

I'm in trouble with the law. Can you help?

Guide to the Criminal Legal Process and
the Rights of Indigenous People Accused
of a Crime

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About Éducaloi

Éducaloi helps citizens understand the law and their legal rights and responsibilities. It does this using simple language.

To learn more, see the “About” section at www.educaloi.qc.ca.

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Important!

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Introduction

Purpose of the guide

This guide is a tool to help community workers answer questions from Indigenous people accused of a crime. Being charged with a crime is stressful and can lead to feelings of helplessness, especially if the accused doesn't understand the process.

Many Indigenous people don't have faith in the legal process. This is partly because Indigenous people are overrepresented in the criminal justice system. In Canada, Indigenous adults make up only 4% of the general population, but 30% of the prison population¹. Historic events have impacted Indigenous communities over several generations (e.g., colonization, displacements, residential schools, racism and discrimination), and this, too, has given rise to overrepresentation.

Community workers can use this guide to answer common questions and concerns of Indigenous people accused of a crime. The goal is for them to know what to expect at each step of the legal process so they feel more in control over what happens to them.

How to use the guide

This guide is in question-and-answer format about what happens during the criminal process. It focuses on the reality of Indigenous people, whether they live in a city or remote community.

Each chapter covers a separate issue. The table of contents helps you find information by topic or question.

Questions are answered in the second person (you) to reflect the trust and understanding between the community worker and the Indigenous person.

Important points

This guide applies only to people accused of a crime living in or outside an Indigenous community in Quebec.

This guide doesn't apply to situations where a person gets a ticket for violating provincial laws (e.g., speeding) or municipal bylaws (e.g., being in a park after hours).



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- Native Para-Judicial Services of Quebec (NPJSQ)
- First Peoples Justice Center of Montreal
- Regroupement des centres d'amitié autochtones du Québec
- Quebec Native Women

Éducaloi also thanks these organizations for sharing their expertise:

- Director of Criminal and Penal Prosecutions (DCPP)
- Barreau du Québec
- Bureau des affaires autochtones du Ministère de la Justice du Québec

¹Statistics Canada, *Adult correctional statistics in Canada, 2017/2018*, by Jamil Malakieh.

Chapter 1

Interactions With Police

The rights a person has when dealing with police depend on the situation. When the police stop someone, they might not necessarily detain or arrest the person. Being stopped by the police is different from being detained or arrested.

Detention

People can be detained in prison. But there are other ways to detain people. For example, they can be detained on the street or wherever police stop them and don't let them leave. People brought by police to the police station as part of an investigation are being detained. People can be detained without being under arrest.

Arrest

The police can arrest people they think committed a crime. They must clearly explain the reasons for the arrest.

People detained or arrested have these rights:

- be told the reason for the detention or arrest
- remain silent
- speak to a lawyer

If the police don't respect these rights, the evidence gathered against a person while detained or under arrest might not be allowed in court.

1.1. Must I answer police questions?

No. You can politely refuse to say what you're doing, where you're going, who you're with and why. You can simply tell them "I have nothing to say."

This rule applies whether you're arrested, detained or stopped by the police.

For example, the police can ask you questions if you saw something happen or have information about a crime. But you don't have to answer.

But even if you don't answer their questions, **you must identify yourself in these situations:**

- The police stop you while you're driving.
- The police suspect you did something wrong (e.g., you hit someone, you're drunk and making a lot of noise on the street, you're smoking in a non-smoking area). In this situation, the police must tell you why they want to know your identity.

If you refuse to identify yourself or give a false identity, the police can arrest you and bring you to the police station. To identify yourself, give your name and address. Sometimes you must also give your date of birth.

1.2. Can a police officer search me?

The police need a good reason to search you and can only search you in some situations. Here are examples:

- The police ask if they could search you and you agree even though you know you could refuse.
- You're being detained and the police believe their safety, your safety or anyone else's safety is in danger.

If you're under arrest, the police can search you for evidence.

1.3. What can police do when searching me?

The police can pat you down over your clothes and check your pockets.

If you're under arrest, the police can do a more detailed search, like looking through your backpack, car or cell phone.

The police can seize things they find during a search (e.g., objects used to commit a crime or that can be used as evidence, such as a scale for weighing drugs, or a knife).

1.4. Can I speak to a lawyer if I'm detained or arrested?

You have the right to speak to a lawyer as soon as you're detained or arrested. The police must tell you why they're detaining or arresting you. They must also tell you about your right to speak to a lawyer.

If you want to talk to a lawyer, the police must give you access to a telephone as soon as possible.

You can choose which lawyer to speak to. If you know a lawyer, the police must give you a phonebook or directory to look up the lawyer's number.

If you can't reach your lawyer on your first try, you're allowed to try again or call a different lawyer.

There is also a service that lets you speak to a lawyer on call for free. If you don't know a lawyer, the police must give you the phone number of this free service and let you call them.

Police must let you speak with your lawyer in private. No one's allowed to listen to what you say. Explain your situation so the lawyer can tell you what to say to the police.

Remember, you have the right to remain silent. You don't have to answer police questions (see question 1.1).

1.5. Do the police have unlimited rights?

No. The police aren't allowed to abuse their powers. They can use force, but only if necessary. For example, police can't push you into a police car if you're not resisting arrest. Using unnecessary force is police brutality.

Here are examples of what the police aren't allowed to do:

- insult you because of your background
- threaten or bully you
- destroy something that belongs to you
- refuse to give you their name and badge number

1.6. What can I do if the police go too far?

Ask for the police officers' names. You can file a complaint without knowing their names, but the information is helpful.

Record a video or audio of what happened so you'll have proof. But don't get in their way. If you don't give them enough room, they could accuse you of interfering with their work.

As soon as possible, write down everything about what happened, such as the date, time, place, what the police said and did and your reactions and words.

1.7. How do I file a complaint against a police officer?

There are two ways to file a complaint, depending on the situation:

- If the police officer **committed a crime**, call the Bureau des enquêtes indépendantes (office of independent investigations) at 1-844-615-3118. Police officers from another region will investigate.
- You can also file an **ethics complaint** against police officers who disobey the police rules of conduct. The officers could be suspended, get a negative report in their file, etc.

In all situations, you can call the confidential toll-free hotline for Indigenous people who are abused by police (1-888-844-2094). A native court worker can

- help you file a complaint, and
- explain the help you can get from a special centre that supports crime victims (Centre d'aide pour les victimes d'actes criminels or CAVAC).



