

# Criminal Law Process

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# How do we know what is a crime?

- Federal government has power to decide
- Set out in legislation
  - Criminal Code
  - Controlled Drug and Substances Act
  - Customs Act
  - Income Tax Act
- Provincial Justice prosecutes Criminal Code offences
- Federal Prosecutor prosecutes everything else – including drug offences

# Types of Offences

- Criminal Code classifies offences as:
  - Indictable
    - More serious, complex
    - Provincial court judge, QB judge or QB judge and jury – accused makes election
    - Must attend court personally (unless lawyer attends)
  - Summary
    - Quicker, simpler matter, generally less serious
    - Provincial court judge, no jury
    - Usually maximum sentence of fine of up to \$2000, a jail term of 6 months, or both
  - Hybrid or dual
    - Crown can elect summary or indictable

# How a person is charged with a crime?

- Police charge person for committing offence
  - Swear an information – document that lists charges
- Several things can happen when person charged
  - Arrest – may need to appear in court to be released or may be released by police with promise to appear
    - With or without a warrant
    - Usually released on conditions (undertaking or recognizance)
  - Appearance Notice – given to accused at scene of crime or later if person comes to police station
  - Summons – similar to appearance notice but may be served on person at home later

# Reporting a Crime

- Contact police or a domestic violence service provider
  - If contact police and they determine there was a crime, it is up to them whether to lay charges – victim has no control over that decision
- If have concerns that not being taken seriously, concerns of racism, sexism or other discrimination
  - Can file a complaint – Saskatoon Police Service Professional Standards Branch, Saskatchewan Public Complaints Commission, or FSIN's Special Investigations Unit
- Once police involved – will ask to give statement

# If Victim concerned about safety

- Police can put no-contact and no-attendance conditions on accused – but only once charged
  - If under investigation but has not been charged, may need to get other protective order
- Emergency Intervention Order
  - Provides immediate action to protect victim of domestic violence in an emergency situation
  - Person acting on behalf of victim should contact police, Victims Services units of the police, First Nations' community case workers or Mobile Crisis services – these are authorized to make applications for these orders by telephone 24 hours a day
  - Can give exclusive possession of home, no-contact, direct police to remove respondent from home, direct police to accompany victim or respondent to home to remove belongings, any other condition necessary
  - Short term – only for use where cannot wait to get into court

# If Victim concerned about safety

- Victim's Assistance Order
  - Issued by Court of Queen's Bench
  - Contact lawyer or legal aid for assistance
  - Similar to Emergency Intervention Order but where less imminent threat – can follow Emergency Intervention Order – longer term
  - Can also include requiring respondent to pay compensation for monetary loss suffered because of abuse (accommodation, legal expenses), grant temporary possession of personal property (vehicle, children's clothing, ID documents), restrain respondent from contacting victim's family, employer, employees, co-workers

# If Victim concerned about safety

- Peace Bond
  - Court order requiring another person to “keep the peace” and obey certain conditions
  - Make and sign “Information” stating fear for safety and reasons why you are afraid of person
  - Call Police Station to find out where to apply for Peace Bond
  - Court date set – complainant does not need to attend, person named has to appear
    - Crown explains situation to judge
    - If court satisfied that have reasonable grounds to fear for your own safety, will ask other person to enter peace bond
    - Can be voluntary – if not, judge orders hearing
- Hearing – similar to trial – complainant and person must attend
  - Crown conducts case for complainant – testimony, evidence
- Can be for up to twelve months
- If person breaks peace bond – call police – can be charged for breaking bond



# If Accused has concerns with police conduct

- File a complaint – Saskatoon Police Service Professional Standards Branch, Saskatchewan Public Complaints Commission, or FSIN's Special Investigations Unit
- Police conduct very relevant to Charter rights and to validity of charges
  - Discuss any concerns with a lawyer or court worker
  - Make a note of the behaviour and preserve any evidence of behaviour as soon as possible after the incident

# First Appearance

- Support people available at the court house
  - Aboriginal court workers
  - Legal Aid Duty Counsel
  - Legal Aid Intake – assists in applying for Legal Aid
- Usually at least one adjournment to get lawyer, disclosure, legal aid etc.
- Can speak with prosecutor to find out what their sentencing position is on guilty plea – helps with decision making process
- Judges relatively gentle on self-reps – understand that do not know the system

# Language Rights

- Accused person or witness has right to assistance of interpreter
  - Paid for and provided by Court
- Accused person is entitled to trial in English or French
- Cree Circuit Court – travels to some Aboriginal communities in Saskatchewan

# Entering a plea

- Request disclosure from the Crown prior to entering plea
  - All relevant evidence in possession of Crown – police reports etc.
- May be several adjournments prior to plea
- Plea entered in provincial court
- Guilty plea – judge ensures facts justify guilty plea and that person accepts responsibility
  - Sentencing hearing – often occurs right away unless issues are complex or reports are ordered
- Not Guilty Plea
  - If indictable offence and accused elects QB, plea not entered until after preliminary inquiry
  - If provincial court – date set for trial

# Trial

- Crown Prosecutor and Defence lawyer (or self-represented accused) call witnesses and evidence
- Accused person has the right to remain silent and does not have to testify – but if they do, they can be cross-examined
- Witnesses – can be voluntary or can be subpoenaed
  - Subpoena is a court order – must show up or can be criminally charged
  - Often contacted by prosecutor or defense before trial to review their evidence
- Judge makes finding of guilty or not guilty – must be found guilty beyond a reasonable doubt

# Sentencing

- Occurs after guilty plea or finding of guilt at trial
- Crown prosecutor and defence recommend sentence
- Judge chooses from range of sentences set by law
- Pre-sentence report
  - Prepared by Probation Officer – information about accused that may help judge in deciding proper sentence
  - Can be requested by defence, prosecutor or judge

