

VICTIMS: KNOW YOUR RIGHTS!

Legal Information Guide
For Interveners
in Native Friendship
Centres in Québec



REGROUPEMENT
DES CENTRES D'AMITIÉ
AUTOCHTONES DU QUÉBEC

Credits

The French version of the guide was produced by *the Regroupement des centres amitié autochtones du Québec* in collaboration with *Éducaloi*. *Éducaloi* is not responsible for the English translation

Graphic design by Suzanne Lafontaine
English translation by Zozita: traduction & revision

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REGROUPEMENT
DES CENTRES D'AMITIÉ
AUTOCHTONES DU QUÉBEC

Regroupement des centres d'amitié
autochtones du Québec
85 boulevard Bastien, suite 100
Wendake (Qc) G0A 4V0
1.877.842.6354
infos@rcaaq.info
www.rcaaq.info

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Justice
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CAVAC

CENTRE D'AIDE AUX VICTIMES
D'ACTES CRIMINELS

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IMPORTANT NOTICE

The law changes constantly.

The legal information in this guide was valid on July 3, 2017.

You can ensure this information still reflects the law in effect by going to educaloi.qc.ca or consulting an expert.

The content of this guide should not be considered as a legal opinion or advice.

This guide was designed to help you lead workshops (sharing circles) on victim rights. It contains general legal information to lead discussions on this topic and answer some participant questions.

This guide is made up of three parts with distinct topics.

Three video clips were produced to help you introduce each theme before addressing the more specific questions presented in the corresponding part of the guide. These video clips are available at www.rcaaq.info.

To encourage participation and a good understanding of the information being shared, it is preferable to organize one workshop per theme.

It is important to respect the pace of your group. More than one meeting may be necessary to finish a topic.

Pay close attention to participants' reactions. Some subjects may be more difficult for some people. You should mention this at the beginning of each meeting.



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Workshop 1: Breaking the Wall of Silence

Filing a complaint:
when and how?







WORKSHOP 1: **Breaking the Wall of Silence**

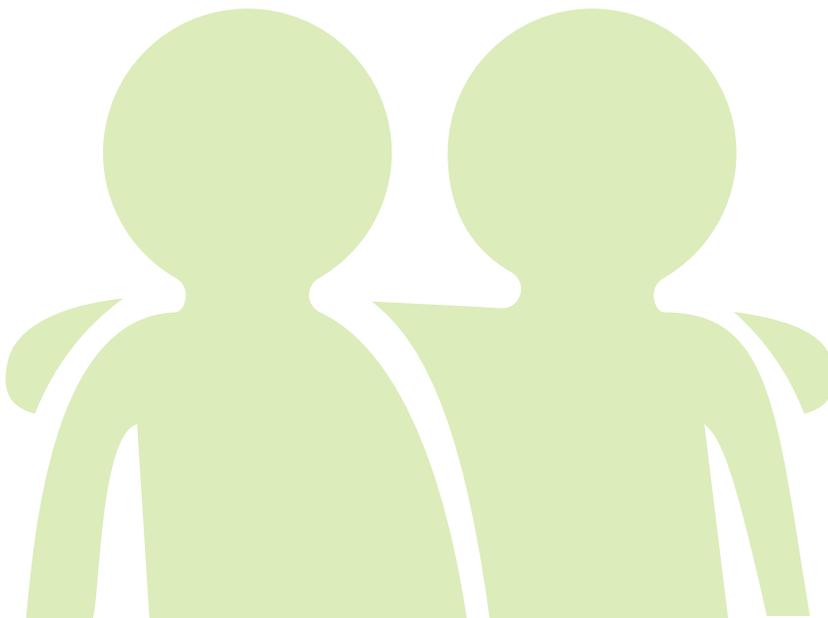
Filing a complaint: when and how?

For victims to report a crime, they have to be able to recognize that the incident is unlawful and may be grounds for a complaint and lawsuit. It's important for victims to know that they can get help if they want to report a crime.

This workshop will help you discuss with participants the various questions victims may ask before reporting a crime. You'll find general information on:



- 1) Certain behaviours that are prohibited by law*
- 2) The specialized help that is available to victims*
- 3) Certain measures to take in cases of physical or sexual violence*
- 4) How to file a complaint*
- 5) The possible arrest of the accused*
- 6) Rules on obligation to report a crime*



1) RECOGNIZING ILLEGAL BEHAVIOURS



It may be obvious to some that they were the victim of a criminal behaviour, but this is not always the case. People may confide in you because they are experiencing a situation that worries them without realizing that the behaviour is criminal and that they have the right to report it.

This section presents several rather common crimes. You can use it to help people put a name on their experience and recognize that they were or are victims of a crime.

	Definition	Examples of situations that could be crimes, depending on the circumstances
Sexual aggression	<p>Making a sexual gesture without the other person's consent (agreement) may be considered sexual aggression.</p> <p>To be valid, consent has to be given freely and knowingly.</p> <p>The other person must know what he or she is consenting to. Consent cannot be had by force or threat.</p>	<ul style="list-style-type: none"> • An individual who forces his spouse to have sex with him. • A man who has sex with a woman who has had too much alcohol and is not able to say whether or not she agrees to the contact (for example, if she's vomiting and unable to stand up alone). • Someone who gropes a woman's breasts without her agreement.
Extortion	<p>Forcing someone to act via threats or violence to obtain something from them.</p>	<ul style="list-style-type: none"> • A man forcing his mother to give him money by implying that he'll hurt her otherwise.