Police abuse in a community

When there is police abuse in a community, police officers from a different region will investigate. This reassures victims who are afraid to complain about the police because they think nobody will believe them or they don't want to cause trouble in their own community.

Chapter 2

Crimes

Crimes are acts prohibited by law. People who commit them can be charged with a crime. There are many different crimes. Most are defined in the *Criminal Code*, but some are defined in other laws.

An accused person might not understand the charges even if the crime is written on the document ordering the person to appear in court. Here are examples:

- The words describing the crime are complicated and the accused doesn't understand them.
- The accused did something without realizing it was a crime.

This chapter describes some common crimes and gives examples to explain them.

The accused's lawyer can answer questions about the charges.

2.1. Examples of crimes

| Crime | Definition | Examples of situations that <u>could be crimes, depending on the circumstances</u> |
|-----------------------|--|---|
| Sexual assault | <p>Doing something of a sexual nature to another person without that person's consent (agreement).</p> <p>Consent must be free and informed.</p> <p>The person must know what she is agreeing to. She can't be forced or threatened into agreeing.</p> | <ul style="list-style-type: none"> • A man forces his spouse to have sex with him. • A man has sex with a woman who is drunk and can't say whether she agrees (e.g., she is vomiting and can't stand up on her own). • A woman touches another woman's genitals without her consent. • A man touches a women's breasts without her consent. |

| Crime | Definition | Examples |
|------------------------------|---|--|
| Impaired driving | <p>Driving a vehicle with</p> <ul style="list-style-type: none"> • a blood-alcohol level over 0.08 (80 mg of alcohol in 100 ml of blood) or • 5 nanograms or more of THC in a millilitre of blood (5ng/ml) or • a decreased ability to drive after consuming drugs or alcohol, no matter how much was consumed. <p>Examples of vehicles: car, snowmobile, boat, motorcycle, scooter.</p> <p>Also, a person isn't allowed to have the care or control of a vehicle while impaired, even if the engine is off.</p> | <ul style="list-style-type: none"> • A woman had several drinks and waits in her parked car for the alcohol to wear off before driving. • A woman consumed cannabis and feels very tired while driving. • A man with a blood-alcohol level over 0.08 after three beers is driving a snowmobile, even if he feels sober enough to drive. |
| Breaking and entering | <p>Entering a place without permission and committing, or planning to commit, a crime in that place.</p> <p>It's not necessary to break a window or force a door open for the act to be illegal. Just opening an unWlocked door could be breaking and entering.</p> | <ul style="list-style-type: none"> • A man enters his ex-spouse's home without her permission and starts kicking her. • A woman goes into a building under construction to steal materials. |

| Crime | Definition | Examples |
|---------------------------------------|--|---|
| Extortion | Forcing someone to do something for your benefit by using threats or violence. | <ul style="list-style-type: none"> A man forces his mother to give him money, saying he'll hurt her if she refuses. |
| Criminal harassment (stalking) | Behaving in a way that makes others afraid for their safety or the safety of someone they know. | <ul style="list-style-type: none"> A woman repeatedly follows her ex-spouse or someone he knows, or watches his house or where he works. A man repeatedly contacts another person, to the point this person feels harassed. |
| Threats | <p>Threatening to</p> <ul style="list-style-type: none"> hurt someone or their pet, or burn, destroy or damage an item that belongs to someone else. <p>It isn't necessary to carry out the threat. It's enough if the threat is taken seriously.</p> <p>Also, it's not necessary for the victim to know about the threat.</p> | <ul style="list-style-type: none"> A man raises his fist and says he's going to hit someone (even if he doesn't really intend to). A woman says she's going to kill her ex-spouse's new girlfriend. |

| Crime | Definition | Examples |
|------------------------|---|---|
| Drug possession | <p>Having a drug or medication without a prescription.</p> <p>Possession of the drug is a crime even if it's a small amount and is for personal use.</p> | <ul style="list-style-type: none"> A man takes pain medication prescribed for a friend. A woman has a small packet of cocaine on the front seat of her car. |
| Assault | <p>Intentionally using force or threatening to use force against someone without their consent.</p> <p>The law doesn't say what amount of force is necessary. In some situations, the amount of force used can be very small.</p> <p>In some cases, assault is very serious, for example, when a weapon is used or the victim is injured.</p> | <ul style="list-style-type: none"> A man pushes his spouse, slaps her or squeezes her arm. A woman throws an object at someone or spits in someone's face. |

Chapter 3

Order to Appear in Court

People who get a document ordering them to go to court might not understand its importance, even though they got it because they committed a crime. They need to understand what the document means and do what it says to prevent the situation from getting worse.

This chapter covers these topics:

- what the document says and why it's important
- who can help
- what to do if the person loses the document
- what to do if the person can't go to court on the date stated in the document

This chapter doesn't apply to tickets for disobeying municipal or band council bylaws.

3.1. The police stopped me and gave me a document. What is this document?

The document orders you to go to court. Sometimes the police give you this document before they let you go if they think you've committed a crime. In other cases, you receive the document at home.

The document can have different names:

- Appearance Notice
- Undertaking
- Summons

The document tells you these things:

- the crime you've been accused of
- the place, date and time you must appear in court

To learn more about the appearance, see question 4.1.

The document might also order you to have your fingerprints taken. It will tell you when and where to do this.

Sometimes, the document will list conditions you must follow. Conditions are things

you must do or not do. For example, you must report to the police station on certain days, or you're not allowed to drink alcohol (see Chapter 6).

Important! You could be accused of another crime and make your situation worse if you don't

- show up for your appearance in court,
- go for fingerprinting, or
- follow the conditions you're given.

Detention after arrest

Sometimes police detain the people they arrest. These people won't receive a document ordering them to appear in court. Instead, they are taken to court, usually within 24 hours.

3.2. What if I lose the document ordering me to appear in court?

You must find out the information so you can go to court at the right time and do what you've been ordered to do. You can get help from your lawyer or from one of these places:

- **A police station in the city where you were arrested** can help if you received the document from the police. Explain your situation and ask for a copy of the document. The police can ask you for identification. They can also ask you questions to help them find the information.
- **Your nearest courthouse** can help if you received the document at home or if your case is already before the court. Staff at the court office can help you find the information. To find out how to reach the court office, or if your case is before the itinerant court, call **Justice Québec's customer service centre at 1-866-536-5140** (toll-free).
- **A community justice centre** can help you find the information for free. To find a centre in your region, visit the website of the Centres de justice de proximité du Québec (see the Useful Resources section at the end of the guide).



