

SEXUAL ASSAULT PROSECUTION

This resource provides information and answers some common questions about the prosecution process for sexual assault.

The prosecution process can be intimidating and overwhelming. If you have more questions or would like some support during this process, you are welcome and encouraged to contact us at The Journey Project.

This information is general in nature and does **not** constitute legal advice.

A Note on Language: Language is important. It holds a lot of power. You may identify with the word "survivor," "victim," both, or neither. The criminal justice system may refer to you as a "victim," "complainant," or "witness," even though you may not identify with any of these terms. This is the language used by the court and does not mean you or your reaction to the incident is being judged. In this guide, we use the term "survivor." However, we know that not everyone who has experienced sexual violence will identify this way.

If you would like to speak with a Legal Support Navigator (LSN), you can reach us through email, text, phone, or our social media pages. We are available Monday to Friday, 9:00am - 4:00pm.

TEL: 1-709-722-2805

TOLL-FREE/VRS: 1-833-722-2805

TEXT: 709-986-2801

EMAIL: support@journeyprojectnl.com

www.journeyproject.ca Twitter: @JOURNEY_NL

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A GUIDE FOR SURVIVORS

WHEN A CHARGE IS LAID	4
VICTIM SERVICES	5
PERSONS CHARGED	6
TYPES OF OFFENCES	7
WHERE WILL YOUR CASE BE HEARD?	8
WHAT HAPPENS AT THE FIRST COURT APPEARANCE?	9
THINGS TO KNOW	10
INFORMATION ABOUT YOUR CASE	11
WHAT HAPPENS AT THE PRELIMINARY INQUIRY?	12
DO I NEED A LAYWER?	13
WHAT HAPPENS BEFORE THE TRIAL?	14
WHAT HAPPENS DURING A TRIAL?	16
EVIDENCE IN SEXUAL ASSAULT TRIALS	18
SUPPORT IN COURT	20
VERDICT	21
SENTENCING HEARING	22



WHAT HAPPENS AFTER A CHARGE IS LAID?

When the police have completed their investigation and gathered enough evidence to lay a charge against the suspect(s), you will likely be referred to Victim Services by the police.

Even if you are not referred to Victim Services, we highly recommend that you contact them. Victim Services can support you at any point, regardless of whether charges have been laid or not. The Journey Project staff can also connect you to Victim Services.

VICTIM SERVICES IN NEWFOUNDLAND & LABRADOR

Victim Services is a voluntary, free, and confidential program that supports you throughout the criminal justice process.



VICTIM SERVICES PROVIDES:

- General information about the criminal justice system.
- Information on your specific case
- Safety planning
- Court preparation
- Assistance writing your victim impact statement
- Referrals to other community organizations and agencies
- 7 Emotional support and shortterm counselling as you prepare to go to court

Victim Services does **NOT** provide legal advice.

When you call Victim Services to request information about your case, you will likely need to provide your police file number. If you do not have one, or do not know it, they may ask you for some identifying information, like the name of the offender(s).

Victim Services has several offices throughout Newfoundland and Labrador.

PERSON(S) CHARGED

The person(s) charged (now "the accused") will either be released back into the community or remain in custody (jail) until the case is finished.

If the accused is released back into the community, the court may place them on conditions (rules) they must follow. For example, the accused might be ordered not to have any contact with you or other people connected to the case.

An accused person can make an application to the court to vary (make changes) to their conditions. If this happens, you have the right to know about it.

If the person is released into the community, you have a couple of options. If you fear for your safety, you can apply for a Peace Bond. This is a court order that places specified conditions on an individual's behaviour. An Emergency Protection Order is a document issued by the Provincial Court that a judge may grant quickly when intimate partner violence has occurred. Your safety is the number one priority. To talk about safety planning, contact The Journey Project, a transition house, a safe house, or the police.

TYPES OF OFFENCES

SUMMARY OFFENCES

These are considered less serious offences under the *Criminal Code*. Charges must be laid within six months of the incident. For most summary conviction offences, there is a maximum sentence of six months in jail and a fine of \$5,000, or both.

INDICTABLE OFFENCES

These are more serious offences of the *Criminal Code* and typically carry a higher maximum sentence. Certain types of sexual assault are indictable offences.

HYBRID OFFENCES

These are the types of offences where the Crown can choose how to proceed with the charge in court—as a summary or indictable offence. These types of offences cover the majority of *Criminal Code* offences including assault and sexual assault.



WHERE WILL YOUR CASE BE HEARD?

It depends on what type of charges are laid. Most criminal cases are heard at the Provincial Court, while more serious criminal cases are heard at the Supreme Court.

