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A GUIDE TO THE LAW IN ALBERTA REGARDING

HOW TO RUN YOUR OWN TRIAL

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GENERAL

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RUN YOUR OWN TRIAL**

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INTRODUCTION

This pamphlet is for people who have been charged with a crime and wish to run their own trial. It is written from the perspective of an accused.

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

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

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

There are really only seven basic steps in every criminal trial:

- a. The case is called.
- b. The trial begins.
- c. An exclusion order of witnesses that are testifying at the trial will be made.
- d. The Prosecutor presents the case for the Crown.
- e. You present your case. (You are called the Defence.)
- f. Both the Defence and the Prosecutor sum up their cases. (These are called submissions.)
- g. The Judge makes a decision.

These steps always go one after the other, and in this order.

THE CASE IS CALLED

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

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THE TRIAL BEGINS

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

THE EXCLUSION ORDER

An Exclusion Order is when the Defence or Prosecutor ask the Judge to exclude witnesses from the courtroom while the other witnesses are testifying. Each witness has evidence to give and should be able to give it without the risk of being influenced by what another witness has said. For this reason, all of the witnesses are usually out of the courtroom until each one is called to testify. If the Prosecutor is going to call more than one witness and hasn't applied to the Judge for an exclusion order, you should be sure to do this. You should say: "*Your Honour, I would like to request an exclusion order*".

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

THE CROWN'S CASE (PRESENTED BY THE PROSECUTOR)

The Prosecutor is trying to prove that you are guilty. To do this, the Prosecutor must prove:

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

Each Crown witness stands in the witness box, swears to tell the truth, and is asked questions by the Prosecutor. Often the main Crown witness

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is the police officer who handled the investigation. However, written evidence, such as a breathalyser test certificate, or a drug analysis certificate may be used against you. They will be introduced by a witness and then the Prosecutor will apply to the Court to have these documents or other pieces of physical evidence marked as exhibits in the case against you. If the Judge decides that they are admissible (meaning, allowed) then the Judge will tell the Court Clerk to mark them as exhibits.

After each Crown witness finishes giving evidence through the questions asked by the Prosecutor, you will have a chance to ask your questions. This is called cross-examination.

1. Cross-Examining the Crown's Witness

Whether or not you should cross-examine each witness depends on what evidence the witness gave when questioned by the Prosecutor. You are not required to cross-examine the Crown's witnesses. Keep in mind that the reason for cross-examination is to bring out evidence which is helpful to the Defence. You want to weaken the force of the testimony where it is helpful to the Prosecution, or to discredit the witness. It is important to listen carefully to each Crown witness. You ask questions to show that the Crown witness is not sure of the facts or that the evidence is weak. If you want to tell the Judge why a witness should not be believed or is mistaken, the time to do that is when you make your final submissions, after all the witnesses have been heard. Cross-examination is a time for you to ask questions. If you try to make speeches or arguments, the Judge will stop you.

There are two other important things to remember when you cross-examine: take your time to do it right and do not argue with the witness. You do not want to lose your temper or say that a witness is lying.

When you cross-examine a witness, the way you ask your questions is very important. While the Prosecutor is bound to let the witness tell their story in their own words, your questions can suggest the answer you want. In this way you can better control, to an extent, what the witness says. Questions of this kind are called leading questions, and they are commonly used in cross-examination. For example, if the crime was committed by someone driving a blue car, and you know that your blue

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car was not the only one at the scene, you could ask the witness the following leading question. "Isn't it true that there was more than one blue car present?"

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

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

2. Redirect

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

3. Conclusion of the Crown's case

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

THE DEFENCE'S CASE (PRESENTED BY YOU)

Until now, the Judge has heard the Crown's entire case and has only heard you cross-examine the witnesses. Now is your opportunity to present your evidence. You can present your defence through your own

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witnesses, as well as your own testimony. Keep in mind that you do not have to call evidence if you do not wish to. If the Crown has not presented enough evidence to prove the case beyond a reasonable doubt, you will not need to call any evidence because the Court should acquit you. Also remember that the Prosecutor can cross-examine your witnesses as you did with the Crown's.

1. Choosing to Testify

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

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

As with other witnesses, prior to testimony you will be required to take an oath. While under oath, you must tell the truth.