Itinerant court

Some remote regions don't have a courthouse. So, a judge travels to the various communities with other legal professionals to hear cases. It's called an itinerant court.

It's up to you to find and pay for a lawyer. If you qualify for legal aid, you might get a lawyer for free or at low cost. To find out if you qualify, make an appointment with the nearest legal aid office. To learn more, see question 9.1 and visit the website of the Commissions des services juridiques (legal aid). (See the Useful Resources section at the end of the guide).

You can also contact a native court worker.

Native court workers know the court system well. They don't give legal advice, but they can help you in these ways:

- offer support
- help you find a lawyer
- go to court with you
- help you understand your rights
- explain the different steps in your case

They work in different regions of Quebec, and their services are free.

To find a court worker, contact the Native Para-Judicial Services of Quebec (NPJSQ) by phone at 418-847-2094 or by e-mail at info@spa.qc.ca.

3.3. What if I can't go to court on the day my appearance is scheduled?

Tell your lawyer as soon as possible that you can't make it. Your lawyer can usually appear for you, but make sure your lawyer is available.

If you don't have a lawyer, you must go to court yourself. If you don't show up for your appearance, the judge can order your arrest, and you could be accused of another crime.

You can also try to appear **before** the date shown in the document. Call or go to the office of the court where you're supposed to go and ask if you can appear before the scheduled date. Do this as soon as possible. Also, let the prosecutor know. The prosecutor is the government lawyer. (See the Useful Resources section at the end of the guide.)

If you don't have a lawyer and you must go to the itinerant court, it's usually harder to appear before your scheduled date. Contact **Justice Québec's customer service centre** at 1-866-536-5140 (toll-free).

3.4. Who can help me if I must go to court?

You can hire a lawyer as soon as possible.

Your lawyer can explain these things to you:

- the crime you've been accused of
- any conditions you must follow
- what can happen
- your rights

Your lawyer's job is to give you advice and defend you against the charges. Your lawyer helps you during your appearance and the steps that follow (see questions 4.1 and 4.10).

Chapter 4

Going to Court

Going to court to face criminal charges can be stressful, especially if the accused doesn't understand the process. Knowing who will be there and how to act can make things easier.

People in the courtroom

- **Judge.** The judge makes decisions at each stage of the court process. The judge usually sits on a raised platform and faces the courtroom.
- **Court clerk.** The court clerk takes notes on everything that happens in the courtroom and asks witnesses to swear to tell the truth. The court clerk usually sits right in front of the judge.
- **Court usher.** The court usher maintains order in the courtroom.
- **Accused's lawyer.** This lawyer is also called the lawyer for the accused or the lawyer for the defence and sits beside the accused.
- **Criminal and penal prosecuting attorney (the prosecutor).** This lawyer presents evidence to prove the accused's guilt. The prosecutor represents the government, not the victim. The prosecutor sits opposite the accused's lawyer.

Rules to follow in court

- Stand when called and remain standing during the appearance.
- Look at the judge when answering questions.
- Be polite.
- Dress appropriately. For example, don't wear shorts, a camisole or an undershirt.

To help the accused prepare for court, this chapter outlines the main steps in the legal process and who can accompany the accused during the process.

Important! People who defend themselves without a lawyer must do all the steps listed in this chapter on their own. They can get help by calling the free criminal law info-line at **1-888-954-9447** or contacting a native court worker (see question 3.4).

4.1. What happens the first time I go to court?

The first time you go in front of a judge is called an appearance.

Important! if you don't show up, you could be arrested and accused of another crime.

At your appearance

- You find out what crime you're officially accused of.
- You find out what evidence the prosecutor has against you.
- You plead guilty or not guilty (see question 5.1).

Before your appearance

- **Find the courtroom.** Check the courtroom number in the document ordering you to appear in court. This information is also on a list called the roll for hearing which is usually posted at the entrance to the courthouse. It lists the names of all the people scheduled to appear that day. Ask someone at the courthouse where the list is posted.
- **Stay in the courtroom** until you're called. You might miss your turn if you leave the room. It can be a long wait, but once you're in front of the judge, it will go quickly.

Some remote regions don't have a courthouse. A judge travels to these regions with other legal professionals to hear cases in different communities. This is called the itinerant court. You'll be told where to go for your appearance.

During your appearance

- **The judge could ask you questions, and you must answer.** If you have a lawyer, the lawyer does most of the talking.
- **If you don't have a lawyer** but you want one, the judge will let you come back to court another day to give you time to find a lawyer. You must plead not guilty. Write down the date the judge tells you to return, and don't wait until the last minute to find a lawyer.

4.2. I was told to go back to court after my appearance. Will that be my trial?

Not usually. You'll have to go back in front of the judge a few times before your trial. These are called *pro forma* hearings. At a *pro forma* hearing, your lawyer and the prosecutor exchange information to help move your case forward.

At a *pro forma* hearing, the judge doesn't decide whether you're guilty, and you don't have to testify.

What's the purpose of a *pro forma* hearing?

- **Find out the evidence against you.** The prosecutor must give your lawyer any evidence that wasn't given earlier (see question 4.4).
- **Negotiate.** Your lawyer can negotiate with the prosecutor to charge you with a less serious crime or give you a lighter sentence (see question 5.2).
- **Choose a new *pro forma* date.** Your lawyer or the prosecutor can ask the judge to postpone the *pro forma* hearing if they need more time to prepare. When everything is ready, they'll ask the judge for a date for your trial or to plead guilty.

If you don't have a lawyer, you can do all this yourself with the prosecutor.

If you have a lawyer, you might not have to go to the *pro forma* hearings. Talk to your lawyer to find out.

Aside from the *pro forma* hearings, there could be other steps before the trial (see question 4.10).

4.3. What if I forget when to go back to court?

Here's how to find out your next court date:

- Ask your lawyer.
- Call the court office or Justice Québec's customer service centre (1-866-536-5140).
- Contact a native court worker in your region (see question 3.4).

For some courthouses, you can look up the date at www.roles.tribunaux.qc.ca/.

Important! if you don't show up when the judge asked you to, you could be arrested and accused of another crime.