	Definition	Examples of situations that could be crimes, depending on the circumstances
Criminal harassment	Behaviour that makes someone fear for his safety or that of a loved one.	<ul style="list-style-type: none"> • A woman who follows her ex-husband or one of his close friends or family members, or who spies on his house or workplace. • A man who communicates repeatedly with someone who feels harassed.
Threats	Threatening to: <ul style="list-style-type: none"> • Hurt someone or that person's pet or • Burn, destroy or damage an object The person doesn't have to intend to take action for threatening behaviour to be criminal. The person just has to have the intention for the threat to be taken seriously.	<ul style="list-style-type: none"> • A person who shakes her fist and says she'll hit someone (even if she doesn't really intend to hit them).
Assault	Intentionally using force or threatening to use force over someone else without his or her consent. The intensity of force is not specified in the law: in some circumstances, it can therefore be very little. In some cases, the cases of assault are more serious. For example, when a weapon is used or the victim suffers wounds.	<ul style="list-style-type: none"> • A man who pushes his wife, smacks her or squeezes her arm. • A woman who throws an object at someone or spits in his or her face.

2) GETTING HELP FROM SPECIALISTS



The trust you maintain with participants can lead them to confide in you about their experiences. Victims often need specialized help to overcome the challenges they face. They may also need guidance through the process if they choose to report a crime.

*You can raise their awareness about the importance of asking for help and point them toward a Crime Victims Assistance Centre **(CAVAC)**.*

CAVAC

CENTRE D'AIDE AUX VICTIMES
D'ACTES CRIMINELS

CAVACs provide guidance and support services free of charge and anonymously. Anyone who has been the victim of violence can use these services, even if they haven't filed a complaint with the police.

The CAVAC offer services including:

- Referring victims to medical and community resources
- Explaining victims' rights and possible recourse
- Explaining the main stages of the criminal process
- Helping victims fill out paperwork (i.e., requests for financial compensation)
- Accompanying victims to court
- Informing victims of developments in the court case relevant to them
- Explaining to victims the conditions imposed on the offender after he or she is released or sentenced

CAVAC workers can provide the comfort and strength victims need to report violence or go through with the criminal process after filing a complaint.

CAVACs also offer services to victims' loved ones and to witnesses of violent acts.

3) ACTIONS IN CASES OF PHYSICAL OR SEXUAL VIOLENCE OR WHEN A PERSON FEARS FOR HIS OR HER SAFETY

When someone confides in you that he or she fears for his or her safety or that he or she has been through physical or sexual violence, he or she needs your listening and support. You may be the first person with whom he or she has spoken.



This section will show you certain steps that can be taken quickly to ensure the victim is safe.

CAVAC workers are also there to inform and accompany people through this kind of situation. However, if you too are familiar with the steps of the process, you could first reassure the victim by telling him or her that there are solutions.

IMPORTANT: The victim should call 911 if his or her safety or that of his or her children is at risk.

• 810: Protection before a crime is committed

People may fear for their own safety, for that of their family or for their possessions if they fear another person will commit a violent act against them.

Should this be the case, they can request a protection order before an offense is committed. This is called a peace bond or an “810” (which refers to the section of the *Criminal Code*).

The 810 is often used to resolve conflicts between two people who know each other (i.e., neighbours, spouses, ex-spouses) and to keep the situation from disintegrating before crimes are committed. This is a way to **prevent a problem** and it is not a punishment for the person targeted by the 810.

This person **has not been found guilty of an offense**. However, he or she is obligated to comply with the conditions the judge imposes. For example, the judge can forbid the person targeted by the 810 from:

- Communicating with the person who requested the 810 or with his or her family
- Coming near the house or workplace of the person who requested the 810

The person who requested the 810 can contact the police if a condition is not fulfilled (i.e., when the offender comes near the house). In this case, charges can be brought against the accused.

Obtaining a 810

If someone fears for their safety, that of their family or for their possessions, they **can ask the police or the Crown persecutor for** their region for an 810. It is free of charge.

People who fear for their safety may have to testify to explain their situation to the judge. The judge will then evaluate all available evidence and decide whether or not to order the accused to sign a protection order and therefore comply with the conditions.

• Leaving one's home

Some people may no longer feel safe in their homes and wish to leave. In some situations, they can even terminate the lease without requiring the landlord's agreement. This is the case if the person was the victim of:

- **Domestic violence** by their spouse or ex-spouse, and their safety or that of a dependent child is at risk
- **Sexual violence** (sexual aggression or threat of sexual aggression) and continuing to live in the same place is a threat to their safety or that of a dependent child

The acts of sexual assault do not have to have occurred in the apartment. For example, if a potential victim fears an aggression on themselves or on their child by someone who knows their address, they can terminate the lease. This is also the case if they or their child was the victim of exhibitionism in the neighbourhood.

However, the lease is not automatically terminated. The victim must inform the landlord and provide certain documents to justify the termination. Generally, the lease ends one or two months after the documents are sent and rent is due up until that point, unless the landlord agrees to terminate the lease sooner.

IMPORTANT: Victims may leave their homes at any time. However, if they leave without having carried out this process, their landlord has the right to continue collecting rent.

For more information on the forms to fill out and the documents to obtain to terminate the lease in cases of violence, consult the in-depth article by Éducaloi ***Ending a Lease for Spousal of Sexual Violence*** at www.educaloi.qc.ca.

The CAVAC can guide victims through these steps.

- **Medical samples taken in some sexual assault cases**

Sexual assault can have a very major impact on a victim and he or she must be well supported. **Specialized centers, called CALACS, exist** in many regions of Quebec **to help sexual assault victims**. For more information, you can visit their website or call them at any time at 1-888-933-9007.