AT THE PROVINCIAL COURT

Only a judge will hear the case, not a jury.

There is no preliminary inquiry.

AT THE SUPREME COURT

The accused can decide whether they want a judge, or judge and jury to hear their case.

The accused can decide if they want a preliminary inquiry. If this is the case you may have to testify twice—once at the preliminary inquiry and once at the trial.



WHAT HAPPENS AT THE FIRST COURT APPEARANCE?

YOU DO NOT HAVE TO ATTEND THE FIRST COURT APPEARANCE.

IT IS YOUR CHOICE. NOT ATTENDING WILL HAVE NO IMPACT ON THE CASE WHATSOEVER.



- The Judge will read the charges against the accused.
- The accused will enter a plea (i.e. guilty or not guilty), or they may request more time to speak with a lawyer and enter a plea later.
- If the accused pleads guilty, the next step is a sentencing hearing.
- If the accused pleads not guilty, a trial will be scheduled to decide whether they will be found guilty or not. During this time, it will also be decided if the trial will be held in Provincial or Supreme Court. The Crown Attorney should explain to you why your case is proceeding in either Provincial or Supreme

Court.

The accused may be released with conditions or remain in custody until the next court date.



THINGS TO KNOW

In the court process, you will be considered a witness for the Crown.

The Crown is required to provide the accused's lawyer with all the information the police have collected about the charges. This process is called disclosure.

A defence lawyer has to make a special application (i.e. an O'Connor Application) to view third-party records (i.e. medical, school, counselling records).

However, the defence lawyer must satisfy the Judge that the records are "likely relevant" to their defence. This decision will be made following a separate court hearing.

INFORMATION ABOUT YOUR CASE

Under the Canadian Victim Bill of Rights, every survivor has the right to request information on the investigation and proceedings.

If you do not attend the first court appearance, the Crown can inform you of the outcome. You can speak to the Crown Attorney by calling the Court responsible for your case and asking to speak to the Crown in charge of your case.

A support person at Victim Services can also find information for you.





WHAT HAPPENS AT THE PRELIMINARY INQUIRY?

A preliminary inquiry is a hearing held to determine whether or not the Crown has enough evidence against an accused person to justify holding a trial. It is essentially a pre-trial screening to filter out cases that are not strong enough to go to trial. It is not your responsibility to make a strong case. It is also not your fault if the matter does not go to trial. This decision is made by the Crown.

Preliminary inquiries are only held for indictable offences. In most cases, the accused is given the option to proceed with a judge, or with a judge and jury.

A survivor may be called to provide testimony at a preliminary hearing. This decision is made by the Crown.

The Court can dismiss the charge(s) if it finds there is not enough evidence to go to trial. This can be difficult for survivors as it can lead to feelings of not being believed, or that the assault did not happen. However, it is important to remember that the court's decision is based on whether or not there is enough evidence. Regardless of what happens here, you are still deserving of support.

DO I NEED A LAWYER?

You do not need to hire a lawyer. In a criminal trial, a survivor is not entitled to a lawyer in the same way an accused person is. In fact, a survivor is not allowed to be represented by a lawyer in court (except in very specific circumstances, which will be explained below). However, it is a good idea to ask for legal advice from a lawyer. A lawyer can assist with making decisions, help protect your private records (e.g. medical, school, counselling records), and provide other legal advice.

Note: The Crown represents the public interest. They are not your lawyer.

IF YOU CANNOT AFFORD A LAWYER, THERE ARE SEVERAL OPTIONS AVAILABLE

The Victim Legal Fund for Disclosure Applications, provided through Victim Services, offers funding to hire a lawyer for certain hearings. Funding is also available for translation and interpreter services.

The Journey Project offers eligible participants referrals for free legal advice through the Journey Project Legal Support Service. This service is available to people of all ages and genders who have experienced sexual violence and/or intimate partner violence and (1) are currently living in Newfoundland and Labrador or (2) living outside the province but experienced an incident of sexual violence and/or intimate partner violence in Newfoundland and Labrador.





WHAT HAPPENS BEFORE THE TRIAL?

Before trial, the Crown (who represents the public interest) and the defence (who represents the accused) may participate in plea negotiations. This means that in exchange for a guilty plea, the Crown may drop or reduce some of the charges against the accused.

If the accused pleads guilty, the Crown and the defence may try to come to an agreement about the sentence. The Crown should inform you if this happens.

Survivors do not have control over the decisions made in a criminal matter. Their interest may be taken into account, but ultimately the Crown serves the public interest.

IN INDICTABLE CASES



If there is enough evidence to proceed to trial, an arraignment date is set. This is the first appearance in Supreme Court.