4.4. What should I do while waiting for my trial?

- **Go to court** when the judge asks you to. Every time you go before the judge, you'll be told when to return. Ask questions if you don't understand. Write down the date because you won't receive another notice.
- **Write down** all the details you can remember about the crime you've been accused of. Where were you? Who was with you? Who did what? Who said what?
- **Study the evidence to prepare your defence.** You have a right to know all the evidence the prosecutor has against you, including police reports, written or video testimony of a victim or witness and pictures.

Usually, your lawyer will receive this evidence the first time you go to court or at a *pro forma* hearing. Ask to see the evidence and take time to study it. If any testimony is false or contradictory, tell your lawyer.

- **Talk to your lawyer** regularly to learn how your case is progressing. You can also talk to a native court worker in your region. To learn what native court workers do, see question 3.4.
- **Take steps to improve your situation right away.**
 - Get therapy if you have a problem with drugs, alcohol or violence.
 - Get help if you have a mental health problem.
 - Take serious steps to find a job or continue your studies.

If you're found guilty, these steps could help you get a lighter sentence.

4.5. Must I testify at my trial?

No, you don't have to testify at your trial.

You can remain silent. You're innocent until proven guilty. The prosecutor's job is to prove you committed the crime.

Your silence can't be held against you to prove you're guilty.

You always have the right to testify if you want to. Talk to your lawyer about whether testifying would help your defence.

If you decide to testify, you'll have to answer the prosecutor's questions. Your lawyer can help you prepare.

At the beginning of your testimony, you must promise to tell the truth. You can either swear on the Bible or solemnly declare to tell the truth.

4.6. I don't speak French very well. Can my trial be in English?

Yes, you can choose to have your trial in English or in French. Tell the judge as soon as possible what language you want and tell your lawyer if you have one.

4.7. I'm not comfortable in either English or French. Can I have an interpreter?

Yes, you have the right to an interpreter for free if you're not comfortable in English or French.

Even if you know some English or French, you can still have an interpreter to ensure you understand everything said in court.

If you want an interpreter, speak to your lawyer as soon as possible or tell the judge, for example, on the day of your appearance. The court office will arrange for an interpreter the next time you're in court.

The interpreter will translate into your language everything the judge, lawyers and witnesses say. The interpreter will also translate what you say into English or French.

4.8. Aside from my lawyer, who can come with me to court?

You can ask anyone you want to go with you.

- **A native court worker** can explain your rights and what's going on throughout the legal process. Native court workers are Indigenous people. They work in different regions in Quebec, their services are free, and they know the legal system very well (see the Useful Resources section at the end of the guide).
- **A person you trust** can support you during the stress of a trial, such as a friend, family member or community worker (e.g., a social worker or a worker in a native friendship centre).

The person can usually sit with you in the courtroom. But only your lawyer can speak to the judge or approach the judge with you. Also, only your lawyer can give you legal advice.


To find a native court worker, contact the Native Para-Judicial Services of Quebec (NPJSQ) at 418-847-2094 or at info@spaq.qc.ca.

4.9. How do I get to court?

You must make your own arrangements to get to court on the date and time scheduled. You can ask friends or family members to go with you. A native court worker in your region can tell you about other options.

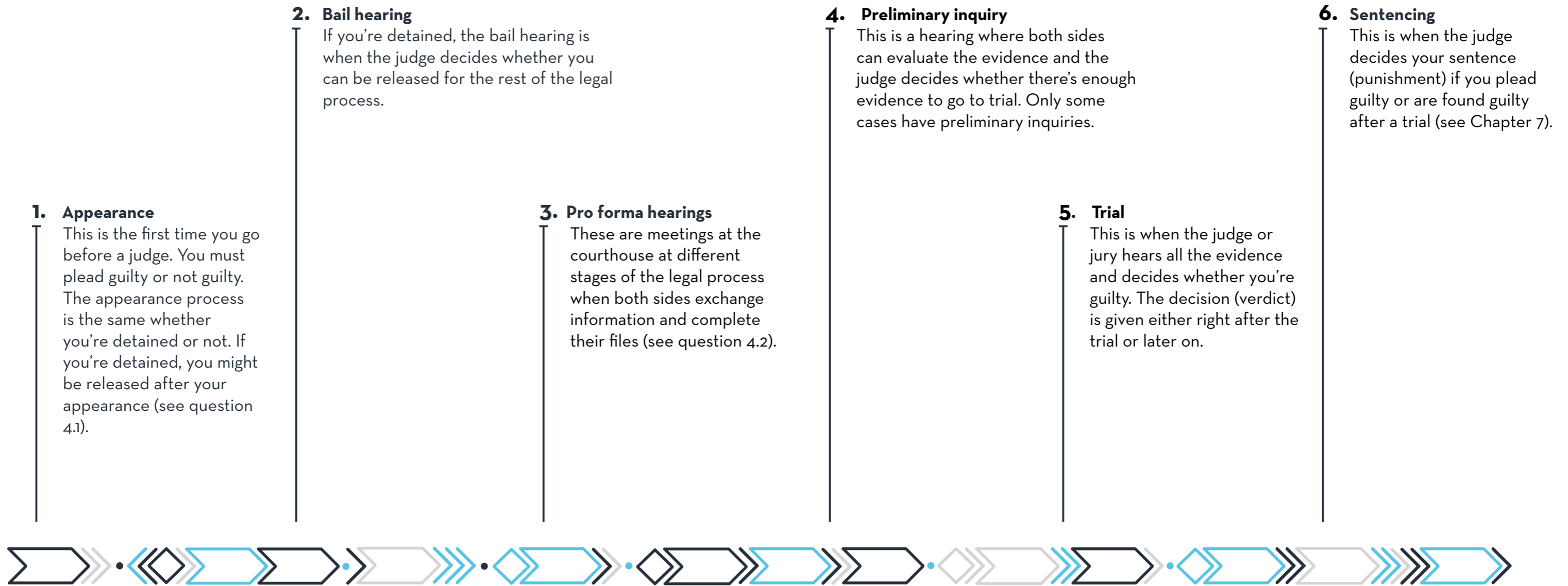
You must also make your own arrangements to get back home if the judge gives you conditions to follow. An example of a condition is a curfew which means you must be home by a certain time.

Living far away from the courthouse is not an excuse for not showing up in court or not following the conditions the judge gives you. You could be arrested and accused of another crime.



