

The Criminal Justice System: *From Charges to Sentencing*

The Key Principles

- The aim the system is to protect and to regulate society, to punish offenders and to offer rehabilitation;
- The Government, through its agents (RCMP and the Crown Prosecutors) bring the charges on information they receive from complaints/witnesses and the victim;
- The Government, through the Crown prosecutors and the RCMP, decide whether the case will proceed; victims cannot “drop the charges”
- The case must be proven beyond a reasonable doubt;
- The interests of society as a whole tend to outweigh the individuals interest in justice being done

The STEPS

1. Police are called
2. Police investigation;
3. Police press charges: arrest and charge the offender;
4. The Crown Prosecutors get the file;
5. Disclosure;
6. Bail hearing;
7. First appearance: guilty or not guilty?;
8. Sentencing;
9. Trial: indictable vs. summary conviction?;
10. Sentencing.
11. What about the Victim?

POLICE CALLED

- Officers responding will ensure the safety of victims and the members;
 - Remove the offender (arrest/detain)
 - Take victims to hospital
 - If children present: contact Social Services
 - Seize weapons

- Investigation:

- Take statements: Interview the people that witnessed the offence.
- Interview the Victim: often KGB, under oath, and video taped or recorded.
- Accused person questioned: no obligation to talk to the Police.
- Take pictures.
- Seize physical evidence: clothing, weapons, etc.
- Seek the victims release of medical records*

Common Domestic Violence Offences

- Assault, Assault Causing bodily harm and Aggravated assault;
- Sexual assault, sexual assault causing bodily harm and aggravated sexual assault;
- Assault/sexual assault with a weapon;
- Threats;
- Forcible confinement;
- Mischief;
- Murder/attempted murder; and
- Manslaughter.

Police Press Charges

“Reasonable and probable grounds to believe that accused committed an offence”

- The Police lay the criminal charge, NOT the victim
- Depending on who is releasing the person charged they may be released on:
 - *A Summons to appear in Court at a later date*
 - *A “promise to appear” or “recognizance” to the officer in charge*
- In many cases, a promise to appear is followed by an “undertaking” which contains conditions which protect the complainant, such as no-contact; and non-attendance at their place of residence/schooling/employment.
- Undertaking to officers-in-charge can also contain a prohibition against weapons and/or drugs.
- Police or Victim Services should speak to the Complainant before deciding to release

Zero Tolerance Policy

The Attorney General's Policy Directive on Domestic Violence provides zero tolerance for those with discretion for enforcing criminal law, at each stage of the proceedings.

Where there is evidence to support charges, charges will be laid.

Where there is evidence to support conviction, the case will proceed to trial as soon as possible.

If a Judge errs at trial, or imposes an inappropriate sentence, an appeal will be taken to a higher court.

Throughout proceedings, Crown Attorneys are expected to pursue cases involving domestic violence vigorously.

Zero tolerance is aimed at ending violence against women and others who find themselves in an abusive relationship.

Goals of Mandatory Charging

- The goals of mandatory or “pro-charge” policies is to:
 - 1) remove responsibility (and blame) for the decision to lay charges from the victim,
 - 2) increase the number of charges laid in spousal abuse cases,
 - 3) increase the reporting of incidents in spousal abuse cases,
 - 4) promote victim co-operation in the prosecution of cases.
 - 5) reduce re-offending
- From: Supporting Northern Women – A Northwest Territories Family Violence Shelter Worker Training Program (June 2010)

Pros and Cons of Mandatory or Pro-Charging Policies

- Whether or not these goals are met is a topic that is debated by many. While the mandatory charge policy does send a strong message about the unacceptable nature of violence in intimate partner relationships, there are pros and cons about its use.
- **Pros:**
- It takes the responsibility off the victim when it comes to having to press charges
- It sends a message to the offender that it is unacceptable to abuse their partner
- It provides the police with the ability to remove the offender from the home to protect the victim from further harm at that time

Problems of Mandatory Charging for Women

- If it is not clear what happened, or if the offender has evidence that he was also assaulted in some way (which commonly happens when the victim tries to protect themselves), it is possible that the woman (“victim”) may also be charged. If the police do not lay charges for some reason, it sends a message to the victim and the offender that whatever happened is ‘ok’
- The woman may feel the need to ‘prove’ to her partner that she does not want the charges to be laid so she may become resistant or volatile with the police, which can be difficult for the police to understand
- Woman ‘loses control’ of the legal process because charges may be laid and she may be prosecuted regardless of what her wishes are
- Women may be less likely to report violence to the police for protection if they know their partner will be charged and/or jailed. There are many reasons why women may be reluctant to contact police if charges will be laid, including:
 - Risk/Fear of retaliation from the partner
 - Loss of income/support if the man is employed and sent to jail
 - Ostracization/pressure/isolation by family, friends, community

PPSC

The Prosecutor

- Crown reviews the case to determine if there is a “*reasonable prospect of conviction*”
- *Yes*: proceed through the Court proses and must prove offence as occurred if accused pleads Not Guilty
- *NO*: the Crown will “drop the charges”
- The Crown proceeds with the charges, NOT the victim

Disclosure: *your private information*

- The Crown MUST provide the accused with all the evidence that will be used against them
- This could include the victims medical records if there were injuries and the records are relevant
- The victim must authorise the release of that information

Bail: *what happens after he's taken away and before court?*

The Crown must show that detention is necessary, and the Court will consider the following:

- Detention necessary to ensure attendance to Court?
 - Detention necessary to ensure victim safety and/or public safety? *Substantial likelihood to reoffend?*
 - Necessary to maintain confidence in the administration of justice?
- ❖ *Sometimes the onus shifts: defence must prove that detention NOT necessary. Ex. Murder charges or when accused offended while out on bail for other charges.*

Common Bail Conditions

- Common conditions for bail or other forms of release (like an undertaking) in spousal violence cases include:

No communication or contact with complainant (or child if the child is a victim)

Required to stay a certain distance from complainant's home or family home, place of employment, school

If there are children, restrictions on access

No use of alcohol or drugs

No possession of weapons

Could include a prohibition on using a cell phone

Keep the peace and be of good behaviour

- If the accused is ordered detained, a J.P. can order that the accused not communicate with any victim or witness while in custody. (s. 515(12) of the *Criminal Code*).