If someone has experienced sexual assault, **he or she should go as quickly as possible to a designed hospital** to receive specialized services. To find out which hospital offers these services in your region, call 811 for the Info-Social hotline.

The hospital team will listen to the victim, check his or her vital signs, screen for sexually transmitted infections, offer options to avoid an unwanted pregnancy, etc. The medical team can also try to sample substances left on the victim's body or clothing by the aggressor (i.e., sperm, saliva, blood or DNA).

For these test to be done, **the victim has to go to the hospital within the five days following the aggression**. After this, it is too late. If possible, it is also recommended the victim not wash, so that as many traces of the aggression as possible can be collected.

These samples will serve as proof if the victim decides to press charges.

These exams can be done even if the victim is hesitant to press charges. He or she will have about two weeks to decide if she wants the hospital to send the results to the police. It is his or her decision.

4) HOW TO PRESS CHARGES

Victims or witnesses of a crime can decide to break the wall of silence and denounce someone who has committed a crime. This step can be essential in putting an end to violence.



It can be stressful for victims to confide in the police, especially if they have to describe intimate details. This is why it's important for them to understand the process of reporting a crime to the police. Here is some general information to help you in guiding witnesses and victims of a crime.

To press charges, victims or witnesses can go directly to the police station in their neighbourhood or town. They can also call 911 at any time.

- **Is there a tie limit for pressing charges?**

In many cases, there is no «statute of limitations» for pressing charges. For example, someone who was sexually abused as a child could decide to report this assault in adulthood.

However, the proof is generally easier to collect if the crime is reported quickly. For example, witness's memories will be fresher in their minds.

In some very specific cases, it is impossible to press charges after six months. For example, it is impossible to accuse someone of vagrancy or nudity in public after six months.

- **What happens during the meeting with the police to report the crime?**

The police officers will ask the witness or victim questions about what happened. They will want details about the circumstances of the offense (location, date, people present, etc.) and the damages it caused (harm done to the victim, degradation of goods, etc.).

The police may ask the victim or witness to write down their version of the facts in a **“statement.”** The police may also write this statement as the victim or witness gives them facts. They will then ask the victim or witness to approve and sign the statement.

A detailed statement can facilitate the police investigation and help charges be pressed against the accused.

The witness or victim can contact the police afterwards if a piece of information is missing in the statement. The police officers may also contact the person who is filing the complaint to obtain complementary information during their investigation.

This statement is very important, because it will remain in the file if charges are brought against the accused. This statement is also sent to the accused and the lawyer.

So as not to obstruct the court case, **all information contained in this statement must be exact.** For example, if during the court case, the victim changes her version of the facts, she would appear less credible to the judge. It is important to take the time to reread the police statement before signing it.

After filing a complaint, the victim or witness can always contact the police to find out developments in their investigation.

For more information on the steps and motivations of pressing charges, see Workshops 2 and 3.

- **Does a victim have to contact a lawyer to press charges?**

It isn't necessary to have a lawyer to report a crime to the police. The victim won't have to pay a lawyer even if charges are pressed. Crown prosecutors take all the necessary steps in court.

For more information on the Crown prosecutor's role, see Workshop 2.

5) POLICE ARREST OF THE ACCUSED

After the crime is reported, victims can feel concern about the accused. They should know that the police won't necessarily arrest someone because another person reported their offense to the police, even if the police believe this person committed a crime.

This section will briefly inform you of what can happen to the accused between the time the crime is reported to the police and the Crown prosecutor decides whether or not to bring charges.

The police cannot investigate a crime if they consider there is insufficient evidence available to bring charges.

After their investigation, the police have several options if they believe someone committed a crime. What they chose depends on the situation, the offense, etc. Here are three possible situations:

➤ **The police may decide not to arrest the accused.**

However, this person will receive an official document convening him or her to appear in court on a specific date.

The police can opt for this avenue if the offense is not very serious (e.g., theft of an object of little value) or if they believe the accused will appear in court and there is little risk of him or her committing another crime before the court date.

➤ **The police may decide to arrest the accused, but release him or her quickly.** In this case, the accused will also receive an official document convening him or her to appear in court on a specific date.

Victims must inform the police if they fear for their safety. The police may then **order the accused to comply with specific conditions**, in the goal of protecting the victim. For example, the police may prohibit the offender from:

- Consuming alcohol or drugs
- Communicating with the victim or coming near him or her
- Possessing a firearm

The accused is required by law to comply with these conditions as soon as the police impose them (so even before appearing in court). Accused can be charged with another offense if they do not comply with these conditions. **Victims should call the police if they see that the accused is not complying with the conditions.**

6) OBLIGATION TO REPORT AN OFFENSE

- **No one is required by law to report a crime to the police**

In Canada, there is no legal obligation for victims or witnesses to report a crime to the police. In other words, someone who knows a crime has been committed doesn't have to report it to the police.

IMPORTANT: Helping someone who has committed a crime can, however, be a criminal act (for example, providing false information to the police or concealing pieces of evidence).

- **When the victim is a child, reporting is sometimes obligatory**

It is obligatory to report situations to the Youth Protection Department (YPD) if there is reason to believe that a child's safety or development is in danger (e.g. sexual or physical abuse). However, there is no obligation to report an offense that does not jeopardize a child's safety or development (e.g. a stolen cellular telephone).

Reporting can be done at any time at a regional youth centre. Reporting to the YPD is confidential.

Moreover, adults have the obligation to help a minor who wishes to report an offense or call the police (for himself or for another child).