If you're detained while awaiting trial
Transportation will be arranged for you. But you must usually make your own arrangements to go home if the judge releases you. In some situations, you can ask correctional services to pay for transportation (e.g., if you can't pay for the plane ticket).

4.10. Main steps in the legal process



Chapter 5

Avoiding a Trial

When a person is charged with a crime, the case can be settled to avoid a trial in these situations:

- The accused pleads guilty.
- The accused signs a peace bond.
- The accused promises to participate in an alternative measures program.

This chapter explains these three situations and why defence lawyers often negotiate with the prosecutor to avoid a trial.

5.1. What happens if I plead guilty?

When you plead guilty, you're saying you committed the crime.

- You won't have a trial.
- The judge says you're guilty and gives you a sentence (punishment) (see question 7.6).
- You'll have a criminal record (see question 8.2).

Nobody can force you to plead guilty. The decision is yours alone, but you should talk to a lawyer first (see question 9.6).

Usually, if you plead guilty you can't change your mind later and defend yourself at a trial.

But if you plead not guilty at your appearance, you can change your mind and plead guilty at any time before the judge makes a decision (verdict) after the trial.

5.2. Why does my lawyer want to negotiate with the prosecutor?

Your lawyer might recommend negotiating with the prosecutor in some situations, for example, if there's a lot of evidence against you.

Your lawyer can try to persuade the prosecutor to charge you with a less serious crime or give you a lighter sentence (punishment).

If you agree to what's been negotiated, you can plead guilty and your lawyer and the prosecutor will recommend a sentence to the judge. The judge doesn't have to follow their recommendation but usually does.

Important! You can't be forced to plead guilty after the lawyers negotiate. If you're not happy with the results of the negotiation, you can still plead not guilty and let the judge decide at a trial.

5.3. My lawyer recommends that I sign a peace bond. What is this?

A peace bond (or Section 810 peace bond) is a promise you make in writing to follow conditions. In some situations, the prosecutor could drop the charges against you in exchange for a peace bond.

To sign a peace bond, you must admit to a judge that the person who made the complaint against you has reason to be afraid you will

- hurt her,
- hurt her spouse or her child, or
- break something that belongs to her.

You won't be found guilty of a crime, and you won't have a criminal record.

If you sign a peace bond, you must follow the conditions the judge gives you. The conditions apply for up to 12 months. Here are examples:

- Don't disturb the peace and be on good behaviour.
- Don't contact certain people.
- Stay away from certain places.
- Don't drink alcohol.

Important! If you don't respect the conditions of your peace bond, you could be accused of a crime.

Erasing all record of trouble with the law

Even though you won't have a criminal record if you sign a peace bond, you'll have to take steps to erase any other record of the charges and the court file. To learn more, see question 8.1.

5.4. The prosecutor recommends an alternative measures program (AMP). What is this?

Under an alternative measures program (AMP), the charges against you could be dropped without a trial if you do certain things (alternative measures).

Here are examples:

- community work
- paying for the victim's damages
- attending an addiction treatment program

You won't have a criminal record and your court file will be closed if you complete the alternative measures. But you must still take steps to erase any other record of your trouble with the law (see question 8.1).

If you don't complete the alternative measures, you'll still face criminal charges and the court process will continue.

You can refuse to do the alternative measures and choose to continue with the regular legal process. Talk to your lawyer before deciding what to do.

5.5. Can the prosecutor recommend an alternative measures program (AMP) in all situations?

No. The prosecutor can only recommend an AMP in these situations:

- **The crime you're accused of is covered by the program.** Your lawyer or the justice committee in your community can give you more information.
- **You admit to the crime.** This can't be used against you if you go back in front of the judge.
- **Your region has an alternative measures program.** Justice committees in several Indigenous communities have signed agreements with the Director of Criminal and Penal Prosecutions (DCPP) to organize alternative measures programs for Indigenous people.

The prosecutor decides whether you can take part in the program after looking at your situation (e.g., any previous convictions, your willingness to repair the harm you caused and the victim's opinion).



Justice committees play a major role in alternative measures programs.

Justice committees are made up of members of the community who

- make recommendations to the prosecutor about specific alternative measures for you, and
- make sure you carry out the alternative measures in the community.

Chapter 6

Conditions

Conditions are things an accused must do or is not allowed to do. For example, the accused might have to go to the police station on specific days or not drink alcohol.

The police or a judge can set conditions at these stages in the process:

- arrest
- release on bail until trial
- signing a peace bond (see question 5.3)
- sentencing (see Chapter 7)

Conditions vary from person to person, depending on their situation.

Accused people who don't follow the conditions could make their situation worse.

This chapter doesn't apply to conditions an accused must follow when released from prison or granted parole. The accused can get more information from his parole or probation officer, or lawyer.

6.1. What if I don't understand the conditions I must follow?

Ask the judge or police officer who ordered the conditions to explain them before you sign anything.

Talk to your lawyer to find out what you can and can't do.

It's your responsibility to ask questions. If you don't obey the conditions, you could be found guilty of a crime. The judge won't accept the excuse that you didn't understand your conditions.

A native court worker in your region can also explain the conditions (see question 3.4).

Here are examples of conditions the judge or police officer can give you depending on your situation:

- **No alcohol.** You're not allowed to drink a single drop of alcohol, at home or anywhere else. Sometimes you might not even be allowed to be in a bar or other places where alcohol is sold or consumed.
- **No weapons.** This isn't always limited to guns. It can apply to other kinds of weapons, such as knives.
- **No contact with a specific person (e.g., victim, witness).** You can't speak to this person or ask someone else to do it for you. And you can't contact this person in any other way (by text, email, Facebook, etc.).

Each case is different. Ask questions to learn more about your specific conditions.

6.2. What if I don't follow my conditions?

You risk being arrested or accused of another crime: breaking your conditions.

There can also be other consequences:

- detention
- harsher conditions
- criminal record (see question 8.2)
- payment of money, if this was one of your conditions

If you break your conditions, you must face the consequences, even if you're found not guilty of the original crime.

6.3. What if I lose my list of conditions?

You must find the information to make sure you follow every condition. Ask your lawyer to get a copy for you. If you don't have a lawyer, you can take these steps:

- **Conditions given by the police.** Any police station can usually tell you what conditions you must follow. But to get a copy of the document, you must ask the police station in the city where you were arrested. Show them identification, explain that you lost your list of conditions and ask for another copy.
If you already appeared in court, go to the courthouse where you appeared and ask the court office for a copy of your conditions.
- **Conditions given by a judge.** The court record at the courthouse where you appeared has a list of your conditions. Ask the court office for a copy. You'll need to show identification.
If your case is before the itinerant court, call **Justice Québec's customer service centre at 1 866 536-5140** (toll-free).

