NOT GUILTY!

Fight and Win your Criminal Case

Tips and Strategies you can use right now to avoid a criminal record, fines and even jail

Written by criminal defence lawyer
Richard Auger

NOT GUILTY!
FIGHT AND WIN YOUR CRIMINAL CASE

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Provided as an educational service by Auger Hollingsworth

We provide this information to help you understand the process of the criminal justice system. Although these tips and suggestions work most of the time, nothing works every time. This is why it is important that you have your case reviewed by an experienced criminal lawyer. This document is not a substitute for specific legal advice that takes into account your particular circumstances.

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PREFACE

WHY I WROTE THIS BOOK

This book is a practical consumer's guide to the criminal court process in Canada. It is not written for lawyers or judges. It is exclusively for consumers. It is meant to be easy to read, helpful, direct, and not filled with complicated legal jargon. The book is also intended to answer the questions that I get most often from new clients.

Some lawyers require you to make an appointment in order for you to get information or to have your questions asked. I believe you should be able to have this information right now, without any pressure.

Most people I represent in criminal cases have never been previously charged with a criminal offence. As a result, they have no understanding of the meaning of their charges or the process of the criminal courts. This lack of knowledge causes additional unnecessary stress, frustration and a feeling of hopelessness.

My goal is that this book will empower any person affected by the criminal court process with knowledge. Knowledge will provide you with empowerment and peace of mind. Armed with information, you will be better able to cope. You will also become an active and positive contributor to your case. Your criminal lawyer needs you at your best in order to succeed in your case. Your criminal lawyer needs specific information from you in order to succeed. Your active and positive participation in your case can only occur if you have a full understanding of your predicament.

I wrote this book to help you participate actively in your defence alongside your criminal lawyer. It can be a fatal mistake for an accused person to worry and suffer silently until the day of trial without having direct input into the case at every step. I believe that no criminal lawyer should take on a case without including the client as a contributing member of the defence team.

I will describe legal terms and procedures that you will hear discussed during your case. Get a handle on the vocabulary early so that you can be a more effective contributor to your case. With knowledge you will be able to provide your criminal lawyer with the information needed to accomplish the best result.

NOT GUILTY!

FIGHT AND WIN YOUR CRIMINAL CASE

CHAPTER 1

ARREST AND YOUR LEGAL RIGHTS UPON ARREST

A police officer has the power to arrest a person if there are reasonable grounds to believe that the person has committed a criminal offence. The arresting police officer may or may not place handcuffs on the person under arrest.

What are "reasonable grounds"?

Merely suspicious circumstances are not reasonable grounds to arrest you. There must be enough facts or evidence available to cause a reasonable person to believe that you have committed or are about to commit an offence. A reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. At the same time, the police do not need to show a strong case that would result in a conviction in order to make an arrest.

If I didn't commit the crime, should I create a fuss?

A person placed under arrest by a police should not challenge the grounds for the arrest. If you challenge or resist arrest, you may face further criminal charges. The issue of whether or not the arrest was lawful is something you should discuss with an experienced criminal lawyer.

Do I need to be handcuffed by the police to be arrested?

Not at all. Not everyone charged with a criminal offence is arrested or handcuffed by the police. For example, the police may simply serve you with an Appearance Notice. You may not have to even attend the police station.

Section 501 of the *Criminal Code* states that an Appearance Notice must include: the name of the accused, the criminal charge and the time, date and place where the accused must attend court.

In addition, the Appearance Notice can require the accused to attend the police station on a certain date for fingerprinting. If you receive a notice to attend for fingerprinting, you must do so. If you do not attend, you may face additional criminal charges.

If you do not attend a scheduled court appearance, the court can issue a warrant for your arrest. The police may then arrest you and bring you to court in custody.

Do I have rights when I am arrested?

Once placed under arrest you are entitled to important rights under the *Charter of Rights and Freedoms*. These rights are taken so seriously by the courts that if the police do not observe these rights, the court can refuse to admit evidence obtained by the police. Depending on the case, this can result in the charges being dismissed by the court or dropped by the crown attorney.

Here are your basic rights upon arrest:

- Every person who is under arrest or detention has the right to be promptly informed of the reasons for the arrest.
- Every person who is under arrest or detention has the right to speak to a lawyer without delay. The police must inform the person of the right to speak to a lawyer and the police must also ensure that the person under arrest can access a lawyer.

- The police must advise the person under arrest of the right to speak to a lawyer and this must be done in a language that is clearly understood.
- The police must also advise the person under arrest that if they cannot afford a lawyer, a lawyer can be provided to speak to the person free of charge.

Contrary to popular belief and many television shows, there is no rule that you are only allowed one phone call to a lawyer from the police station. An accused person is entitled to a reasonable opportunity to consult a lawyer whether that is done by making one phone call or several phone calls.

Once an accused person expresses an interest in speaking to a lawyer, the police must facilitate contact with a lawyer.

The police must also allow the opportunity to speak to a lawyer in private. Any failure to provide a private telephone call may be a denial of the accused's *Charter* right to consult a lawyer.

The police must not undermine the accused's confidence in his or her lawyer. In other words, the police cannot tell you that it is a mistake to "lawyer up" or to follow the lawyer's advice.

There can be a number of complicated issues that arise when the police are giving you your right to consult a lawyer. For example, was an interpreter available if language was an issue? Were accommodations made if the legal advice was not understood by the accused? Was there adequate privacy for your call? Did you want to speak with a specific lawyer? Were you permitted to leave a message for the lawyer of your choice to call you at the police station?

If any of these issues arose during your arrest, you want to ensure you discuss this with your criminal lawyer.

CHAPTER 2

YOU ARE PRESUMED TO BE INNOCENT

Although it is extremely stressful and upsetting to be charged with a criminal offence, there is some good news. The law clearly states that even though you have been charged by the police, you are presumed to be innocent of the offence. The crown must prove the charge against you beyond a reasonable doubt. The crown must prove the case based on credible, reliable and admissible evidence. This is not an easy task for the crown. If the crown cannot prove the charge beyond a reasonable doubt, the court must dismiss the charge and you will continue to be innocent of the offence.