The Court Process: *First Appearance*

- The accused, if ready, will enter a plea: guilty or not guilty
- May proceed to sentencing right then if the accused pleads guilty and takes responsibility, or may be set over to another day to produce a Pre-sentence report
- Step a trial date or a date for a preliminary inquiry

PROVE it:

preliminary inquires and trials

- If charged with an indictable offences or “serious offences” accused has the right to a preliminary hearing before the actual trial
 - The victim will likely have to testify and be cross examined twice as a result
- At trial the Crown must prove their case *beyond a reasonable doubt*
- Accused doesn't have to testify
- Victim will likely be required to testify
- If uncooperative the Crown can treat the victim as a hostile witness and get permission to cross examine the victim

Preparing to Testify and Testifying

- “Testifying” means telling your story in Court, “under oath”, in front of the Judge, Crown, accused and his lawyer (“defence counsel”)
- Courtprep.ca is a good website to see what court looks like and for tips on preparing
- Testifying is stressful and intimidating – important to have a support person attend trial with you
- “Defence counsel” will ask questions to raise doubts about your story
- You will be “excluded” from Court until you testify
- The accused is not required to testify and often does not testify

Burden of Proof

“Conviction” or “Acquittal”

The Judge or Jury will consider the evidence and decide whether they are convinced “beyond a reasonable doubt” that the accused man is guilty of the offence charged.

This is a very high “burden” or “standard” of “proof”

If they are convinced “beyond a reasonable doubt”, the accused man will be “found guilty” or “convicted”.

If they are not convinced that the evidence meets this high test, the accused man will be found “not guilty” or “acquitted”

Crown Witness Coordinators: CWC

- Work with Victims to prepare for the Court process
- Assist lawyers obtain information from Victims about the nature and dynamic of the relationship
- Assist Victims prepare Victim Impact Statements

Sentencing

- If the accused is found "guilty" the judge must choose from a range of sentences set by law and decide on the appropriate sentence.
- The judge will consider:
 - the circumstances of the crime
 - the offender's criminal record
 - the offender's personal history
 - the impact of the crime on the victim (and any "Victim Impact Statement")
 - the amount of responsibility that is taken by the offender
 - Any "Pre-Sentence Report"
 - If the offender is Aboriginal, "*Gladue*" considerations under s.718.2(e) – the judge has a duty to consider all options other than jail
 - In some communities the judge conducts a sentencing circle

Pre-Sentence Report

Often a pre-sentence report will be prepared by the probation officer.

It will contain information on the offender' s:

- Mental health history
- Access to weapons
- Drug/alcohol history
- Plans for the future
- If the offender is Aboriginal, the *Gladue* considerations may be in the PSR or in a separate *Gladue* report. These considerations include whether the offender:
 - attended residential school or is the child of parents or grandparents who attended residential school;
 - grew up in a home with abuse or addictions;
 - was in the child welfare system;
 - and the community and other options and resources

The woman should have the opportunity to provide information and her views and concerns in this process

Victim Impact Statement

- A woman who has experienced violence may wish to prepare a “victim impact statement”: to tell the court about the impact the violence has had on her and her family
- She can file a statement but is not required to
- Victim Services can help her with the statement
- The judge is required to consider the content of the statement in sentencing
- She can be cross examined on the statement

Types of Sentences

- An *absolute discharge*. This means he or she will not be punished.
- A *conditional discharge*, which means he or she will have to fulfil certain conditions for a period of time. This is instead of a prison term or other punishment.
- To pay a *fine* up to many thousand dollars. The government will collect and keep this money, not the victim.
- Pay money or *restitution* to a victim for any injuries or to replace any property that was taken or damaged.
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- A release on *probation* for a period of time. The offender is to be of good behaviour and tell the probation officer or youth worker of any changes of address, school or work. There may be special conditions that he/she needs to follow. Contact or no contact with the complainant may be a term in a probation order.

Types of Sentences

- A *conditional* sentence where the accused serves time (less than two years) under supervision in the community along with certain conditions instead of jail.
- Imprisonment or *jail*. This is the most serious sentence because it takes away a person's freedom. An offender who is sentenced to jail for less than two years will stay in a provincial correctional institution and may be on *probation* after that time. The offender will have to follow certain rules and report to a probation officer regularly.
- An offender sentenced to two years or more serves the time in a federal penitentiary. After serving at least one third of the sentence, an offender can ask for *parole*. Parole allows the offender out of jail, with strict rules and supervision before the sentence is completed. An offender on parole who does not follow the rules may be returned to jail.
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- An *intermittent* sentence where the offender will go to jail for blocks of time such as every weekend.
- A person who commits a very violent crime against another person may be declared a *dangerous offender* and sentenced to stay in a federal prison for as long as he or she is considered dangerous. In some cases, this will be indefinitely. A special request and hearing must be held to declare an offender a dangerous offender.