Some professionals have broader-reaching obligations to report to the YPD

In their practice, some professionals have the obligation to report to the YPD any situation that compromises the safety or development of a child or adolescent. This includes teachers, psychologists or health workers. Their obligation is not limited to cases of sexual abuse or physical violence; it also includes abandonment, negligence and psychological maltreatment.



Workshop 2: The Criminal Process

What happens after the victim
reports a crime to the police?







WORKSHOP 2: The Criminal Process

What happens after the victim reports a crime to the police?

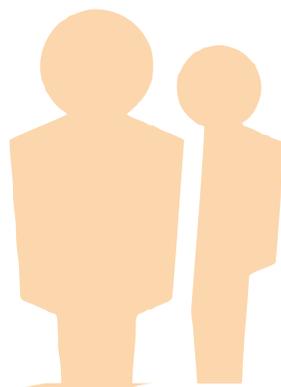
Victims of violence who dare to file a complaint show great courage. The process can be an emotional trail. However, the reporting is only the start of a lengthy process that can be difficult to understand.

The workshop aims to help participants better understand what will happen, starting from the moment the victim reports an offense.



The information presented here will help you explain an overview of:

- 1) How and why reporting a crime to the police can result in charges against the accused*
- 2) The main stages of the criminal process*
- 3) The role of the victim as witness*



What is a Crown prosecutor?

A prosecutor or “**Crown counsel**” is an attorney paid by the government who is mandated with prosecuting people who commit crimes. The **Crown prosecutor is not the victim’s lawyer**. He or she works for the best interest of the public.

The Crown prosecutor decides if a **suspect will be taken to court or not**.

1) THE PROCESSING OF THE COMPLAINT

The police investigation must be complete before a complaint can lead to a potential prosecution. The Crown prosecutor must then decide whether or not to bring charges.

The police investigate

The police will issue a summary of all the information given by the victim filing the complaint. They will then verify the reported incidents. Then, according to these findings, the police may carry out further investigation. The goal is to **collect evidence to determine whether a crime was committed and by whom**.

The police can terminate an investigation if they consider that there is not enough evidence available to bring charges.

The police will ask the Crown prosecutor **to prosecute the suspect if the investigation turns up sufficient evidence to bring charges**.

In all cases, **victims have the right to stay informed** of the developments and outcome of their complaints.

Crown prosecutors assess the evidence collected and decide if they will bring charges against the accused.

- **How does the Crown prosecutor decide?**

Crown prosecutors **assess all evidence in the police investigation file**. Prosecutors bring charges only if they are **persuaded they have enough evidence** to prove to the judge and jury that the accused is guilty of the crimes held against him or her.

For more information on why sometimes a prosecutor does not bring charges, see Workshop 3.

- **What happens when the Crown prosecutor decides not to bring charges after the complaint?**

The Crown prosecutor informs the investigating police officer that he or she has decided not to bring charges. The officer then informs the victim that there will be no further action as a result of his or her complaint. The victim can also ask to speak directly with the Crown prosecutor so that this latter can explain the reasons behind this decision.

When the prosecutor does not have enough evidence to bring charges, he can still request the judge to impose certain conditions on the accused to ensure the protection of the victim. These conditions are called a “810”

For more information on «810,» see Workshop 1.

- **What happens when the prosecutor decides to bring charges?**

The criminal process starts when the Crown prosecutor officially brings charges against the accused: this is the «disclosure.» The disclosure is a document that very specifically lays out the offenses (counts) being brought against the accused.

Generally, when the prosecutor brings charges, the CAVAC will communicate with victims to:

- Verify their contact information
- Give them information on their rights and courses of action as victims
- Inform them of the parts of the criminal process that are relevant to them

Victims also receive a letter telling them that the suspect is being taken to court.

At this stage, the prosecutor may meet with them to discuss the case and explain the criminal process. Victims can also ask the CAVAC for the contact information of the prosecutor in charge of their case if they wish to speak with him or her.



A victim cannot «take back» a complaint

A victim who reported an offense may wish to abandon the criminal process. In this situation, **only the Crown prosecutor can decide to terminate the lawsuit.**

According to the evidence collected against the accused, the prosecutor may decide to continue the process, even without a victim testimony. Victims who are concerned about the lawsuit should speak with the prosecutor.

Bargaining with the offender for a plea of guilty

The Crown prosecutor can modify the accusations so that the offender pleads **guilty to lesser charges**. The prosecutor can also bargain a sentence ahead of time with the offender and propose it to the judge.

The prosecutor can decide to bargain with the offender for several reasons. For example, when the evidence against the accused is weak, **the Crown prosecutor may have more luck obtaining a conviction by bargaining with the offender than by a trial**.

Victims do not participate in these negotiations and cannot inhibit a bargain on a guilty plea. However, in some cases, prosecutors must inform them that a bargain is underway and that an agreement was reached with the offender in regard to his or her guilt. This is the case, for instance, in domestic violence or sexual assault cases.

2) THE MAIN STAGES OF THE CRIMINAL PROCESS

There are many steps to the criminal process before the lawsuit's outcome is known. **The victim is required to collaborate with the Crown prosecutor** to advance the case and in certain steps will perhaps have to testify. There are resources to help victims throughout the legal process, such as the CAVAC.

For more information on the services CAVACs offer victims, see Workshop 1.

Here are the steps of the criminal process:

- **Court appearance**

The victim does not have to be present.

Early in the criminal process, the accused is summoned before a judge: this is the court appearance. The accused must tell the judge whether he or she is pleading guilty or not guilty to each count (offense) held against him or her.

➡ **If he or she pleads guilty**, there will be no trial because the offender admits to the crime(s) he or she is being charged with. Later, the judge will decide what sentence is appropriate.