What is Proof Beyond a Reasonable Doubt?

Proof beyond a reasonable doubt means more than proof that the accused is "probably or likely guilty". If the court concludes only that you are probably guilty, you must be acquitted.

However, at the same time the crown does not need to prove the case to an absolute certainty. Generally, courts have held that the trial judge or jury must be "sure" that the accused committed the offence, otherwise the accused must be acquitted.

Can the Crown Prove a Guilty Act and a Guilty Mind?

There is no guilty act without a guilty mind.

In order to prove guilt, the crown must prove two parts for every criminal offence. The crown must prove an act (*actus reus*) was committed by you and that you had the criminal mental intention (*mens rea*) to commit the act.

To prove the guilty act, the crown must show:

a) an action (or omission of an action);

b) by a person with capacity;

c) in a voluntary manner;

d) which caused certain consequences.

If there is any reasonable doubt about whether these aspects of the act occurred, the court must find you not guilty. You do not need to testify or prove the act did not occur. You have the right to remain totally silent.

CHAPTER 3

UNDERSTANDING YOUR CRIMINAL CHARGES

When you were released from the police station, you received documents from the police that identify what exactly you were charged with. Sometimes you will have more than one criminal charge. Depending on the type of case, the following are examples of the wording of charges that you may see:

"Fraud Over Five Thousand Dollars" – This is section 380(1)(a) of the *Criminal Code*.

This charge is usually worded on your documents as follows:

> "William Jones between the months of January 2009 and January 2010 at the City of Ottawa and elsewhere in the Province of Ontario did by deceit, falsehood or other fraudulent means unlawfully defraud a bank of the sum of money exceeding five thousand dollars ($5,000.00) by fraudulently misusing the bank account number 123456".

"Income Tax Evasion" by understating income – This is section 239(1)(d) of the *Income Tax Act*.

This charge is typically worded as follows:

> "William Jones did between December 31, 2009 and July 1, 2010 at the City of Ottawa in the said region and elsewhere within the Province of Ontario wilfully evade or attempt to evade payment of federal taxes imposed by the *Income Tax Act* R.S.C. 1985, c. 1. (5th Supp.) as amended, in the amount of $125,525.52 by understating taxable income in William Jones' 2009 T1 Individual Income Tax Return and did thereby commit an offence contrary to paragraph 239(1)(d) of the *Income Tax Act*.

"Income Tax Evasion" by failing to report income – This is section 239(1)(a) of the *Income Tax Act*

This charge is typically worded as follows:

> "William Jones did between December 31, 2008 and July 1, 2009 at the City of Ottawa in the said region and elsewhere within the Province of Ontario make false or deceptive statements in William Jones' 2009 T1 Individual Income Tax Return for the taxation year 2008, filed as required by the *Income Tax Act* R.S.C. 1985, c. 1. (5th Supp.) as amended, by stating that his taxable income was $25,000.00 which statement was false or deceptive by reason of his failure to report additional income in the amount of $150,000.00 and did thereby commit an offence contrary to paragraph 239(1)(a) of the *Income Tax Act*.

"Goods and Services Tax Offences" by failing to remit G.S.T. – This is section 327(1)(c) of the *Excise Tax Act*.

This charge is typically worded as follows:

> "William Jones Services Incorporated and William Jones being an officer, director or agent of William Jones Services Incorporated did on or about July 1, 2010 at the City of Ottawa in the said region and elsewhere within the Province of Ontario wilfully evade the payment or remittance of taxes imposed by the *Excise Tax Act* R.S.C. 1985. Chapter E-15, as amended, in the amount of $56,988.99 by failing to report and remit the correct net Goods and Services tax in the Good and Services Returns of the said William Jones Services Incorporated for the 2009 calendar year, thereby committing and offence under paragraph 327(1)(c) of the *Excise Tax Act*.

"Impaired driving" — This is section 253(a) of the *Criminal Code*

This charge is usually worded on your documents as follows:

> "William Jones on or about the 1st day of August 2008 at the City of Ottawa, while his ability to operate a motor vehicle was impaired by alcohol or a drug, had the care or control of a motor vehicle, contrary to section 253(a) of the *Criminal Code*"

You can be charged with the impaired operation of a motor vehicle if the police believe your ability to drive is impaired — to any degree — as a result of drinking or drugs. This charge may be laid when the police have physical evidence of bad driving, slurred speech or indications that you are off balance**.**

"Over 80" — This is section 253(b) of the *Criminal Code*

This charge is usually worded on your documents as follows:

> "William Jones on or about the 1st day of August 2008 at the City of Ottawa, had the care or control of a motor vehicle, having consumed alcohol in such quantity that the concentration thereof in his blood exceeded 80 milligrams of blood, contrary to section 253(b) of the *Criminal Code*"

"Over 80" means the amount of alcohol in your blood measured by
a breath or blood test. The legal blood alcohol level in Canada is 80 milligrams of alcohol in 100 milliliters of blood. Anything above that is considered "Over 80".

Some people are charged with both Impaired Operation and the charge of Over 80.

"Refuse sample" - This is section 254(5) of the *Criminal Code*

This charge is usually worded on your documents as follows:

> "William Jones on or about the 1st day of August 2008 at the City of Ottawa, without reasonable excuse, failed or refused to comply with a demand made to him by a peace officer under section 254 (3) of the *Criminal Code* in the circumstances therein mentioned to provide then, or as soon thereafter as is practicable, such samples of his breath as in the opinion of the qualified technician referred to in section 254 of the *Criminal Code* are necessary to enable a proper analysis to be made in order to determine the concentration, if any, of alcohol in his blood, and to accompany the peace officer for the purpose of enabling such samples to be taken, contrary to section 254(5) of the *Criminal Code*"

Refusing to provide a suitable breath sample can result in this charge. It applies if you refuse to provide a breath sample into a roadside screening device or into a breathalyzer at the police station. The roadside screening device test is given to see if you are over the legal limit. If you fail this test, you will be asked to take a breath test at the police station that measures the amount of alcohol in your blood.

