

How a criminal trial works

This document explains how a criminal trial works and some of the terms used in court.

It's very important to also read *Representing Yourself in a Criminal Trial* (Provincial Court). This is available at legal aid offices and on the Legal Services Society website at www.lss.bc.ca. See Appendix 1 and 2 of this document for diagrams of how the court process works, before and during trial.

Do you have to prove that you are innocent?

No. If you are charged with a crime and go to trial, the law requires a judge or jury to consider you innocent unless the prosecutor, or crown counsel, proves you are guilty beyond a reasonable doubt. You do not have to prove that you are innocent.

What is an *Information*?

Before the trial, the government sends you a document called an Information. It describes the crimes that the prosecutor has charged you with. At the trial, the prosecutor will try to prove you committed these crimes. Each crime listed in the Information is called a "count".

What is disclosure?

The prosecutor must give you all the documents they have about the charges against you. This includes copies of police reports, witness statements, your criminal record, and statements you made. This can also include pictures, maps, notes and names. If you don't get all the documents, send a letter to the prosecutor asking for them. You can also ask the judge at your arraignment or trial confirmation hearing to order the prosecutor to give you the documents.

How does a trial start?

After you plead not guilty, the prosecutor explains the case against you and then brings in their witnesses and asks them questions to prove you are guilty. The witnesses testify by telling the court what they know.

Then you can question (cross-examine) each of these witnesses—see *What is cross-examination*, below, for more detail. When the prosecutor and you have questioned all the prosecutor's witnesses, the prosecutor has finished making the case against you.

What must a prosecutor prove to convict you?

The prosecutor must convince the judge or jury that you committed the crime. To do that, the prosecutor has to show that:

- *you* committed the crime, and
- *all the parts* of the crime actually happened (there are usually several parts to a crime), and
- *you intended* to commit the crime.

If the judge or jury have a reasonable doubt about any of these, they can't convict you of the crime.

What is cross-examination?

This is a type of questioning during a trial. You can question the prosecutor's witnesses. This questioning is called cross-examination. The prosecutor can also cross-examine your witnesses.

You can use cross-examination to try to show the following:

1. That the prosecutor's witness is not believable or reliable.

For example, you may be able to force the witness to admit that he or she:

- **Is biased**—if the witness is a friend of the victim or holds a grudge against you, you can argue that the witness may not be fair.
- **Told different stories**—if you have a copy of the witness's police statement in writing and the witness now tells a different story, you can point this out to the court.
- **Could not see clearly**—you can question the witness about whether they wore glasses, drank alcohol, were close enough to see clearly, or whether it was too dark for them to see well.

2. That the prosecutor's witness has evidence to support your case.

You may be able to force the witness admit that it was dark or rainy, or that *another* witness was not wearing glasses or had been drinking.

3. That the story of a witness is different from the story that you will present.

If a witness says something you disagree with, then you *must* question the witness about it. If you don't, the judge will wonder why you did not ask such questions at the time and may not believe *your* evidence later.

How do you defend yourself?

- **Cross-examine the prosecutor's witnesses** – to show that their stories are not true or reliable.
- **No-evidence motion**—if the prosecutor has no evidence on an element of the crime, you can ask the judge to dismiss that offence.
- **Insufficient evidence**—if you think that the prosecutor has not proven you committed the crime—and if you are sure the judge or jury don't think you are guilty—then you do not need to present your defence. But if the judge or jury do find you guilty, then you cannot re-open your case. It is impossible to be sure what the judge or jury think, so it is a serious decision not to defend yourself.
- **Call your witnesses**—if you choose to present your case, call your witnesses into the courtroom, one at a time, and ask them questions to explain your side of the story. Then the prosecutor will cross-examine each of them.
- **Decide whether to testify yourself**—you do not *have* to testify (tell what happened), but you may want to—so that you can directly tell the judge or jury what happened. If your version of what happened is important, you must tell it at this time, under oath (because later, when you make your final arguments, you can only use evidence that you or your witnesses presented.)

If you testify, the prosecutor can cross-examine you to try to show that you are not being honest or that you have changed your story. You will have to answer all the questions that the prosecutor asks you. This cross-examination may include bringing out your criminal record to test your credibility. The prosecutor may get evidence from you that can hurt your case, but the prosecutor cannot cross-examine you if you do not testify. **Deciding whether to testify is often the most important decision you can make in your case.**

- For more detailed information, see *Representing yourself in a criminal trial*—pages 19-25.

Can all evidence be used?

No. Sometimes a judge will not allow certain kinds of evidence to be used. For example:

- *Hearsay*—if someone said something to you that you want to use as evidence, you must have the person come to court to repeat it – you cannot just repeat it to the court yourself.
- *Voir dire*—if the prosecutor wants to use unusual evidence, the judge may stop the trial to decide whether it can be used. If you think the evidence should not be used, you can tell the judge why not.

What are Submissions?

Submissions are the final arguments that both you and the prosecutor make to the court. After all the evidence is presented (above), you can now speak to the judge or jury to persuade them that you are not guilty. Your arguments must be based on the evidence or lack of evidence presented during your trial—you cannot use new evidence. If you presented evidence for your case, you will make your Submissions first, and the prosecutor will go second.

Judgement: the decision of the judge or jury

The judge (or jury) decides if you are guilty after hearing all the evidence and the submissions. If you are not guilty (acquitted), you can leave. But if you are guilty (convicted), then you must wait for the judge to sentence you, or give you a penalty.

What to do if you don't understand something

Tell the judge you don't understand. The judge will try to help you.

Read these documents also:

- *How a criminal trial works*
- *How to prepare your case*
- *How to take notes during your trial*
- *How to behave in court*
- *Representing yourself in a criminal trial*