

COURT APPEARANCES

BAIL HEARING

What happens? After the accused has been arrested, they can be released from custody if appropriate. Bail eligibility is based on a number of factors. The accused can be held in jail until the conclusion of the criminal proceeding if they are unable to make bail. The complainant will be provided with a copy of the accused's bail conditions through the Victim/Witness Assistance Program.

Is the complainant involved? No – but she can attend this appearance even though she will not have a role to play.

Is the accused involved? Yes – they and their lawyer, if they have one, must appear in court.

FIRST APPEARANCE

What happens? The accused or their lawyer will receive the disclosure package and set their next court date.

Is the complainant involved? No – but she can attend this appearance even though she will not have a role to play.

Is the accused involved? Yes – they, or their lawyer, must appear in court.

ARRAIGNMENT

What happens? The accused will enter a plea of guilty or not guilty. If the accused pleads guilty, the next court appearance will be sentencing and the matter will be concluded. If the accused pleads not guilty, the court process continues on the path to trial.

Is the complainant involved? No – but she can attend this appearance even though she will not have a role to play.

Is the accused involved? Yes – they, or their lawyer, must appear in court.

PRELIMINARY INQUIRY

What happens? In cases where the charges are serious, there may be a preliminary inquiry. This is a proceeding to determine whether there is enough evidence for the case to go forward to trial. This hearing looks a lot like a trial, because witnesses must testify and can be cross-examined in front of a judge.

Is the complainant involved? Probably – it is likely that the complainant may need to testify or present her evidence at this hearing.

Is the accused involved? Yes – they, or their lawyer, must appear in court.

TRIAL

What happens? Both the Crown and the defence will present their evidence to a judge or jury, who will decide the outcome of the case. If the verdict is not guilty, the accused is free to leave and will not have a criminal record. If the verdict is guilty, the next court appearance will be sentencing the offender.

Is the complainant involved? Probably – the complainant is required to testify in most sexual assault cases. The complainant will be questioned by the Crown and cross-examined by the accused, or their lawyer.

Is the accused involved? Yes – they and their lawyer, if they have one, must appear in court.

SENTENCING

What happens? The judge will make a decision as to the consequences the offender will face for their crime(s). This could include jail time, a monetary fine, community service and/or probation.

Is the complainant involved? Maybe – the complainant may prepare a Victim Impact Statement if she wishes.

Is the accused involved? Yes – they and their lawyer, if they have one, must appear in court.

WHAT A SURVIVOR NEEDS TO KNOW ABOUT CRIMINAL LAW

Not Okay Project

A Fact Sheet for Survivors of Sexual Violence



In partnership with



Funded by



Barbra Schlifer Commemorative Clinic •
489 College St., Suite 503 • Toronto, ON • M6G 1A5 •
T: (416) 323-9149 • F: (416) 323-9107 •
E: info@schliferclinic.com W: www.schliferclinic.com

WHO DOES WHAT IN A CRIMINAL LAW CASE?

COMPLAINANT

The person reporting the alleged crime to the police.

What Role Does She Play?

- Choosing to report to the police.
 - » To begin a criminal case against the accused, the complainant must report to the police.
 - » Before reporting, it is important to understand that how the case proceeds after reporting is largely out of the complainant's control. Both the police and the Crown will proceed with the case as they see fit.
- After reporting, the complainant's role is largely that of a bystander.
 - » She cannot direct the police investigation and is not a party to the criminal court case.
 - » The Crown is not the complainant's lawyer and does not represent the complainant's particular interests.
 - » She does not get a lawyer of her own unless the accused requests a hearing to determine whether evidence of prior sexual history or her third party records can be admitted.
- If the criminal case goes to trial, the complainant will likely be asked by the Crown to testify in court about the crime. At this point, the complainant will also be called a witness.
 - » This testimony is often the main source of evidence for the Crown in sexual assault cases.
 - » The accused, or their defence lawyer, has the right to cross examine the complainant. This means that they can ask the complainant questions about the evidence she has provided.
 - » Testifying is often a difficult and lengthy process. There are testimonial aids that can be provided by the Crown in certain circumstances to make testifying easier.
 - E.g. The services of a support person or animal, use of prerecorded video evidence, or holding proceedings on camera.
- If the accused is found guilty or pleads guilty at any point in the process, the complainant may present a Victim Impact Statement to the court during sentencing. This statement describes the impact the crime has had on the complainant and can influence the sentence the offender is given.

VICTIM/WITNESS ASSISTANCE PROGRAM (VWAP)

A program offered to help victims throughout the criminal law process.

What Role Do They Play?

- The primary purposes of the program are to provide information, support, and resources to victims going through the criminal process.
- Services are provided on a priority basis to the most vulnerable victims of violent crime.
- VWAP can provide:
 - » Documents such as bail conditions and probation orders (VWAP will not provide police reports);
 - » Information about the criminal justice system;
 - » Referrals to outside community agencies;
 - » Arrangements for language interpreters;
 - » Help with completing a Victim Impact Statement.
- To find the office nearest you, call the Victim Support Line at 1-888-579-2888 (toll free) or 416-314-2447 (in the GTA)

CROWN ATTORNEY

The lawyer representing the government who prosecutes the accused in court.

What Role Do They Play?

- The Crown will decide whether to proceed with the charge against the accused if there is sufficient evidence from the police investigation and the case is in the public interest to prosecute.
- The Crown will then build and argue the case against the accused.
 - » They are not the complainant's representative in court – they represent the public interest.
 - » The Crown will have some interaction with the complainant about testifying if the matter goes to trial.

DEFENCE LAWYER / DUTY COUNSEL

The lawyer who represents or provides advice to the accused during their criminal case.

What Role Do They Play?

- **Defence Lawyer**
 - » The accused can hire their own lawyer to represent them in court if they can afford it or can find a lawyer who accepts Legal Aid clients.

- » This lawyer will receive the disclosure, negotiate with the Crown, build a defence, and represent the accused in court. They will appear in court with the accused or, in certain circumstances, for the accused.

- **Duty Counsel**

- » Duty counsel are lawyers who work in the courthouse. They are employed by Legal Aid Ontario to help those who do not have a lawyer.
- » They usually cannot represent the accused at trial, but may be able to help in the courtroom with adjournments, bail hearings, guilty pleas, and sentencing.
- » They can also provide information and legal advice or help the accused find out if they qualify for Legal Aid.

THE PROCESS

REPORT TO THE POLICE

What happens? The complainant reports an alleged incident to the police. In many cases, the police will tape a video statement with the complainant that will be admitted into evidence and provided to the accused, if charges are laid.

Is the complainant involved? Yes - to give evidence to the police of the incident they are reporting.

Is the accused involved? No.

POLICE INVESTIGATION

What happens? The police investigate the allegation to see if there is enough evidence to charge the accused.

Is the complainant involved? Maybe – if the police need more information about the allegation.

Is the accused involved? Yes – the police will contact the accused about the allegation while conducting their investigation.

CROWN MOVES FORWARD WITH THE CHARGES

What happens? The Crown will move forward with the charges if they feel there is sufficient evidence and that it is in the public interest to prosecute the accused.

Is the complainant involved? No

Is the accused involved? No