6.4. Can I get my conditions changed?

Yes, but only in some situations and if you have a good reason. For example, you have a curfew but you just got a night job. It's not automatic, and your request to change conditions could be refused.

If you have problems with your conditions, talk to your lawyer.

6.5. How long must I follow the conditions?

It depends on who gave you the conditions and when.

| Who gave you the conditions? When? | When your conditions end |
|---|--|
| The police or a judge, before the trial | <ul style="list-style-type: none"> • The charges are dropped. OR • You're found not guilty. OR • The judge sentences you. |
| A judge, when ordering a peace bond (see question 5.3) | <ul style="list-style-type: none"> • The time set in the peace bond is over. |
| A judge, when handing down your sentence (see question 7.6) | <ul style="list-style-type: none"> • The time ordered by the judge is over. <p>Important! When a judge sentences you, it can be hard to know when your conditions end. Sometimes they don't start right away, for example, if you must go to prison.</p> |

Chapter 7

Sentences

Anyone accused of a crime will wonder about possible sentences (punishments) if found guilty.

This chapter covers these topics:

- how a judge decides the sentence
- kinds of sentences
- Gladue reports and Indigenous peoples

It's impossible to know what sentence a judge will order for every crime. There are too many kinds of crimes and too many factors to consider in each case.

This chapter gives helpful information to prepare the accused for sentencing.

Important! Don't confuse the sentence a person gets when found guilty of a crime with other measures (see questions 5.4 and 5.5 on alternative measures programs).

7.1. What kind of sentence can I expect?

It's impossible to know in advance what sentence (punishment) a judge will order, but your lawyer can give you a general idea.

The law sets the kind of sentence for each crime, for example, a fine or a prison term. But the judge decides the length of a prison sentence or the amount of a fine on a case-by-case basis. For some crimes, the judge can't give a lighter sentence than the minimum sentence set by law.

To learn more about the kinds of sentences, see question 7.6.

7.2. How does the judge decide the sentence?

The judge considers these factors:

- seriousness of the crime
- harm you caused to the victim or society
- your chances of reintegrating into society
- your personal situation (see question 7.3)
- your Indigenous origins. Ask your lawyer to tell the judge you're an Indigenous person (see question 7.4).

Before deciding the sentence, the judge holds a hearing to learn more about these factors. You have the right to speak at the hearing. This is the time to say you regret what you did and show the judge you're making a serious effort to get back on track.

In some situations, your lawyer and the prosecutor can agree on a sentence and recommend it to the judge. In other situations, your lawyer and the prosecutor will recommend different sentences. Each will present information and evidence to convince the judge to choose the sentence they suggest.

The judge doesn't have to agree to the sentence your lawyer or the prosecutor recommends. The judge decides what's fair and reasonable based on all the information presented.



Negotiating without a lawyer

If you don't have a lawyer, you can negotiate with the prosecutor on a sentence to suggest to the judge.



7.3. How will the judge know about my personal situation?

There are several ways. The judge can ask a probation officer to prepare a report about you. This is called a presentencing report and covers these topics:

- your physical and mental health
- your family history
- your criminal history, if any
- whether you're sorry for what you did

The judge uses this report to decide the chances that you'll commit another crime or reintegrate into society instead.

At the sentence hearing, you can tell the judge about your situation and any positive steps you took after committing the crime. Here are examples:

- Apologize to the victim or her family.
- Get therapy for problems with drugs, alcohol or violence.
- Get help for mental health problems.
- Take serious steps to get a job or go back to school.

Your lawyer can also ask witnesses to testify about your situation and the steps you've taken.

7.4. Can my Indigenous background help the judge decide my sentence?

Yes. If you're a member of a First Nation, Inuit or Métis, whether or not you live in a community, the judge must consider your Indigenous background before giving you a prison sentence.

The judge must also consider problems in your community as well as historical events that affected Indigenous communities over several generations (colonization, displacements, residential schools, discrimination, etc.).

The judge must consider how all these factors affect your personal situation and led to your trouble with the law.

A judge can ask for a Gladue Report to get more information on these factors and help decide on a fair sentence (see question 7.5).



Indigenous justice committees

Some communities have a justice committee made up of community members. The committee plays an active role in the justice system and offers services to community members accused of a crime. For example, the committee can recommend some sentences or alternative measures to the judge.

7.5. What is a Gladue Report?

A Gladue Report is a report for the judge that explains your situation and experience as an Indigenous person.

A Gladue Report covers these topics:

- historical events that had a negative impact on Indigenous communities
- history of your community
- your family history
- your criminal history
- whether you're sorry for what you did

The report also recommends sentences that respect Indigenous traditions.

The report doesn't excuse what you did or automatically entitle you to a lighter sentence. Instead, it suggests the best sentence for your specific situation. A Gladue Report is useful even if there's a presentencing report in your file (see question 7.3).

Ask your lawyer to request a Gladue Report as soon as you've been found guilty. It's free.

To learn more, contact the Native Para-Judicial Services of Quebec at 418-847-2094 or the justice committee in your community.



Gladue

The Gladue Report is named after Jamie T. Gladue, an Indigenous person accused of a crime. In this 1999 case, the court said that judges must consider the accused's Indigenous background to decide on a fair sentence. This approach is meant to address the problem of overrepresentation of Indigenous people in prison.