TYPES OF CRIMINAL OFFENCES

The *Criminal Code of Canada* sets out all of the specific criminal offences in Canada.

Indictable, Summary and Hybrid Offences

All criminal offences in Canada are classified as either indictable offences or offences punishable on summary conviction. Some criminal offences are called hybrid offences because they can be either indictable or summary conviction offences. Hybrid offences are offences where the crown has

the right to chose to prosecute either by indictment or summarily. If the offence is a hybrid offence, the crown will elect an indictable offence where the circumstances are more serious. The crown will elect summary where the circumstances are less serious. If the crown does not formally elect either indictable or summary conviction offence, all hybrid offences are deemed to be indictable.

These classifications matter to you because they determine your mode of trial (for example, jury or judge alone), appeal procedures and range of sentence.

Features of an Indictable Offence

Normally, a person charged with an indictable offence has the right to choose his or her mode of trial. You may choose to be tried in one of the following courts:

a) by a single judge of the Ontario Court of Justice (often referred to as the lower or first level of criminal trial court);

b) by a single judge of the Superior Court of Justice (often referred to as the higher or upper level of criminal trial court); or

c) by a judge and jury of the Superior Court of Justice.

The most serious criminal offences such as murder and treason must be tried by the Superior Court of Justice. In those cases, you do not get to make a selection. In addition, a murder case must be tried by a judge and jury in the Superior Court of Justice. A murder trial can only proceed without a jury if the crown attorney and the defence both agree not to have a jury.

A person charged with an indictable offence also typically has the right to a preliminary hearing. A preliminary hearing provides an opportunity for the criminal lawyer to examine the crown's witnesses before trial and, in some cases, to argue that the charges should be dismissed before trial.

Sentencing for Summary Offences versus Indictable Offences

Sentencing refers to the punishment imposed if you are found guilty.

Whether the offence is indictable or summary can affect the sentence imposed if you are convicted. Generally, indictable offences have a range of maximum sentences ranging from life imprisonment to fourteen years, ten years, five years or two years.

However, a person found guilty of a summary conviction offence is generally sentenced to a maximum of six months imprisonment (unless the *Criminal Code* specifically states otherwise) and/or to a maximum fine of $2,000.

Six Month Limitation Period for Summary Conviction Offences

Charges for most summary conviction offences must be laid within six months after the date of the alleged offence. This is important to keep in mind. You should discuss with your criminal lawyer the date of the alleged offence and whether or not the police may have missed the six month limitation period. Do not simply accept what the police or the crown attorney say about the date of the offence. They may have it wrong and you could benefit from this six-month limitation period. If you suspect that the police may have charged you past the 6 month limitation period, do not discuss it with the police, your friends or family. Keep this possibility to yourself and only discuss it with your criminal lawyer.

DISCLOSURE: THE CROWN/POLICE CASE AGAINST YOU

If you have attended remand court, or have spoken to your criminal lawyer, you will have heard the word "disclosure".

Disclosure is the process that entitles you to receive and review all of the evidence that the crown or the police have to support the charges against you. All information in the possession or control of the crown that is relevant to the

charges must be disclosed to your lawyer. The crown must disclose evidence that is either inculpatory or exculpatory. In other words, you have the right to get the evidence even if it hurts the crown's case and helps your case.

On the other hand, you never have to give disclosure to the crown. Generally, you and your lawyer do not need to disclose the evidence you gather to help your case. The crown must always provide complete disclosure. This is one of the most critical steps in the defence of your charges. It is critical that your criminal lawyer obtain complete disclosure from the crown and review the disclosure with you.

Generally, the courts require the crown to provide complete disclosure before the accused is required to plead or to elect the mode of trial. You cannot make an informed decision about how to proceed in your case without reviewing the crown disclosure and understanding the case against you. You should insist that the criminal lawyer you hire reviews all of the disclosure with you. This includes all police notes, witness statements, videotaped statements and any physical evidence. You should provide your criminal lawyer with your own assessment and opinion of the disclosure.

The crown's obligation to provide complete disclosure is based on the fact that the accused is entitled to make full answer and defence to the charges. The right to make full answer and defence can only occur if you know the complete case against you and know all of the evidence.

You should ask your lawyer if disclosure is complete. Often, disclosure is not complete and it is necessary for the criminal lawyer to write to the crown to request missing disclosure. No accused person should be forced to make decisions about the case until complete disclosure is received, reviewed and analyzed by you and your criminal lawyer.

WHAT IF DISCLOSURE IS NOT MADE BY THE CROWN

Similarly, no accused should be forced to set a trial date before having received and reviewed complete disclosure. Sometimes, if there is a problem with receiving complete

disclosure the criminal lawyer will conduct a pre-trial with a judge and the crown to try to resolve the problem. However, there can be circumstances where the crown may refuse to produce disclosure which the criminal lawyer believes must be disclosed. In these circumstances, the criminal lawyer has the right to go to court to ask a judge to make a court order to force the crown to deliver the disclosure. We have done this successfully in cases in the past and we have found that it turned out to be an advantage to the client.

The accused person does not have to pay in order to receive disclosure. The crown must provide complete disclosure to the accused free of charge.

Obtaining complete disclosure is an important component of your defence. A breach of the accused's right to obtain complete disclosure can be a breach of the accused's section 7 right under the *Charter*. The remedy for this type of *Charter* breach should be discussed with an experienced criminal lawyer. The remedies include obtaining order for disclosure, adjournments of court proceedings and even a "stay of proceedings" resulting in the dismissal of the charges. There can be problems in getting complete disclosure and in order to remedy the problem it is important that an experienced criminal lawyer take the appropriate steps.