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

2. Advantages of giving evidence yourself

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

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3. Disadvantages of giving evidence yourself

- a. The Prosecutor will have a right to cross-examine you.
- b. The Prosecutor will point out any weak spots in your evidence.
- c. If you have a criminal record the Prosecutor will be able to ask you questions about it (if you do not give evidence the Prosecutor cannot mention your record during the trial).
- d. The Prosecutor may ask you about things you do not want to talk about, but you will have to answer.
- e. Remember, you do not have to give evidence yourself. It is up to the Prosecutor to try to prove that you are guilty. If the case against you is not that strong, there may be no need for you to give evidence.

4. Other defence witnesses

You may want to call your own witnesses. One of the most common mistakes made by people acting for themselves is to want to give evidence when they are questioning the witnesses they have called. You must allow your witnesses to tell their own story in their own words. You may guide them somewhat but you cannot ask leading questions (which suggest the answer you want) as you may in a cross-examination. For example, your questions should not suggest that you want a particular answer. You say: "Were you with anyone on the night of February 19th?" NOT "We were together on February 19th, weren't we?" You say: "How fast was I driving?" NOT "I was driving over 50 km/h, wasn't I?". Any questions which can be answered "yes" or "no" are likely to be leading questions and are not allowed.

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

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5. How do you pick a good witness?

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

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

6. Subpoenas

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

7. Voir dire

At some point during the trial the Judge may direct that the Court enter into a *voir dire*. This is simply a mini-trial within the main trial and it is generally used to determine whether or not a particular piece of evidence should be allowed into the main trial. Often the evidence in question is a statement you gave to the police. Generally, what needs to be determined is whether your statement was voluntary or not. *Voir dire*s usually involve complicated issues and it will likely be necessary for you to get advice from a lawyer. If there is no way for you to afford a lawyer then contact Lawyer Referral Service or Student Legal Services.

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SUBMISSIONS

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

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

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

DECISION

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

1. Not Guilty

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

2. Guilty

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

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the crime which might lead the Judge to give you a lighter sentence. You might want to include your personal circumstances (age, employment, family). Mention any changes you are making in your life to avoid committing future offences or any circumstances around the offence that might make the judge more lenient (ie. stole to feed family, on medication etc.). Also, you should mention any time you have spent in pretrial custody as this will also be taken into account when the sentencing is done. See Student Legal Services 'How to do Your own Speak to Sentence' pamphlet.

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

VOCABULARY

1. Judge

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

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

2. Prosecutor

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

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

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3. Court Clerk

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

4. Court Reporter

It is the Court Reporter's job to make a verbatim (i.e. word for word) transcript of everything that is said during the trial. The proceedings are also tape recorded. The purpose of these transcriptions/recordings is to create a record for appeal purposes. Court reporters are no longer used in Edmonton courtrooms as everything is electronically recorded.

5. The Accused

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

6. Witnesses

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

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

7. Public

Anyone can come and watch what is going on. There are rows of seats at the back of the courtroom. Before your case comes up, it would be a good idea for you to go to a courtroom and watch what happens. That will give you an idea of what to expect when it's your turn.

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REFERRAL NUMBERS

Student Legal Services of Edmonton [780] 492-2226
Corona Criminal Office (Downtown) [780] 425-3356
www.slsedmonton.com

Legal Aid [780] 427-7575
www.legalaid.ab.ca

Law Line [780] 644-7777
www.lawline.legalaid.ab.ca

Lawyer Referral Service 1-800-661-1095 (Toll Free)
www.lawsocietyalberta.com/publicservices/lawyerReferralService.cfm

Provincial Court Clerk (Edmonton)
Criminal Division [780] 427-7863 or 427-7867
www.albertacourts.ab.ca/ProvincialCourt/CriminalCourt/tabid/97/Default.aspx

Traffic Division (Edmonton) [780] 427-4724
www.albertacourts.ab.ca/ProvincialCourt/TrafficCourt/tabid/99/Default.aspx

Crown Prosecutor (Edmonton) [780] 422-1111
www.justice.gov.ab.ca/criminal_pros/default.aspx

Elizabeth Fry Society . . . Court Worker Program: [780] 422-4775
Located on fourth floor of courthouse Women's
support number: 780-421-1175