7.6. Kinds of sentences and other measures

The table below explains the kinds of sentences and measures a judge can order if you're found guilty. Here are examples:

- a discharge
- one or more fines
- other measures in addition to a sentence or a discharge

If you're found guilty, you'll have a criminal record. To learn more about criminal records and other impacts of criminal charges, see Chapter 8.

| Discharge | Description |
|--|---|
| Absolute or conditional discharge | <p>A judge could decide not to sentence you even if you're found guilty. This is called a discharge. It can be absolute or conditional.</p> <p>An absolute discharge is when you don't have any conditions to follow.</p> <p>A conditional discharge is when the judge gives you conditions to follow (probation). If you don't follow them, you could be given a sentence.</p> |

| Sentence | Description |
|-------------|--|
| Fine | <p>The judge could order you to pay a fine. A fine is an amount of money you pay to the government.</p> <p>You can contact a fines collector to make a payment arrangement or start a work program that lets you work to pay off the fine. To learn more, contact the Bureau des infractions et amendes (fines office) at 1-877-263-6337 (toll-free).</p> <p>If you don't pay the fine or do the work, the judge could send you to prison.</p> |

| Sentences | Description |
|--|--|
| Suspended sentence | <p>The judge could decide to wait before sentencing you. This is called a suspended sentence.</p> <p>In this case, you're free but must follow some conditions for a period of time (probation).</p> <p>If you disobey the conditions, the judge could order a sentence for the original crime.</p> |
| Serving a sentence in the community | <p>If you're ordered to serve your sentence in the community, you won't go to prison. But you're not totally free. You must follow strict conditions. For example, you might only be allowed to leave your house to go to work or for medical reasons.</p> <p>You're supervised much more closely when serving a sentence in the community than if you have a suspended sentence.</p> <p>If you don't follow all the conditions ordered by the judge, there are serious consequences, such as going to prison for the rest of your sentence.</p> |
| Prison sentence | <p>A prison sentence is the strictest punishment because your freedom is completely taken away. You must spend the whole sentence in prison.</p> <p>If you're sentenced to 90 days or less, the judge might give you an intermittent sentence that lets you leave prison on a regular basis. For example, you can go to work on weekdays and return to prison on the weekends. You must follow conditions while you are away from prison.</p> |

The following measures are not ordered alone but can be added to a sentence or discharge.

| Other measures | Description |
|------------------------------------|---|
| Probation | <p>The judge could put you on probation. The judge decides what conditions you must follow and for how long.</p> <p>Here are examples:</p> <ul style="list-style-type: none"> • Don't contact or go near the victim. • Don't take drugs or alcohol. • Don't stay out past curfew. <p>If you don't follow all the conditions, you could be accused of another crime.</p> <p>See Chapter 6 to learn more.</p> |
| Compensation for the victim | <p>The judge could order you to pay the victim money to make up for financial losses your crime caused.</p> <p>For example, if the victim has physical or psychological injuries that prevent a return to work, you might have to pay for the victim's lost income.</p> <p>Depending on your personal situation, the judge will decide whether to add this measure to any other sentence to make you take responsibility for the harm you caused.</p> |

| Other measures | Description |
|-------------------------|---|
| Victim surcharge | <p>A victim surcharge is an amount of money you pay in addition to another sentence or a discharge.</p> <p>The victim surcharge is usually:</p> <ul style="list-style-type: none"> • \$100 or \$200 (depending on the crime), or • 30% of the fine you must pay. <p>A judge can exempt you from the victim surcharge, or reduce the amount, if it is justified under the circumstances, for example if you are unemployed or homeless.</p> <p>Just as with fines, it is possible in some cases to make a payment arrangement for the victim surcharge, or start a work program, if would be difficult for you to pay (see fines above).</p> |

Chapter 8

Impact of a Criminal Record

Criminal charges have long-lasting consequences. This chapter explains the impact of a criminal record.

8.1. I was charged with a crime but not convicted. Will there still be files about my trouble with the law?

Yes. If you're charged with a crime and must go to court, it will be noted in police files, court files and often in the files of the Royal Canadian Mounted Police (RCMP).

These files exist even in these situations:

- You're found not guilty.
- The charges were dropped (e.g., after negotiations or signing a peace bond).
- You received a discharge (see question 7.6).

Steps to erase these files

- **At the courthouse.** You can ask to erase your name from the court's public registers (the plunitif). You must wait a while after the legal proceedings are over. Contact the court office to find out how long you must wait and what steps to take.
- **At the police station.** You can ask to destroy your fingerprints and photograph in their files. The police station will also ask the RCMP to destroy your fingerprints and photograph from their files.

A lawyer can help you.

Note: Some court decisions are available online. So, people can see information about your problems with the law, even if you're found not guilty.

Help to erase records

Alter Justice is an organization offering free information services and help with criminal records and files. Call 418-522-4343 or visit their website [French only].

8.2. What are the consequences of having a criminal record?

If you're found guilty, you'll have a criminal record. This could affect several areas of your life:

- **Work.** Usually, employers can't fire you, refuse to hire you or put you at a disadvantage because of your criminal record if
 - the crime has no connection with the job, or
 - your record is suspended (a pardon).

The rules are stricter for some jobs, for example, work with children.

- **Insurance.** An insurance company can refuse to insure you, cancel your insurance, raise your rates or refuse to pay for damage if you have a criminal record or didn't tell them you have one. Your criminal record can also affect your family's insurance.
- **Travelling outside Canada.** Some countries won't let you in if you have a criminal record. It's difficult to enter the United States with a criminal record, even for a stopover at an airport.
- **Renting an apartment.** A landlord can refuse to rent you an apartment if you have a criminal record.

To reduce the impact of your criminal record, you can ask for

- a record suspension (a pardon), or
- a waiver, which is special permission to enter the United States.

A lawyer can help you. But your criminal record won't disappear.

A temporary record if you're discharged

If you're discharged, you'll have a criminal record that says you were found guilty but were discharged. This record is temporary and is erased automatically.

In the case of an absolute discharge, it is erased one year after the judge's decision.

In the case of a conditional discharge, it is erased three years after your probation is over.

Important! If you try to enter the United States before your record is erased, US customs officials will see your record. They could hold on to this information forever to stop you from entering the country.

Important! Even if your criminal record is temporary, you must still take steps to erase the information in other files (see question 8.1).

Chapter 9

Relationship With Your Lawyer

Even though accused people can defend themselves without a lawyer, it's usually a good idea to have one. A lawyer's advice and explanations can help them throughout the entire legal process.

A lawyer's role is to defend the accused. Lawyers know the law and the legal system, and this could make a big difference in what happens to the accused.

But relationships between accused people and their lawyers can be complex, and the accused might not know how to act.

This chapter covers these topics:

- how to find a lawyer
- what to expect from a lawyer
- what to do in case of a problem with the lawyer

9.1. How can I find a lawyer?

Check whether you qualify for legal aid to get a lawyer for free or at low cost. Contact the nearest legal aid office. Visit the website of the Commission des services juridiques (see the Useful Resources section at the end of the guide).

If you qualify for legal aid, the legal aid office will connect you with one of its lawyers or will give you a list of lawyers from private offices who accept clients on legal aid, or you can look for one of these lawyers yourself.