CHAPTER 4

BAIL: GETTING RELEASED FROM CUSTODY

You have the right to apply for bail

Every person charged with a criminal offence has the right to apply for bail. This is another guaranteed right under the *Charter of Rights and Freedoms*. Section 11(e) of the *Charter* states that no person should be denied reasonable bail without just cause. Reasonable bail means that the terms or conditions of the person's release from custody must be reasonable.

When do you get to apply for bail?

A person arrested by the police must either be released or brought before a justice of the peace within twenty-four hours after arrest. The justice of the peace will then deal with the issue of your release or continued detention. The justice of the peace has the power to release the accused person, with or without conditions.

What type of evidence is heard at a bail hearing?

A bail hearing will proceed if the crown attorney does not agree that the accused can be released. The bail hearing can be heard by the justice of the peace. The justice of the peace can hear evidence about the alleged criminal activity and can determine if there is a suitable plan of release being proposed. Typically, the evidence heard in a bail hearing is subject to a publication ban so that it cannot be reported in the media. This is to protect your right to a fair trial.

The crown attorney can also lead evidence at the bail hearing about your criminal record. A prior criminal record can be an important factor in whether or not the court will release an accused person on bail. A person with a criminal record can be released on bail, but often it will require more stricter terms or

a sum of money to be pledged for bail.

Any accused person who is applying for bail should ensure that his or her criminal lawyer is fully apprised of any criminal record, however lengthy or dated. The criminal record will come out in open court. It will be a disadvantage to you if your criminal lawyer is not fully aware of the criminal record in advance. The criminal lawyer needs to know about any criminal record in advance because it will also impact on the plan of release that which the lawyer will recommend to the court. An accused with no criminal record will not need a plan of release which that is as strict or complex as an accused with a criminal record. If we get to court and there are surprises, bail may be denied and we will have to go back to the drawing board. This leads to unnecessary delay while you are in jail.

Is there always a bail hearing?

The police can release you directly from the police station without a bail hearing under three different arrangements. First, the police can release you if you enter into a "promise to appear". Where that happens, you will be given a formal document with a date and time for a court appearance. You will sign the promise to appear and agree to attend court as required.

The police can also release you directly from the police station if you enter into a "recognizance" in an amount not exceeding $500 without deposit.

The police can also require you to enter into an "undertaking" with one or more of the following conditions:

a) remain within a specified jurisdiction;

b) notify the police of any change in address, employment or occupation;

c) abstain from communicating with named persons and/or abstain from attending any specified address;

d) deposit passport;

e) abstain from possessing any firearms;

f) report to the police and sign in at the police station on specified dates;

g) abstain from the consumption of drugs or alcohol.

Follow your Conditions of Release!

It is critical that the accused strictly comply with each and every condition of release, whether the release is from the police station, on the consent of the crown or by court order. Failure to comply with release conditions can result in you being arrested on additional criminal charges and held for a contested bail hearing. It can be very difficult for an accused to be released again after being charged with failure to comply with release conditions.

It is important that you give your criminal lawyer a copy of the documents given to you by the police when you were released. Be sure to ask your criminal lawyer if you do not understand any of the terms. You should also discuss with your criminal lawyer any conditions that are overly onerous or impractical. For example, if a condition of release interferes with your ability to continue employment or school, your criminal lawyer may be able to have the condition changed.

Will I win my bail hearing?

The accused never has to testify at the bail hearing. In some circumstances the accused may testify, but cannot be asked about the offence in question unless the accused voluntarily gives evidence about the offence.

The rules of evidence are more relaxed at a bail hearing than they are in a criminal trial. Any credible or trustworthy evidence, including hearsay evidence, can be accepted by the bail court. Often the crown's evidence at a bail hearing is given by a police officer or can even be simply read to the court by

the crown attorney.

The crown or a police officer can simply tell the court what other witnesses have said without calling those witnesses to testify. This can be a disadvantage for the criminal lawyer because it can be difficult to challenge the evidence supporting the statements made by the police officer or crown attorney.

The bail court must decide on the release or detention of an accused person on three grounds. First, is detention necessary to ensure the accused will attend court to deal with the charges? On this question, the court wants to be confident that the accused will not leave the jurisdiction. It is important that you convey to your criminal lawyer all of your ties to the local community. For example, you should ensure your criminal lawyer knows about your family, dependents, length of time residing in the community, employment and other community responsibilities. All of these factors will help convince the court that you have every reason to remain in the jurisdiction and deal with the charges.

Second, the court will consider whether detention is required because the accused will likely commit further offences if released.

Third, the court will consider whether detention is required to maintain confidence in the administration of justice.

What if I am not successful at my bail hearing?

If an accused is denied bail and ordered to remain in custody, there is a right to appeal to a higher court and this procedure is commonly referred to as a bail review.

CHAPTER 5

GETTING YOUR CHARGES WITHDRAWN OR STAYED

When can the crown withdraw a charge?

The crown has the right to withdraw any criminal charge before an accused enters a plea in open court.

If the crown tries to relay the charge after the charge has been withdrawn, the court may intervene to ensure there is no abuse of process. This should be discussed with your criminal lawyer because any decision by the crown to prosecute after a charge was withdrawn may require a legal application to be brought before the court.

What about a stay of the charges?

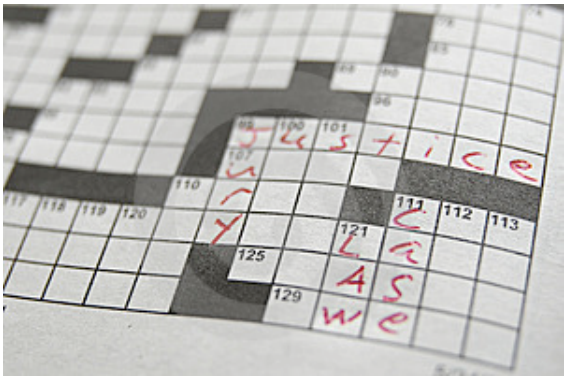
The crown may also stay the proceedings as of right at any time before a final judgment is rendered. A stay of proceedings stops the prosecution proceedings immediately. The court has no power to intervene to require the continuation of the prosecution. Once a stay of proceedings is entered, the accused can also automatically be released from detention.