➡ **If the offender pleads not guilty**, there will probably be a trial.

Offenders who plead not guilty at the court appearance can change their mind to plead guilty to the charges being held against them at any time in the process.

- **Investigation on probation**

Generally, the victim does not need to be in court for this step.

If the police have not released the accused since his or her arrest, the judge will decide if the accused can be freed or if he or she must be detained in prison until the trial. At this step, the judge makes no decision as to whether or not the offender is guilty.

Rather, the judge will evaluate whether there are sufficient reasons to keep the accused in custody. If there are none, the judge must release the accused, but will require him or her to appear in court for the trial.

The victim must inform the investigating police officer or the Crown prosecutor if he or she fears the accused or feels threatened if this person is released.

The Crown prosecutor can oppose the release of the accused or request the judge to impose conditions if this person is released. In this case, the prosecutor can ask the investigating police officer to testify to explain the victim's fears to the judge.

The judge can **impose conditions on the offender to protect the victim**. For example, the judge can forbid the offender from:

- Coming near the victim
- Communicating with the victim (in person, by telephone, text message, email, Facebook, etc.)
- Consuming alcohol or drugs

Offenders can be arrested and put back into custody if they do not follow the conditions imposed by the judge. This is called a **«breach of condition.»**

The victim may notify the police if they witness a conditional breakdown of the accused.

• **Pro forma meetings**

The victim does not need to be present.

After the court appearance, the Crown prosecutor and the accused's lawyer (the «defense attorney») can appear before a judge on several different dates, which are called pro forma meetings. The judge makes no decision in regard to the accused's guilt at this stage.

These meetings are held to proceed with the process and give each party the necessary time to prepare their cases.

This is when the Crown prosecutor must send the defense attorney the proof he or she possesses in regard to the counts being charged against the accused.

It is an obligation in criminal law to allow the defense lawyer the chance to prepare his or her client's defense.

• **Preliminary investigation**

The victim may have to testify at this stage.

In some cases, the defense attorney or the Crown prosecutor can request a pre-trial hearing to hear the witnesses and assess the evidence. This is called a preliminary investigation.

The accused sometimes decide to plead guilty after a preliminary investigation. This can be the case, for instance, when they realize that the prosecutor holds major evidence against them.

- **The trial**

In theory, the victim will have to testify at the hearing, but this is not always the case.

For some criminal offenses, the trial is heard only by a judge and, for others, by a judge and a jury. When there is a jury, it is the jury members who must decide whether or not the accused is found guilty at the end of the trial.

➤ **Presentation of the evidence and the pleadings**

The trial is when the judge or the jury hears all the evidence and decides whether or not the accused is guilty.

The Crown prosecutor presents the court with the evidence against the accused to show that he or she is guilty. They bring in witnesses and present any other piece of available evidence.

When the Crown prosecutor has presented all available pieces of evidence, the defense attorney can reply. His or her goal is to weaken the proof presented by the Crown prosecutor or to present new arguments to defend his or her client. This is the point when the accused may testify in his or her own defense. The accused also have the right to remain silent in court.

Then, the Crown prosecutor and the defense attorney each present their legal arguments to convince the judge or jury. These are the pleadings.

➤ **The verdict**

The verdict comes at the end of the trial. This is when the judge or the jury announces if the accused is found guilty or not guilty, according to available evidence.

➤ **The sentence**

If the accused is found guilty, the judge decides on the sentence to be imposed. Before this decision, the victim may prepare a written statement or testify before the judge to explain the repercussions of the offense (the impact on his or her physical or psychological health, material loss, etc.).

For more information on the sentence, see Workshop 3.

3) VICTIMS' TESTIMONY

In the criminal justice process, the victim's role is to serve as an important witness who can help the prosecutor prove that the accused is guilty. Testifying in court is an opportunity for victims to be heard and to speak out against the violence they suffered.

- **The importance of testifying**

During the trial, the prosecutor will call as witnesses various people who can provide useful information with a view to proving that the accused committed the offenses he or she is charged with.

Generally speaking, victims' testimonies are an important piece of evidence because victims are often present when the crime takes place and are often in the best position to explain to the court what happened.

The Crown prosecutor is usually the one who decides whether or not victims should testify.

The victim receives a document known as a «subpoena» (a notice to appear in court) at least two weeks before the date on which he or she is required to testify. This document specifies the date, time and address of the court where the testimony will be heard. **If you receive a subpoena, you are legally required to appear in court to testify.**

Anyone who receives a subpoena and is required to testify in court has the right to take time off work and is also entitled to receive a sum of money as reimbursement for travel expenses and as compensation for the time spent in court.

- **What does testifying involve?**

Testifying means telling the court about certain events that happened in one's presence. Witnesses explain what they saw, heard, felt or otherwise experienced in a given situation to demonstrate that the events occurred in a certain way.

The prosecutor may meet in advance with victims asked to testify to explain the process and to help them prepare their testimonies.

Prior to testifying, witnesses take an oath. That means they swear to tell the truth in court.

The prosecutor then asks the witnesses questions so they can recount the events that occurred. This is known as the examination.

The defense attorney may then ask the same witnesses additional questions. This is known as the cross-examination.

Generally speaking, the defense attorney tries to undermine the credibility of witnesses. He or she tries to create doubt in the judge's or jury's minds that the events occurred as the witnesses describe them.

The defense attorney may also attempt to contradict the witness's version of events by presenting other witnesses.

Victims who testify in court may find it hard that the defense attorney tries to cast doubts on their version of the events. They should bear in mind that the **defense attorney has nothing personal against them**; his or her job is to simply defend the accused to the best of his or her ability.

