's good character, work ethics, or even call witnesses that describe why the Accused does not require a severe penalty. The Crown Attorney gets to make submissions as to what penalty they believe is appropriate. There could be a big difference between what the lawyer is saying and the Crown Attorney is seeking. It is important to the Accused that the sentence is the least penalty and thus the lawyer will work very hard to try to make any sentencing ruling by the judge be in favour of what is best for the Accused's from the client's point of view.

It is possible that the Crown, and the Accused (through the Accused's lawyer) agree what sentence should be imposed on the Accused. This is called a "*joint submission*" and is usually followed by the judge. This would be discussed in more detail if a joint submission is to be considered.

14. Proceedings through a Trial

If the Accused and the lawyer decide that it is best for the Accused not to plead guilty then the only way that this matter could be resolved would be either the Crown agrees to withdraw the charges (which sometimes occurs but usually takes a lot of persuasion on the part of the lawyer) or the Accused proceeds through a trial at the end of which a judge

decides whether the Accused is guilty or not guilty.

A trial means evidence is called and the matter would probably take several hours, perhaps even several days of court time. This would be discussed with the Accused in detail if it is apparent that a trial is required to resolve the case.

If a judge finds the Accused guilty then he or she would proceed to a sentencing process described above. If the Accused is found not guilty that is the end of it and he or she is free to go without any penalty from the court.

15. Cost of the Proceeding

It is very difficult to predict how much lawyer time or law clerk time is required to bring a matter to an end. Many of the factors are out of the Accused's control and the lawyer's control. However estimate will be provided at each stage as the best can be made.

Please be sure that the client discusses all aspects of his or her case, including time required to complete various tasks and the expected costs as the client's matter proceeds.