A stay of proceedings is an excellent outcome for the accused. However, the crown does have the power to recommence the prosecution after a stay of proceedings has been entered. This is why you should discuss with your lawyer whether or not it is possible to obtain a withdrawal of charges rather than a stay of proceedings. Sometimes, an experienced criminal lawyer can persuade the crown to agree to withdraw the charges rather than entering a stay of proceedings.

CHAPTER 6

THE PRELIMINARY HEARING: IS THERE EVEN ENOUGH EVIDENCE AGAINST YOU?

Not every case will have a preliminary hearing. If you and your criminal lawyer decide that you will have a preliminary hearing, it will typically be the first formal court proceeding where the crown presents evidence to a judge to support the charges.



What happens at a preliminary hearing?

The main purpose of a preliminary hearing is to determine whether or not there is sufficient evidence to require you to stand trial.

Normally, the crown will call witnesses and tender evidence to establish that there is at least "some" minimal amount of evidence sufficient to proceed to trial. The criminal lawyer is entitled to challenge the evidence and argue that there is insufficient evidence to proceed to trial. The goal of the criminal lawyer is to argue that the charges should be dismissed for lack of evidence. Another goal is to cross-examine witnesses in order to secure evidence which helps prepare the defence for trial.

Another third important aim of the defence in a preliminary hearing is to pin crown witnesses down to their testimony. All of the evidence heard at the preliminary hearing is recorded by a court reporter and transcribed. This official transcript is an extremely important tool in defending your criminal charges. The transcript can then be used later to confront any witness who changes his or her testimony at trial. You would be surprised how often this happens. This can be critical to the success of your trial.

What happens after the preliminary hearing?

Any accused person preparing for trial should make sure that all transcripts are ordered and obtained. Once the transcripts are obtained, the accused should carefully review all of the transcripts and discuss the evidence privately with his or her criminal lawyer.

What are the judge's powers at the preliminary hearing?

The judge who hears the preliminary hearing has limited powers. The judge has no power to conclude that *Charter* rights were violated and therefore cannot make any orders under the *Charter*. As well, the judge cannot make a determination that any provision of the *Criminal Code* is unconstitutional. The judge has no power to make an order requiring the crown to provide disclosure to the accused. The judge does not have the power to assess credibility or weigh the evidence at the preliminary hearing.

The judge sitting at a preliminary hearing does have the power to grant adjournments, make orders that the evidence not be published, make rulings about the extent of cross-examination of witnesses and make rulings about the admissibility of evidence.

Either the crown or the accused can request that the judge hearing the preliminary hearing make an order which bans the

publication of the evidence in any newspaper. The purpose of such a publication ban is to prevent potential jurors in the local community from hearing evidence in the media and pre-judging a case that they may ultimately decide.

The criminal lawyer has the right to cross-examine the crown witnesses. The main goals of the defence cross-examination are to test the credibility and reliability of the crown's case, to obtain useful admissions for trial, to obtain full disclosure and to secure evidence to be used in *Charter* challenges at trial.

What are the possible outcomes of the preliminary hearing?

After hearing all of the evidence at the preliminary hearing, the judge will decide whether to order the accused to stand trial in the Superior Court of Justice or to order a discharge of the accused for lack of evidence. The judge at the preliminary hearing never makes any finding about guilt or innocence.

The legal test for ordering an accused to stand trial has a very low threshold. The test is whether or not there is <u>any</u> evidence upon which a reasonable jury, properly instructed, could return a verdict of guilty. At a preliminary hearing the crown does not have to prove the case beyond a reasonable doubt.

Do you have to attend the preliminary hearing?

Normally, the accused will be present in court for the preliminary hearing. The accused almost never testifies at the preliminary hearing. Although the defence has the right to call witnesses and lead evidence, it is normally only the crown that does so. The defence usually uses the preliminary hearing as an opportunity to learn more about the crown's case.

Why is a preliminary hearing so important?

The preliminary hearing is an important aspect of the defence of your case. It provides a unique opportunity to get the

charges dismissed entirely or at the very least allows for an opportunity to undermine and challenge the crown's evidence.

If the preliminary hearing is conducted properly and goes well for the defence, it can lead to some or all charges being withdrawn by the crown. At the very least the crown may realize that some or all of its case is weak and may agree to a favourable plea bargain. We have had charges withdrawn during or at the conclusion of the preliminary hearing because we were able to demonstrate through cross-examination how weak the crown's evidence was. This is, of course, a tremendous victory for the accused because it avoids the risk and expense of being forced to attend trial.

How do we prepare for the preliminary hearing?

It is important that you meet with your criminal lawyer well in advance of the preliminary hearing to fully prepare. You want to know what witnesses the crown will call and what the witnesses are expected to say in their testimony. You will want to equip your criminal lawyer with information about the witnesses and their anticipated evidence. Try to provide your criminal lawyer with information that helps your case and that can be confirmed by the crown witnesses at the preliminary hearing.

In some cases, we have hired private investigators to help us gather information to be used to confront witnesses at the preliminary hearing.

Do we always choose to have a preliminary hearing?

You should discuss with your criminal lawyer whether it is worth conducting a preliminary hearing. Sometimes, for strategic reasons, it is advisable to waive the preliminary hearing and to proceed straight to trial.

CHAPTER 7

PLEADING NOT GUILTY OR GUILTY IN COURT

Before the start of trial, the court clerk will read the charges in open court to the accused. This is called the "arraignment". The accused stands before the court with the criminal lawyer during this process.

Once the charges are read, you will be asked in open court how you wish to plead to each charge. You may plead guilty or not guilty (or very rarely one of the special pleas).

If you plead not guilty, the plea is recorded by the court clerk on a document referred to as the "Information". The Information is the charging document that will be before the court. The trial judge can then invite the crown attorney to call its first witness and the trial can commence.