Here's what you can do **to find a lawyer on your own:**

- Ask people you know to recommend a lawyer.
- Use a referral service (see the Useful Resources section at the end of the guide).
- Ask a native court worker in your region.
- Look online or in a telephone book.

Before making an appointment with a lawyer, make sure the lawyer takes criminal law cases. If you don't qualify for legal aid, ask how much it costs for the first appointment and to defend you.

Note: You're allowed to change lawyers anytime during the process (see question 9.7). A lawyer can also refuse to represent you.

9.2. What if I don't understand what my lawyer says?

Ask questions. Don't be shy. Part of your lawyer's job is to help you understand your legal situation. Your lawyer should use simple language when explaining things.

How to understand what your lawyer says

- Ask your lawyer to write down the most important things you must do and remember.
- Ask a friend or family member to go with you to meet your lawyer (see question 9.5).
- Ask for explanations from a native court worker in your region (see question 3.4).

If you understand what's happening, it's easier to make decisions and follow your conditions (see Chapter 6).

9.3. My lawyer isn't returning my call. Is this normal?

Your lawyer might not call you back right away. You can ask questions at any time, but your lawyer might be busy in court with clients whose cases are scheduled before yours.

Tips for contacting your lawyer

- When leaving a message, give the best time to call you back.
- Make sure your phone number and voicemail are working.
- If you don't have a phone, find another way to be reached. For example, ask a neighbour or someone else if they mind taking calls from your lawyer.
- Ask your lawyer as soon as possible if you can communicate by email.
- Write down your questions so you don't forget to ask them.

If the problem continues or you're not satisfied with your lawyer, see question 9.7.

9.4. Can my lawyer report me if I say I committed a crime?

No. Your lawyer isn't allowed to report you.

Your lawyer can ask you to explain everything that happened to be able to defend you and give you the best advice. You can speak freely with your lawyer.

If you admit that you committed a crime, your lawyer can still defend you at trial but must follow the rules. For example, your lawyer can't lie for you or let you lie to the judge.

9.5. Can someone come with me when I meet my lawyer?

Yes. You can ask anyone you want to go with you.

But your lawyer can ask you to give confidential information in private. You can refuse. But if your lawyer wants to talk to you in private, it's to protect your interests.

If you don't understand or are afraid to forget something the lawyer says, ask if the person accompanying you can help you after you've spoken to your lawyer in private.

9.6. My lawyer recommends I plead guilty. Do I have to?

No. This decision is totally up to you. Your lawyer can't force you to plead guilty.

But your lawyer can recommend pleading guilty. Your lawyer knows your case well and the consequences of the choices you have. Ask your lawyer to explain why pleading guilty is the best decision in your case.

To find out what happens if you plead guilty, see question 5.1.

Useful Resources

Native Para-Judicial Services of Quebec (NPJSQ)

Find a native court worker

- Call 418-847-2094 or 1-888-844-2094 (toll-free)
- Email info@spaq.qc.ca

For victims of police abuse

- Free, confidential help line: 1-888-844-2094

Find a Lawyer

Legal aid

To find out if someone qualifies for legal aid

- www.csj.qc.ca
Switch to English.
Click on “Find a legal aid office” (top left corner).

How to apply

- www.csj.qc.ca
Switch to English.
Click on “Legal Aid” at the top of the page, then “How do I apply?”

Find a lawyer in the accused’s region

Quebec Bar referral service for a free or low-cost consultation

- Montreal: 514-866-2490
- Longueuil: 450-468-2609
- Quebec City, Beauce and Montmagny: 418-529-0301
- Other regions: 1-866-954-3528

Services after the first 30 minutes or hour are usually at the lawyer’s hourly rate.

9.7. What if I’m not satisfied with my lawyer?

You have the right to change lawyers, for example, if you lose confidence in your lawyer, or if it’s too difficult to communicate with your lawyer.

Before changing lawyers,

- talk to your lawyer to try to solve the problem, and
- check if there’s another lawyer in your area who can take on your case.

This is a serious decision. Changing lawyers could cause delays, especially close to your trial date. Your new lawyer will have to read all the documents in your file, and you’ll have to pay for this.

The judge could refuse to postpone your trial to give you time to find a new lawyer, especially if your trial date is close.

You can call the **Barreau du Québec** (association of lawyers) at 1-844-954-3411 to ask questions or make a complaint if you’re not happy with your lawyer.

Lawyers directory

- www.barreau.qc.ca (French only)

Click on “Bottin des avocats” at the top right.
Search by region or language.

JurisRéférence

- www.jurisreference.ca

Switch to English.
Select “Find a Lawyer” and click on “find the lawyer” in red.
Search by region or area of law.
You’ll have to fill out a questionnaire about the accused’s situation.

Relationship With the Lawyer

For questions about the lawyer’s behaviour or responsibilities

- Syndic du Barreau du Québec (Quebec Bar ethics body)
1-844-954-3411

Contact the Prosecutor

Find the prosecutor’s contact information

- www.dpcp.gouv.qc.ca (French only)

Go to the top left and click on “Le DPCP, présent pour vous” and then “points de service.”
Search by city.

Find a Courthouse or Information on an Accused’s Court File

To find a courthouse

- www.justice.gouv.qc.ca

Switch to English.
Click on “Contact Us,” then “Find a Courthouse.”

To get information about a court file (date, place, etc.)

- 1-866-536-5140
- www.roles.tribunaux.qc.ca

Switch to English.
Click on “I accept the conditions.”
Fill in the search criteria.

For More Information

Éducaloi

Legal information website in plain language

- www.educaloi.qc.ca

Centres de justice de proximité du Québec (local community justice centres)

Free in-person consultation services in various regions of Quebec

- www.justicedeproximite.qc.ca

Parole Board of Canada

Information on record suspension (pardon)

- www.canada.ca/en/parole-board.html
- 1-800-874-2652
- suspension@pbc-clcc.gc.ca

Ligne Info-Droit Criminel (Quebec Bar’s criminal law help line)

Telephone information service for accused people without lawyers and not eligible for legal aid. Service in English may vary.

- 1-888-954-9447
30 minutes for free

Alter Justice

Free information on criminal records and rights of detained people, and help with requests for suspension of records (pardon).

- www.alterjustice.org (French only).
Click on “Services.”
- 418-522-4343
- info@alterjustice.org



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INFORMATION EMPOWERS