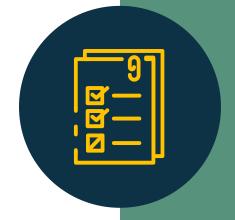
If the accused pleads guilty, the matter will be moved for sentencing.



The accused enters a plea of guilty or not guilty.



If the accused pleads not guilty, a trial date will be set.



WHAT HAPPENS DURING A TRIAL?

During a trial, the Crown and the defence may provide evidence or call witnesses to testify.

This is done through direct and crossexamination questions. The Crown always presents their case first, followed by the defence.

DIRECT EXAMINATION

If one side calls a witness, they can only ask direct, or non-leading questions. The other side has the opportunity to cross-examine the witness.



CROSS EXAMINATION

After one side is finished, the other can ask questions. These can be leading, "yes" or "no" questions that are meant to poke holes in the witness' story

THE CROWN

The job of the Crown is to prove guilt beyond a reasonable doubt. This means the judge (or jury) must be almost absolutely certain that the accused is guilty.

The Crown is responsible for making sure that the criminal justice process is fair to everyone involved, including the accused.

The Crown can call anyone as a witness to help prove guilt beyond a reasonable doubt, except for the accused person.





THE DEFENCE

The job of the defence is to point out every possible reason why the judge (or jury), should find the accused not guilty.

The defence may call the accused as a witness if they choose.

The accused does not have to give testimony, so they may not speak at all during their trial.

The defence can also decide not to call witnesses at all.

The defence may focus on the survivor's truthfulness and inconsistencies in their story.



CROSS-EXAMINATION

Cross-examination can be extremely invasive and traumatic for survivors of sexual assault. Many people describe this process as re-traumatizing and often more harmful than the assault itself. We recommend bringing a support person with you and using other court supports that are available.

INNOCENT UNTIL PROVEN GUILTY

In Canada's legal system, a person is innocent until proven guilty. This means that although the survivor sees the accused as guilty, the court does not. The judge (or jury) must be convinced beyond a reasonable doubt that the accused is guilty. This is a high standard of proof. If there is a reasonable doubt, the accused must be found not guilty. A not guilty verdict does not mean your experience did not happen. It means proof beyond a reasonable doubt was not proven in court.

EVIDENCE IN SEXUAL ASSAULT TRIALS

TESTIMONY

In most sexual assault or childhood sexual abuse trials the evidence presented largely consists of witness testimony. This generally includes the survivor, the accused, and any other potential participants or witnesses. The accused has a right not to take the stand and testify during the trial. The survivor does not.

BEFORE YOU TESTIFY IN COURT

You can meet with the Crown Attorney to become familiar with the Crown and the Court room itself. It is helpful to write down any questions you have for the Crown. You can also bring a support person with you.

WHEN YOU TESTIFY IN COURT

You are required to tell the truth. You will have to swear or affirm an oath to tell the truth before you testify. You may be asked invasive or embarrassing questions, or to recall details that you have already provided multiple times. This can be very difficult. Try to provide as much information as possible. You should answer all questions as completely and truthfully as you can. If you do not know the answer to the question, it is ok to say that. There are also supports and testimonial aids that may be available to you during trial. The accused person will be present in court. For supports that can help reduce the traumatic impact of this experience, see Section 12: Supports in Court. Expert witnesses (e.g. SANE nurse, police officer, doctor) may also be called to testify about physical/medical evidence.

PHYSICAL EVIDENCE

The purpose of physical evidence depends on the issue of the trial. Bodily fluids and other DNA evidence may be used to prove the identity of the accused. Physical evidence may also be used to prove a sexual act took place. If both the survivor and the accused agree that a sexual act(s) took place and only dispute consent, proving that a sexual act took place is less important.



VIDEO & PHOTOGRAPHIC EVIDENCE

Video and photographic evidence is rare in sexual assault cases. However, it is becoming more common due to the use of smartphones and other devices with cameras.

QUESTIONS ABOUT THE SURVIVOR'S SEXUAL HISTORY

The survivor should not be asked questions about their sexual activities with anyone unless, after a preliminary hearing, the judge decides to allow these questions.