If you plead guilty, the crown attorney will then read to the court a summary of the facts about what they say happened. The accused or the criminal lawyer will be asked if those facts are admitted. These admitted facts are necessary because the facts need to properly support the charge which the accused has pled guilty to. Ideally, the accused would only admit to the minimum number of facts which are required to meet the essential elements of the offence.

What if I Plead Guilty?

If you decide to plead guilty, it is very important that you review the facts with your criminal lawyer well in advance of pleading guilty in court. You should meet with your criminal lawyer to determine the scope of the facts that will be admitted. You should discuss with your criminal lawyer if it is possible to limit the number of aggravating facts which will be admitted. The facts which will be admitted on the plea can be the subject of negotiation between the criminal lawyer and the crown attorney. The scope of the admitted facts is very important because these are the facts that the judge will use

to decide to impose the appropriate sentence. It is also important to keep in mind that these admitted facts can be available to the public, and therefore, any employer, family member or person interested in the accused's case has access to these facts.

A guilty plea must be fully informed, voluntary and unequivocal. Therefore, if you decide to plead guilty to any criminal offence it is critical that you ask your criminal lawyer to explain all of the legal consequences. You must be certain that you understand the long term implications of the guilty plea. In fact, the judge may directly ask you a series of questions in open court to ensure that you fully understand the nature and consequences of your guilty plea, the voluntariness of your guilty plea and the fact that you will no longer have the right to a trial.

No accused person can or should admit to any facts that are not true. Sometimes, there are facts that the accused will not admit even though there may be a plea of guilt. In that instance, there is a procedure to require the crown to prove the facts that are in dispute.

No accused person can plead guilty or admit to facts unless it is done on a completely voluntary basis. The accused must fully understand that the plea is an admission of the essential elements of the offence, the nature and consequences of the plea and that the judge does not have to accept any sentence suggested by either the crown or the defence.

If the judge accepts the guilty plea and the accused admits to the facts read in court, the judge may make a finding of guilt. The judge can then hear submissions from the crown and defence about the sentence which should be imposed. The sentencing hearing can occur immediately or on a later court date.

Are guilty or not guilty the only pleas?

The *Criminal Code* allows a person charged with an offence to plead the special pleas of *autrefois acquits* or *autrefois convict*. These pleas are based on the principle that no person should

be placed in jeopardy twice for the same cause. In other words, if you have been prosecuted again on a charge already prosecuted, the accused can plead the previous conviction or acquittal as a complete defence to the second charge. The accused would have to prove that the facts or issues in both charges are the same.

CHAPTER 8

YOUR CRIMINAL TRIAL

Who has to prove what?

The crown always has the burden of proof in a criminal trial and therefore calls evidence first in every criminal trial. The crown has the power to decide what witnesses it will call and the order of the witnesses. The crown does not have to call every witness who appears in the disclosure or every witness who might know something about the case.

For this reason, it is important that you meet with your criminal lawyer in advance of trial to determine what witnesses the crown will call at trial. If a witness who is important to your defence is not going to be called by the crown, you need to discuss this with your criminal lawyer because it may be necessary to subpoena the witness. This can be important because if a witness necessary for your defence is not placed under subpoena, the witness may not attend your trial and you may be forced to proceed with your trial without the witness. If you have served the witness with a subpoena and the witness does not attend your trial, you have remedies available including a request for an adjournment and/or a request for a material witness warrant to have the witness brought to court. Keep in mind that you will need lead time before your trial date to have any subpoenas issued and served personally on all witnesses.

You should also discuss with your criminal lawyer whether or not witnesses important to your defence may have documents in their possession that are also helpful to your case. There is a mechanism to subpoena important documents to court.

Do you have to call evidence at your trial?

The accused has no obligation to call evidence or to provide any explanations at trial. Your criminal lawyer, in appropriate circumstances, can mount your defence simply by cross-examining the witnesses for the Crown.

When the crown calls a witness to testify at trial, the crown asks the witness open ended, non-leading questions first. This means that the crown can only asks questions like: What happened that night? Where did this occur? Who was present? What did you see?

When the crown is finished asking questions of the witness, your criminal lawyer has the right to cross-examine the witness. This is the opportunity for your criminal lawyer to question the crown witness in a way that is helpful to your case. Cross-examination is a critical right of the accused to make full answer and defence and is guaranteed by the *Criminal Code* and the *Charter*.

Cross-examination is at the root of the criminal justice system and is often considered the weapon for finding the truth. Although there are limits to cross-examination, it is such an important right in a criminal trial that most judges give considerable latitude to criminal lawyers in the conduct of cross-examinations.

Goals of cross-examination include weakening the crown's case, strengthening your case and discrediting witnesses. During cross-examination, the criminal lawyer may get the crown witness to agree with suggestions that help your case. This can be done with information that is contained in the crown disclosure or it can be done with information that only you and your lawyer know about. The criminal lawyer never has to share with the crown information to be used in cross-examination of a crown witness. This can be an advantage if done correctly because the witness and the crown may not be expecting the suggestion made by the criminal lawyer to the crown witness.

Another important goal of cross-examination is impeaching the

witnesses. If a witness gives evidence at trial that contradicts or differs from evidence given previously in a statement or at the preliminary hearing, the witness can be impeached and discredited.

Do not be surprised if at your trial the trial judge intervenes to ask witnesses questions. This is permitted and not uncommon.

At the close of the case for the crown, the criminal lawyer has the option to call evidence to contradict or minimize the crown's evidence or to not call any evidence. Witnesses called by the defence are examined in chief by defence counsel and then cross-examined by the crown.

Once all of the evidence is complete, the crown and the defence have the right to make a final argument to the court. Generally, the rule is that the criminal lawyer must present argument first, if the accused called evidence. If the accused called no evidence at the trial, the criminal lawyer has the right to make argument last. Sometimes, it is considered to be beneficial to "get the last word".

