



ending violence against women

Springtide Resources Inc

Online Course: Love, Sex, Violence and Crime: An overview of Criminal Law and Violence against Women

GLOSSARY OF TERMS

Understanding the jargon:

The law has its own language, one that is often incomprehensible to normal people. Some of this is inevitable – just as doctors, car mechanics and computer geeks develop short form language to make it easy and quick to communicate among themselves, so have lawyers, law clerks, police officers and judges created their own code. However, some of the time, this specialized language is used when it does not have to be in part to create a culture of elitism about the law. Whatever the reason, it can be difficult and confusing for a woman, especially if she is recovering from the trauma often associated with abuse, to navigate her way through the criminal system when she does not understand the language that is being used by everyone around her. This glossary provides a guide to the most common words and terms that are likely to be used in a violence against women criminal case.

Absolute discharge: This means that even though the accused was found guilty, the court does not register a conviction against him, with the result that he does not have a criminal record.

Accused: This is the word used to identify the person who has been charged with committing a criminal offence. Before he is charged, he may be known as the “suspect.” During the trial proceedings, the accused is commonly called the “defendant.” If he is found guilty, he may then be called the “perpetrator.”

Acquittal: When the accused is found not guilty of the charges against him, he is given an “acquittal.”

Breach of Undertaking/Recognizance: When a person fails to comply with the terms and conditions of his undertaking or recognizance, he has committed a breach. It is a criminal offence to breach an undertaking or recognizance.

Complainant: In the language used by police, lawyers and other criminal court officials, the victim of a crime has different names at different stages of the process. First, she is the victim. She becomes a “complainant” when she goes to the police and gives a statement about that has happened. Once a charge is laid and the case is passed to the Crown Attorney, she will become known as the “witness.”

Many women who have been the victims of violence reject this formalized language that describes them as victims or complainers, and prefer to use the word “survivor” to describe their initial experience at the hands of the accused person but also of the legal system.

Conditional discharge: Sometimes, when someone is found guilty, they are required to fulfill certain conditions as part of their penalty. This could include such things as completing a drug rehabilitation program or participating in a male batterers’ program. If the person is successful in completing the conditions, he is “discharged” or let go and will have no criminal record for this offence. If he is not successful, the judge can withdraw the discharge and enter a criminal conviction against him.

Court: This is the place where trials take place and court-related services have their offices.

Criminal Code: The *Criminal Code* is a very large book that lists, defines and describes everything that is a crime in Canada. It applies in every province and territory in the country. Anyone found guilty of an offence that is listed in the *Criminal Code* has committed a criminal act. Other statutes that regulate the behaviour of people in Canada include the *Youth Justice Act*, *Narcotics Control Act* and the *Firearms Control Act*.

There are many illegal acts that do not fall within the scope of the *Criminal Code*. These activities are often governed by provincial legislation and will vary from province to province. People can be found guilty of them and be sentenced to penalties that include jail time.

The offences that fall within provincial authority tend to be of a less serious nature than those that fall under the authority of the federal *Criminal Code*.

Criminal trial: When someone is charged with a criminal or provincial offence, the case immediately begins proceeding towards a trial.

is hybrid, the Crown Attorney chooses whether to proceed by way of indictment or by way of summary conviction. This is called the election of proceedings.

Examination in chief: This is one of the kinds of questioning for a witness in a trial. It is done by the lawyer on the same side as the witness. The accused and any of his witnesses are examined in chief by the defence lawyer and the victim and any witnesses on her side by the Crown Attorney. This examination provides the witnesses to give their detailed story of what has happened.

Guilty: In a criminal case, the accused may decide to plead guilty, which is admitting he is responsible for the act. If he does not, there will be a trial, at the end of which, depending on the evidence, he may be found guilty.

Hybrid offence: Some criminal charges can be tried as either a summary or an indictable offence. These charges are called hybrid offences. The Crown Attorney makes the choice as to how to proceed, which is called an election.

Incarceration: When a person has been convicted of a criminal offence, there are a number of possible penalties that can be imposed by the judge. Incarceration, which means the person must spend a period of time in either a provincial jail (if the period of time is less than two years) or a federal prison (if the time is two years or more) is the most severe. Frequently, individuals found guilty are punished by being placed on probation, by having to pay a fine and/or by having to serve what is called a conditional sentence. This means that they are under a form of “house arrest” – while they are not in jail, their movements are limited and other conditions may be placed on their activities.

Indictable offence: Charges that are considered more serious are called “indictable.” The maximum penalties are higher. The accused has more options available to him in terms of how the case proceeds, including the right to a trial by jury.

Intermittent sentence: When someone convicted of a criminal offence receives a jail sentence of 90 days or less, he may be allowed to serve it on weekends, which is an intermittent sentence.

Judge: A judge may be either federally or provincially appointed. Judges, who must be lawyers, have the authority to hear criminal cases and decide on the outcomes; judges decide whether or not the accused person is guilty and what penalty is appropriate. Criminal court judges also may rule on bail, although most bail is handled by Justices of the Peace.

Justice of the Peace: These people, who do not have to have had legal training, are provincially appointed and have fewer areas of responsibility than do judges. In addition

person will likely have to follow conditions similar to bail conditions. If he breaches them, he can be arrested and sent or returned to jail.

Subpoena: This is an order from the court requiring the person to whom it is given to appear in court to testify in a trial. If the person fails to go to court on the date stated in the subpoena, a police officer may come to get her right away so the trial can proceed or a warrant may be issued for the person's arrest.

Summary offence: A summary offence is a crime that is considered less serious and for which the maximum penalties are lighter. The accused has his trial in front of a provincial court judge, with no option to have a trial by jury. Generally, if convicted, the accused can receive a fine of not more than \$2,000 and/or a jail sentence of no more than 6 months. However, if the conviction is for criminal harassment or sexual assault, the maximum penalty is 18 months incarceration.

Summons: This is a legal document requiring an accused person to appear in court on a specified date.

Surety: This is a person who agrees to be responsible for the behaviour of the accused while he is out of custody on bail.

Suspended sentence: Sometimes, a judge will order a jail sentence and then suspend it, which means the person does not actually have to go to jail, as long as he follows certain conditions. If he does not follow the conditions, the judge can send him to jail to complete the original sentence.

Testify: This is when someone, in court, gives evidence under oath; that is, tells her story about what she has seen and/or heard.

Victim: This is the person who has been harmed by the accused.

Victim Impact Statement: This is a written statement that the victim can prepare after the accused has been found guilty. In it, she talks about the effects on her of what the accused has done.

Victim/Witness Assistance Program: This is a program in the criminal court to support and assist victims and witnesses. The workers meet with victims to explain how the court process works, keep them informed of the progress of their case and accompany them to court if this is what the victim wants.

Warrant: This is an order from the court that gives the police the authority to arrest someone or, in the case of a search warrant, to search a person or a place.