The prosecutor may ask the judge to intervene if the defense attorney cross-examines the victim too aggressively.

- **Measures to facilitate testifying**

Witnesses have a key role to play in the legal process. Their involvement helps the other participants understand what happened so a decision can be made as to whether the accused is guilty.

The accused is present during the proceedings and the courtroom is usually open to the public. Some people, particularly victims, may have a hard time dealing with the criminal justice process.

The law sets out various measures designed to assist and protect victims who testify in court. Space is set aside for victims in most courtrooms so they do not have to sit near the accused as they wait to testify.

Measures to assist individuals called to testify are designed to avoid intimidation or reprisals targeting victims and to ensure that victims are not disturbed by the presence of the accused during their testimony.

To take advantage of these measures, victims should contact the prosecutor and ask him or her to file a petition with the judge. The judge will then evaluate whether certain measures should be taken to facilitate the giving of testimony and to ensure the victim's safety.

For example:

➤ Victims may **testify from behind a screen or from outside the courtroom** so they do not have to look at the accused.

➤ Victims may **be accompanied by a person of their choice** while testifying.

Victims have the right to **testify in a language other than English or French** if they are more fluent in that language. **They must inform the prosecutor about their linguistic status as soon as they know that they are required to testify.** In that case, interpretation services will be provided free of charge.

CAVAC is there at every step of the legal process

As soon as the legal process begins, victims can contact the CAVAC (crime victim assistance centre) for the information to contact the prosecutor of their case.

Throughout the process, CAVAC is there to provide victims with information on assistance measures and all available resources.



Workshop 3: A Step Toward Healing

Will the accused
be punished?
How?







WORKSHOP 3: A Step Toward Healing

Will the accused be punished?
How?

When reporting a crime, victims often want to know what will happen to the person they reported. Many victims or victims' families would like to see the accused punished. In other cases, people may contact the police only to stop someone from behaving in a certain way «in the moment» and may be scared that the accused will remain in prison.

In some cases, the accused will be found guilty and will have to serve a sentence. In other cases, there will be no punishment and the accused will go free. This third workshop will help you explain the following situations to the participants:

- 1) Why the accused is not punished in some cases*
- 2) How the judge determines punishment if the accused is found guilty*
- 3) What types of sentences the accused may receive*
- 4) What other options are available to victims so they can obtain reparations*



1) WHY THE ACCUSED IS NOT ALWAYS PUNISHED



Explaining to victims who have broken a wall of silence that their aggressor was not found guilty or that no charges were laid can be difficult.

We must keep certain basic principles of justice in mind so we can better assist victims when faced with an «unfavourable» decision. By explaining these principles, you can help the participants understand that it was not because the victims' testimony was not believed that the accused was not punished.

High standards of proof and evidence are designed to avoid condemning someone who is innocent

- **Innocent until proven guilty**

The **presumption of innocence** is a very important principle in criminal law. All individuals charged with a criminal offense are considered innocent until found guilty by a judge or jury.

Since the accused is considered innocent until proven otherwise, the accused is not responsible for proving his or her innocence. **That task falls to the Crown prosecutor, who will attempt to demonstrate that the accused is guilty.** The «burden of proof» thus falls on the prosecutor's shoulders.

For further information on the prosecutor's role, please refer to Workshop 2.

- **Guilty “beyond a reasonable doubt”**

For the accused to be found guilty at the end of the trial, the prosecutor must prove beyond a reasonable doubt that the accused is indeed guilty of the offense.

That means that as soon as **the judge or jury has doubts that the accused did not commit the offense, the accused must be acquitted** (in other words, the accused must be found not guilty). Demonstrating that the accused is probably guilty is not enough. The judge or jury must be convinced of the accused's guilt and there must be no doubt in their mind.

Why such a high standard of proof?

The consequences of sentencing are very serious.

An accused who is found guilty may face sentences such as a heavy fine or even prison time. He or she must also deal with the consequences of having a criminal record. **Everyone wants to make sure that no innocent people are found guilty due to some error!**

The consequences for the victim's complaint

- **The Crown prosecutor may decide not to bring charges against the accused**

Even if the victim filed a complaint with the police, it is possible that no charges will be brought against the accused. In that case, the accused will not be required to appear in court.

The Crown prosecutor is the one who decides whether or not to bring charges after reviewing the police file. Charges will only be brought if the prosecutor is convinced that there is sufficient evidence to demonstrate beyond a reasonable doubt that the accused is guilty.

Since demonstrating guilt beyond a reasonable doubt can be quite difficult, there are various situations in which the prosecutor may decide not to bring charges. For example, the prosecutor may decide not to bring charges if there is not enough evidence to identify the accused.

That is exactly what happened in the Val-d'Or case in 2016. Even though multiple women reported abuse, the prosecutors decided not to bring charges. They explained that, in several cases, there wasn't enough evidence to identify the aggressors beyond a reasonable doubt (i.e., lack of identifying details or inability to identify a photo of the aggressor).

Victims have the right to know why no charges were brought. To obtain that information, they should call the police officer or the prosecutor in charge of the case.

IMPORTANT: Participants must be reminded that the prosecutor's **decision to bring charges (or not) has nothing to do with the prosecutor's own personal opinion.** Even if no charges are brought, that doesn't mean that the prosecutor believes that nothing happened..

Conditions to comply with even if no charges are brought: Section 810 of the *Criminal Code*

In some cases, the prosecutor may ask the judge to impose conditions on the accused, rather than bringing charges. That means that **there will be no trial and that the presumed aggressor will not be found guilty.** Nevertheless, the accused will be required **to comply with certain conditions imposed** by the judge, for example, staying away from the victim or the victim's home.