In a jury trial, the trial judge gives a final charge to the jury. The trial judge's charge is to assist the jury with understanding the factual issues and the law to be applied. The trial judge also asks the jury to consider all possible defences of the accused to the jury.

CHAPTER 9

COMMON LEGAL DEFENCES

If you are considering defending your charges at trial, you may have a positive defence. Here is a review of the more common defences.

Alibi

This is a defence that can be raised where the accused could not have committed the offence because he or she was not physically present at the location of the offence when it occurred. If the court concludes that the accused did not have the opportunity to commit the offence because he or she was elsewhere, the accused may be found not guilty.

If you maintain that you were elsewhere at the time of the offence, it is critical that this be discussed privately with an experienced criminal lawyer. This is important because it may be necessary to privately interview witnesses and secure evidence to confirm that you were at a location other than where the offence occurred. It is also important to discuss this privately with an experienced criminal lawyer because the lawyer will need to decide when and how to provide the necessary notice of the alibi to the crown. Although usually the defence does not have to disclose anything to the crown, the law does suggest that the crown and police should be given a reasonable opportunity to investigate any alibi defence. If this notice is not given, the alibi defence can be rejected by the court.

Provocation

This is a defence that is commonly misunderstood. Provocation can only be used to reduce the charge of murder to manslaughter. Provocation is not a defence to other

circumstances. Generally, the accused must have committed the offence "in the heat of passion caused by sudden provocation". It must be a wrongful act of such a nature that it would deprive an ordinary person of the ability to self-control. The accused must have acted suddenly before there was any time to consider the actions or to cool his or her passion.

Self- Defence

This is a defence that may be available to a person who committed the wrongful act but did so to prevent harm to him or herself, to others under their protection or to their property.

This defence is complicated and it is therefore critical that the accused discuss with an experienced criminal lawyer the circumstances of any possible defence of self-defence. Generally, there needs to be evidence of the "necessity" to have committed the act by using force and the force used needs to be "reasonable".

Automatism

This is a defence where the accused is in a state of impaired consciousness with no voluntary control over his or her actions.

Intoxication

Intoxication may render an accused's actions involuntary and therefore the accused may not have formed the mental intention to commit the offence. There are complicated issues surrounding whether or not the intoxication was voluntary or involuntary.

CHAPTER 10

SENTENCING

Sentencing in a criminal case is a human process and can be one of the most difficult procedures to conduct. It is very difficult to predict the outcome of a sentencing hearing.

The basic purpose of the criminal law is to protect society and individuals from personal injury and property damage. The main goal in sentencing a person convicted of a criminal offence is to promote just sanctions which will promote the protection of society and its individual members. More specifically, the *Criminal Code* sets out the goals of sentencing to be denunciation, deterrence, to separate offenders from society where necessary, rehabilitation, reparation to victims, and to promote offender responsibility.

How do you prepare for sentencing?

If you are facing an upcoming sentencing hearing, it is important that you understand and discuss with your criminal lawyer how each of these goals will be met. This is critical because the judge will want to be persuaded that the sentence proposed meets these goals. You should discuss with your criminal lawyer which documents, witnesses or other evidence will be presented in order to satisfy the court that these goals of sentencing will be met.

Ensure that your criminal lawyer has a full understanding about your background including your education, community involvement, medical history, family support and personal circumstances in your life that may have been present leading up to the commission of the offence. The sentencing judge will be trying to get a clear picture of you as a person and you will want to assist your criminal lawyer in conveying that picture in the best possible light. You can assist your lawyer by gathering information and reliable evidence about the positive aspects about you and your character.

During the sentencing hearing, the judge can ask you if you wish to say anything to the court. You should discuss this aspect of the process with your criminal lawyer.

What will be the outcome of the sentencing?

You should also make sure that you understand all of the terms of the sentence that your lawyer will ask for and all of the terms of the sentence the crown attorney will ask for. The law states that the sentencing judge does not have to accept the sentence proposed by either the criminal lawyer or the crown attorney. The sentencing judge can impose a sentence harsher or more lenient than the sentence proposed by either party.

Although all of these goals of sentencing should be considered, courts often focus on the goals of deterrence, rehabilitation and denunciation.

Deterrence is comprised of both general deterrence and specific deterrence. General deterrence is the idea that the sentence imposed in your case will discourage other potential offenders from committing a similar offence in the future. This is the goal of sentencing often referred to as the "need to bring the message to the community" about the consequences for committing crimes.

Specific deterrence, on the other hand, is the goal of preventing you personally from committing a similar offence in the future. The goal of specific deterrence is to reduce recidivism and repeat offenders.

The goal of rehabilitation allows the sentenced person to obtain education, skills or counseling which may be seen as the root cause of the criminal activity. For example, in alcohol or drug related offences, the sentencing judge may impose a term requiring the individual to attend and complete professional alcohol or drug assessment and counseling. The theory is that the offence was committed because the person abused alcohol or drugs and if the abuse is addressed, the person will no longer offend.

Denunciation as a goal of sentencing is becoming more important in sentencing decisions made by judges. Denunciation is the component of the sentence used to show condemnation of the offence. It is a somewhat symbolic statement (and therefore hard to quantify) of society's disgust or criticism of the conduct.

Are there other factors that will be considered?

The other major issue that must be considered by the sentencing judge is whether there are any aggravating or mitigating circumstances about the offence or the offender that should increase or decrease the sentence. For example, in a drinking and driving case, an accident and high blood alcohol content readings would be aggravating circumstances and could give rise to a harsher sentence. In a theft or fraud case, the offender's repayment of the monies involved may reduce the sentence imposed.

Whether or not an offender has any form of prior criminal record is a very important factor for the sentencing judge. If you have a criminal record, the crown attorney will most likely point it out to the judge at the sentencing hearing. If you have a criminal record, you should fully discuss with your criminal lawyer all of the circumstances of your previous convictions. This is important because although the judge will hear about your previous convictions, your lawyer may be able to point out extenuating or mitigating circumstances relating to the previous incidents.