# Sentencing Circles

- Available in some communities – rarer than advocates of this type of sentencing would like
- Forum for community members to make recommendations to a judge re sentencing
- Participants can include: Accused, victim, family and supporters (victim and accused), judge, defence lawyer, prosecutor, police, service workers (youth, social, addictions, probations), Elders
- Outer circle – may contain additional community members
- Allows for informality, more freely shared information, tailored process and sentence

# Sentencing Circles

- Requirements
  - Must be finding of guilt and agreed statement of facts
  - Willing participants
    - Accused, Victim, Community must consent to participate during and provide support, supervision, reintegration after
  - Meet requirements of eligibility - eligible for suspended sentence, intermittent sentence of minimal term of imprisonment followed by probation
- Objective
  - Make offender aware of impact of offence
  - Allow community to recommend sentencing options and engage in sharing responsibility for decisions affecting sentencing



# Principles of Sentencing

- to denounce unlawful conduct;
  - to deter the offender and other persons from committing offences;
  - to separate offenders from society, where necessary;
  - to assist in rehabilitating offenders;
  - to provide reparations for harm done to victims or to the community;  
and
  - to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.
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- Needs to be proportionate
  - And similar sentences for similar crimes and circumstances

# Factors in Sentencing

- Seriousness of offence
- Manner of commission of offence
- Role played by accused
- Isolated event?
- For reason of bias or hate – Racist, sexist etc.
- Abuse of spouse, partner, child, family member
- Abuse of position of trust or authority
- Criminal Record
- Age of Offender
- Character
- Intoxication
- Family and Community ties
- Attitude of offender after offence
- Other penalties or effects suffered by accused
- Time in Custody
- Conduct of victim – generally not applicable in cases of sexual assault
- Personal difficulties that may have prompted out of character response – ex. Financial problems

# Factors that cannot be taken into account

- Pending matters
- Gender
- Public Response
- Station or status in life
- Culture or Race – except for *Gladue* factor
- Submissions inconsistent with guilty plea

# Gladue Factor s. 718.2(e)

- Purpose is to address serious problem of overrepresentation of Aboriginal people in prisons and to encourage judge to use restorative justice approach
- Just one factor – need to consider all factors
- In sentencing an Aboriginal offender, the judge must consider:
  - Unique systemic or background factors which may have played a part in bringing the person before the court
  - Types of sentencing procedures or sanction which may be appropriate because of particular Aboriginal heritage/background
- Applies to all Aboriginal offenders wherever they reside

# Types of Sentences

- **Absolute or Conditional Discharge**
  - No sentence – no conviction entered
  - Absolute – immediate, nothing further required from accused
  - Conditional – person must follow conditions for a period of time and is discharged if successful
- **Suspended Sentence and Probation**
  - Judge suspends passing sentence, releases person on probation
  - Supervised in community by probation officer for specified period time
  - May be other conditions – no alcohol, community service etc.
  - If successfully follows probation, will be sentenced to time served
  - If not, breach of probation, sentence more serious

# Types of Sentences

- Probation can also occur after term of imprisonment
- Fines – set amount of money paid to court
  - Usually fine alone but sometimes combined with other sentence type
  - Need to be able to pay it or work it off
- Conditional Sentence Order
  - Technically a term of incarceration in the community
  - Similar to probation since on conditions
  - But if breached – harsher consequences – could result in serving the rest of the sentence in jail
- Imprisonment
  - Most serious sentence
  - Provincial jail for less than 2 years, Federal for 2 years or more
  - Intermittent Sentence – allows person to serve sentence on certain days (weekends, holidays) if working, studying, etc.
  - Parole – allows person to serve rest of sentence out of prison, often on conditions – Victims have right to info re parole hearings upon request

# Particular Issues that Arise in Criminal Law Process for Aboriginal Offenders

- Lack of financial resources
- Home community often far from center where charged
  - Difficult to make court dates
  - Less family and community support due to distance
  - Difficult to follow conditions if remain within same environment
- Home address changes = problem with conditions
  - Or if reside in several places – difficult to give address, follow curfew

# Victims Rights and Programs

- Victim Surcharge - \$50 for summary, \$100 for indictable, 15% of fine
  - Can be increased or waived by judge
  - Source of funding for victims programs
- Victim Impact Statement
  - Describes harm or loss suffered by victim
  - Victims must be made aware of this right
  - Statements considered at time of sentencing
  - Offenders provided with copy
- Victim Services



# Involvement of Victim in Criminal Law Process

- Is limited
- Initial engagement with law enforcement
  - Usually asked to make statement – written, recorded, videotaped
- Victims DO NOT charge the accused – the Police charge the accused
  - Once a crime is reported to the police – it is up to the police whether charges are laid and pursued
  - A victim cannot drop charges
- Victim is not a party to the proceeding – it is the Crown (R.) versus the Accused
- Victim may be asked to be a witness at trial or sentencing hearing, may make impact statement
- May be asked or allowed to provide statement for parole hearing

# Being a Witness at Trial

- Subpoena – court order, sets out day, time and location
  - Must be served on you
  - Must comply or may be charged with a crime
- Before trial – will speak with prosecutor or defence lawyer about evidence you will present
- At trial – usually asked to wait outside while others testify
  - Sworn in – under oath
  - Lawyer that called you asks questions first, then other side
- Victims Services offers assistance and support to victims required to testify – can also act as liaison with police, court etc.
  - Support person may also be allowed to sit close to victim while testifying
- Recanting or change to evidence – may be cross-examined on prior statement
- Trials are public unless judge has good reason to exclude – very rare