The prosecutor may make this decision if, for instance, there is not enough evidence to bring charges, although there may be fears for the victim's safety or that of his/her family or property.

The victim should contact the police as soon as any of these conditions are violated (for example, if the accused goes to the victim's home). In that event, charges may be brought.

For further information on Section 810 of the Criminal Code, please refer to Workshop 1.

- **The accused may be found not guilty by the judge or jury**

If the prosecutor decides to bring charges, the legal process begins. At the end of the trial, the judge or jury may still find the accused not guilty. **That will be the outcome if the judge or jury is not convinced beyond a reasonable doubt that the accused is guilty.** Identification problems or inconsistent testimony may explain such a decision.

The accused will then be free to go and no sentence will be imposed (i.e., no fine, no conditions to comply with, etc.).

This decision by a judge or jury does not mean that they did not believe the victim. **Even though the judge may completely believe the victim, he or she may still find the accused not guilty if there is any doubt about the accused's guilt.** For example, the judge may completely believe that the victim was attacked by a man with dark hair who resembled the accused. But it is also possible that the judge may not be convinced that the accused was indeed the aggressor (despite the physical resemblance).

2) IF THE ACCUSED IS FOUND GUILTY, THE JUDGE WILL IMPOSE AN APPROPRIATE SENTENCE

If an accused is found guilty of an offense, there will be consequences. In legal terms, the accused is then given a "sentence."

Sentences may have various goals, including the following:

- Denouncing a crime and the harm caused to victim(s)
- Discouraging people from committing crimes
- Helping the accused to reintegrate into society
- Making reparations for the harm caused to victims

How does a judge determine a sentence?

It is always the judge who decides on the sentence when the accused has been found guilty. Sentencing is determined based on a number of factors. **A judge does not choose a sentence arbitrarily or on a whim.**

The main factors a judge takes into consideration when issuing a sentence are:

- **Minimum and maximum sentences**

Certain offenses carry maximum sentences and mandatory minimum sentences. In these cases, the judge may not deliver a sentence harsher than the maximum or lesser than the minimum, and **must respect the legal limits**, regardless of the particulars of the case.

- **Seriousness of the offense**

The more serious the crime, the more serious the sentence. As well, the **greater the accused's role in the crime**, the greater the sentence. For instance, an accused who helped commit a crime will be punished, but generally receive a lighter sentence than if he or she had committed the crime directly.

- **Other sentences for similar offenses**

A judge must also be consistent in sentences issued for crimes committed in similar circumstances. For instance, if two people are accused of theft in similar circumstances, it would be unjust for one person to be sentenced to two years of jail time and the other to merely have to pay a fine.

- **Aggravating or extenuating circumstances**

Here are some examples of **aggravating circumstances** that might lead to a **harsher sentence**:

- If an offense is motivated by racist or sexist prejudice
- If an offense involves a spouse or a minor
- If the accused is in a position of authority vis-à-vis the victim (e.g., coach or parent)
- If the accused has previously committed similar offenses (criminal record)
- If the offense has significant emotional or financial consequences for the victim

Here are some examples of **extenuating circumstances** that might lead to a **lesser sentence**:

- If the accused cooperates with police or pleads guilty out of remorse
- If the accused undergoes therapy to address substance-abuse problems that existed at the time of the offense
- If the accused offers financial compensation to the victim

- **Time served**

In some cases, the accused may have spent time in detention awaiting trial. In such a case, a judge may take in consideration the number of months spent in detention to reduce jail time.

Reports and testimonials to support sentencing

Prior to making a sentencing decision, a judge will hear from the parties involved, including reports or testimonials from witnesses, to deepen his or her understanding of the accused and the victim. Among other things, this input will allow the judge to take into account any aggravating or extenuating circumstances as listed above.

- **Understanding the accused's situation**

A judge may ask a probation officer for a report on the accused. This **pre-sentencing report** provides information on the accused's family history, record, activities, physical and mental health, character, remorse, and so on.

The Gladue Report: When the accused is Indigenous

The Gladue Report, the name of which refers to a related Supreme Court of Canada decision, is a pre-sentencing report that may be requested by the court when sentencing an Indigenous offender. The Gladue Report outlines possible measures to replace jail time.

The Gladue Report was implemented to address the overrepresentation of Indigenous people in prisons. **The goal of the report is not to make excuses or to reduce sentencing, but rather, to ensure that sentencing takes the accused's the situation into account.**

In arriving at a sentence, the judge must pay particular attention to historical factors that may have led the accused to commit the crime, possibly including issues that the accused's community has faced for years.

- **Understanding the victim's situation**

The victim may prepare a written statement explaining the repercussions of the offense (this statement is not mandatory). The victim may describe damages resulting from the offense, including:

- Material damages (e.g. a broken window)
- Physical damages (e.g. physical pain, scarring)
- Financial damages (e.g. lost work time or income, cost of therapy)
- Moral damages (e.g. impact on victim's relationships in his or her community)

The victim's statement must be completed as a **form available online** and in person from a **CAVAC**. A CAVAC intervener can help the victim fill out the form.

Prior to sentencing, the judge must be sure the victim has had the opportunity to fill out this form.

The court will submit a copy of this statement to the prosecution and to the defense.

The judge must take this statement into consideration, and may allow the victim to read the statement to the court rather than simply reading it him- or herself.

The judge may also order the victim to appear in court to testify during the sentencing hearing. The victim has the right to an interpreter, free of charge, if he or she wishes to testify in his or her own language.