SECTION 276(1) OF THE CRIMINAL CODE (RAPE SHIELD LAW)

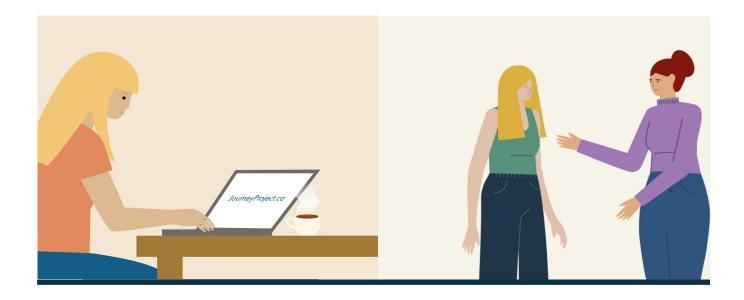
This law limits the defence's ability to introduce evidence or cross-examine sexual assault survivors about their past sexual history, whether with the accused or any other person. Before the defence can question a survivor about their prior sexual conduct, the judge must rule that the evidence is admissible via a specific application. The judge must consider the rights of the defence; of the survivor to privacy and personal dignity; and of society to have its best interests served.



THIRD-PARTY RECORDS AND O'CONNOR APPLICATIONS

The defence may make an application for disclosure to the court (i.e. an O'Connor Application) to access documents held by a third party, a person or group not directly connected to the case. These documents can include medical records, school records, counselling records, and other records connected to the survivor.

However, there is a process. The accused has to show the judge that the information requested is relevant to an issue in the trial or to a witness' competency to testify. The survivor and the person or group that has the records have the right to appear at a hearing and argue that the records should not be given to the defence.



SUPPORT IN COURT

Seeing the accused and testifying in court can be overwhelming and difficult. We suggest that you bring a support person with you. This can be a friend, family member, or a Victim Services representative. The Journey Project can also accompany you to court if requested. However, this may not be possible in every part of the province.

TESTIMONIAL AIDS

Testimonial aids sometimes also available to survivors. These must be requested in advance and can include:

Testifying through a closed-circuit television so you are outside the courtroom.

Testifying from behind a screen or other device so you cannot see the accused.

Having a support person sit close to you for support.

The Crown requesting the Court to be closed to the public in special circumstances outlined in the *Criminal Code*.

You can discuss these options with the Crown or a Victim Services Coordinator.

PUBLICATION BANS

A publication ban is when the Crown requests a ban that prevents your name and/or identifying information from being published or broadcast. Preliminary hearings can be included in publication bans.

If requested, publication bans must be ordered for all survivors under the age of 18, for survivors of sexual assault of any age, and for witnesses of sexual offences under the age of 18.



VERDICT

A verdict is a formal decision made by either the judge (or jury). The judge (or jury) must decide if the accused is guilty or not guilty. For the accused to be found guilty of a sexual assault, three things must be proven beyond a reasonable doubt:





A not guilty verdict, or acquittal, does not mean you are not believed or that the sexual assault did not take place. A not guilty verdict means that the Crown did not prove their case beyond a reasonable doubt. Both the Crown and the defence can appeal the verdict within 30 days.

SENTENCING HEARING

The judge determines the appropriate sentence for the offender (i.e. the accused who has been found guilty). A sentence may include jail time, community service, and/or registering on the National Sex Offender Registry. During the Sentencing hearing, evidence will be presented to the court to help the Judge decide on the sentence.

The Crown and the defence may make the same sentencing recommendations called a joint submission.

Both the Crown and the defence have the right to appeal a verdict or sentence within 30 days if they think the judge made a mistake in one of these areas: reasons for deciding a verdict; reasons for deciding a sentence; or instructions to the jury.

APPEAL

To have a trial decision reviewed by a higher Court. This is not a new trial and no witnesses are required to give evidence.







The Journey Project exists to strengthen justice supports for survivors of sexual violence and/or intimate partner violence. It was established in 2017 as a collaborative initiative of Public Legal Information Association of NL (PLIAN) & the NL Sexual Assault Crisis and Prevention Centre (NLSACPC).

www.journeyproject.ca

PLIAN is a non-profit organization dedicated to educating Newfoundlanders and Labradorians about the law. PLIAN provides public legal education and information services with the intent of increasing access to justice.

Contact PLIAN's Legal Information Line by calling toll-free/VRS **1-888-660-7788** or e-mail info@publiclegalinfo.com

To reach the St. John's office call **709-722-2643**To reach the Happy Valley-Goose Bay office call **709-896-5235**www.publiclegalinfo.com

The **NLSACPC** is a non-profit, community-based, charitable organization that exists to support individuals of all genders who have been impacted by sexual violence.

To contact the St. John's office call **709-747-7757**To reach the Happy Valley-Goose Bay office call **709-896-6758**

The NLSACPC operates a 24-hour Support and Information Phone Line that can be reached at **1-800-726-2743**

You can also text/chat with the **NLSACPC** Monday 2pm-8pm, Wednesday 2pm-8pm, and Friday 12pm-8pm by texting 1-800-726-2743 from your mobile phone, or using the "Get Support Now" button on the NLSACPC website,

www.endsexualviolence.com