For more information on the regulations surrounding victim testimony, please see Workshop 2.



What is probation ?

The judge may impose a number of time-specific conditions on the offender, which are referred to as probation orders. For instance, the judge may forbid the offender from:

- Contacting or approaching the victim
- Consuming alcohol or drugs
- Leaving the house after a prescribed curfew
- Etc.

Probation orders may vary from one case to the next, and may be **imposed in addition to sentencing**.

The offender must respect the conditions imposed throughout the probation period. A **breach of probation may result in further charges**.

3) POSSIBLE SENTENCES

It is impossible to anticipate the particular sentence a judge will deliver for each type of offense. There are too many factors to take into consideration in each case, and too many different types of offense.

The goal of this section is to explain the various possible sentences a judge may choose to issue. It may not be useful to present them in detail during your activity, but you may choose to refer to this section to answer more specific questions from your participants. Even after having read or heard a judge's decision or sentence, it can be hard to understand what that sentence represents in concrete terms.

IMPORTANT: Remember that a judge may sometimes combine different punishments in sentencing a single offender.

Sentence	Description
Discharge	<p>A judge may decide not to issue a sentence even if an offender has been found guilty; this is referred to as a discharge. For instance, a discharge may be issued if the offender has no criminal record and the offense is relatively minor.</p> <p>A discharge may be unconditional or conditional:</p> <ul style="list-style-type: none"> · A conditional discharge will include probationary terms, and the offender will have to comply with a number of conditions. · An unconditional discharge has no conditions.
Fine	<p>The judge may order the offender to pay a fine. Monies collected are remitted to the government, not the victim.</p>
Restitution	<p>The judge may also order the offender to pay a sum of money to the victim as compensation for damages resulting from the crime. For instance, the offender may be ordered to pay a sum of money to the victim if the victim suffered physical or psychological injuries that prevented him or her from working for a given period.</p> <p>The victim can fill out a form to claim this financial compensation prior to sentencing. This is a different form than the victim's statement mentioned above (which highlights the victim's situation). Prior to sentencing, the judge must ensure that the victim has had the opportunity to fill out this form. The Crown prosecutor will submit this form to the judge, and the judge will decide whether to order financial compensation.</p>
Suspended sentence	<p>The judge may decide to wait prior to sentencing; this is referred to as a "suspended sentence."</p> <p>In the case of a suspended sentence, the judge puts the offender to the test. The offender will be released, but will have to comply with several conditions during the probation period. For instance, the judge may order the offender not to communicate with the victim or not to consume alcohol. If the offender does not comply with these conditions, the judge may then decide to issue the sentence that would have been handed down in the first place.</p>

Sentence	Description
<p>Imprisonment in the community</p>	<p>This sentence resembles a suspension of punishment, but the offender is monitored much more closely. The offender who receives this sentence won't go to prison. Instead, he or she will stay in the community (in his or her home, for example) for the duration of the punishment. He will also have to comply with very strict conditions. For instance, he may be required to stay in the house, except to go to work or the grocery store or for medical reasons.</p> <p>If these conditions are not met, there may be serious consequences like being sent to prison to finish the sentence.</p>
<p>Imprisonment</p>	<p>Imprisonment is the most severe punishment since offenders completely lose their freedom. Before imposing this sentence, the judge must be sure that there is no other less severe punishment that would be appropriate.</p> <p>In some cases, the judge can allow the offender to leave prison regularly. This is called an "intermittent sentence." For example, he or she could leave prison for the work week and go back to prison for the weekend. This is only possible if the sentence is fewer than 90 days.</p> <p>The offender can also be released permanently before the end of his or her sentence (generally, after having served a third or two-thirds of the sentence). This is called "conditional discharge." The offender will have to comply with strict conditions until the end of his or her punishment. If offenders do not comply with these conditions, they can be sent back to prison.</p> <p>A victim can request where an offender is being detained, the dates of his or her release or the conditions he or she must comply with when released. Victims can also explain their fears and give their opinions on the conditions to be imposed, before conditional discharge is granted.</p> <p>For more information, call:</p> <ul style="list-style-type: none"> • 1-866-909-8913 (if the offender has a sentence of fewer than two years) • 1-866-806-2275 (if the offender has a sentence of more than two years) or

4) OTHER RECOURSE



At the end of the process, the victim may not be satisfied with the judge's or the Crown prosecutor's decision. It may be difficult for the victim to see the offender avoid a charge or conviction. The victim may also be dissatisfied with the sentence, even when the offender is found guilty.

It is important to understand that victims themselves may not contest the judge's decision through an appeal. **Only the Crown prosecutor can file an appeal.**

However, there are a **number of other means by which a victim may obtain reparation.** A victim may choose to exercise this recourse even if the **offender has been found not guilty**, and he or she can do so before the completion of the criminal trial.

- First, the victim may claim financial compensation from the Direction de l'indemnisation des victimes d'actes criminels (IVAC) for physical or psychological injuries sustained. In some cases, friends or family of the victim may also apply for IVAC compensation. You should direct victims to a CAVAC for assistance in seeking financial compensation. These services are free of charge.
- Second, the victim may appear before a civil court and request financial compensation from the offender for damages sustained. The victim will not have to prove beyond a reasonable doubt that the offender has committed the crime: the burden of proof in a civil court is different. The victim may choose to represent him- or herself, but it may be preferable to consult a lawyer, since civil court procedures can be complicated.

IMPORTANT: In either case, the victim must file the claim within a specific delay. Further information is available from a CAVAC or from a lawyer.

For more information on CAVACs, please see Workshop 1.