Sometimes the criminal lawyer and the crown attorney agree on all of the terms of the sentence that the court should impose. This is commonly referred to as a "joint submission" because the defence and the crown jointly agree on the sentence. The sentencing judge is not legally required to accept the joint submission as presented. However, the law also states that the sentencing judge should not reject the joint submission of a sentence unless it is contrary to the public interest and it would bring the administration of justice into disrepute.

CHAPTER 11

APPEALS

An accused person who has been convicted at trial and/or sentenced after trial or a guilty plea has the right to appeal.

You should consult with a criminal lawyer about an appeal immediately after the conviction and sentence. There are short limitation periods for filing your Notice of Appeal that must be complied with in order to proceed with an appeal. If you miss these limitation periods the court can refuse your appeal. Even if you are not sure about carrying through with a full appeal, you should get legal advice and consider at least filing the Notice of Appeal to preserve your right of appeal while you decide.

The general role of the appeal court is to determine whether or not the trial court properly considered all of the evidence relating to the issues which led to the outcome of the trial. For example, if the record of the trial (as reflected in the trial transcripts) and the trial court's final reasons for judgment show that the judge did not consider or understand the evidence, the appeal court can reverse a trial decision. As well, if the trial judge considered certain evidence which the appeal court concludes should not have been admitted, the appeal can succeed.

Your criminal lawyer will normally need to order and review all of the transcripts from your trial before being able to give you an opinion on the legal grounds or chance of success of an appeal. No person convicted of an offence should assume that an appeal is not worth pursuing without getting legal advice.

BAIL PENDING APPEAL

A person convicted at trial and sentenced to jail, may request to be released on bail while they await the hearing of an appeal. Obviously, the purpose is to avoid a person serving a jail sentence needlessly if the appeal is successful and the person is ultimately acquitted months down the road. In deciding whether or not to release a person on bail pending appeal, the court will consider whether the appeal has any merit, whether the person will surrender into custody at a later date and whether detention is necessary in the public interest.

CHAPTER 12

PLEADING GUILTY

Should I just plead guilty now?

No. Here is why and how an experienced criminal lawyer can help.

There are at least two main reasons why you should not plead guilty without meeting with a lawyer:

- There may be circumstances in your case that could result in the charges being dropped outright before trial; or
- You may have several legal defences that could result in the charges being dismissed by the judge at trial.

It is almost a certainty that if you do not have a lawyer review the case properly, you will not get the charges dropped or dismissed. If you attend court on your own to plead guilty, the crown attorney will not likely look to see if there are reasons that your charges could be dropped. No one else will either.

An experienced criminal lawyer knows how to review the disclosure to determine if your *Charter* rights were violated. The crown attorney has a strict obligation to provide your lawyer with all of the evidence that may support or undermine the charges. Sometimes, evidence that may help your case is not provided by the crown attorney when it should be.
An experienced criminal lawyer diligently follows-up to ensure that the crown attorney provides complete disclosure. This can be crucial to your defence because there may be evidence which destroys the crown attorney's case. For example, your lawyer should insist that the crown attorney provide all video and audio recordings of you at the police station.

If the crown attorney does not disclose the evidence your lawyer requests, your lawyer can bring an application to the

trial judge asking for a remedy, including, in some circumstances, a request to have the charges against you dismissed.

Once your lawyer has the complete disclosure from the crown attorney, he or she must carefully investigate all of the evidence to determine whether or not it supports the charges. The lawyer will consider whether there is evidence that you were not involved in the alleged offence.

In many cases, an experienced criminal lawyer retains professional investigators to inspect physical evidence and to interview witnesses. This can prove to be invaluable information at your trial or in negotiations with the crown attorney.

Once your lawyer knows the weaknesses in the crown attorney's case, he or she will discuss your options with you. For example, the lawyer can show the crown attorney the problems with the case and try to encourage a favourable resolution for you, including that the charges be withdrawn.

CHAPTER 13

HOW YOU CAN HELP YOURSELF NOW

It is tempting to tell your family and friends the "whole story" leading to your arrest. Don't! Keep the details to yourself and only discuss them with your lawyer.

Make detailed notes including dates, times, conversations and what happened leading up to your arrest and provide them to your lawyer immediately. Try to make these notes as soon as possible after you are released from the police station while the events are still fresh in your mind. At the top of these notes write the title "Private, Privileged and Confidential Notes for the purpose of obtaining Legal Advice".

In your notes, record:

- what you were doing during the time or dates of the alleged offences;
- where you were and at what time;
- the names and telephone numbers of the people you were with;
- what documents you have that may be relevant to the charges;
- if relevant, what route(s) you may have travelled and stops you may have made;
- did you have a cell phone available;
- do you have your cell phone records;
- how you were stopped or met by the police;
- what the police said to you;
- what you said to the police;
- what procedures were followed by the police;
- how you got to the police station and what happened on the way to the police station;

- what was said to you about your right to obtain legal advice;
- who you contacted for legal advice; and
- any other details prior to your release from the station.

Do not share the notes with anyone, but bring them with you when you meet with your lawyer.

Keep all receipts, credit card statements and cell phone bills in relation to the day of your arrest.

CHAPTER 14

25 THINGS YOU NEED TO KNOW ABOUT DEFENDING YOUR CRIMINAL CHARGES

Four essential facts that the crown attorney must prove before you can be found guilty of a criminal offence:

1. Your identification: The crown attorney must prove that you as the accused before the court is the person that actually committed the offence.
2. Jurisdiction: The crown attorney must prove that the offence occurred at a time and place which would give the crown attorney jurisdiction or authority to proceed against you in court.
3. Illegal acts or actions: The crown attorney must prove that an act (or actions) occurred which violated a specific provision of the *Criminal Code*.
4. "Guilty Mind": The crown attorney must prove that you had the mental intention to commit the specific offence for which you are charged.

Six things the crown attorney does not want you to know:

1. There are technical problems in proving the case, including the admissibility of the evidence.
2. The police made errors in processing you upon arrest or at the police station.
3. The police made errors by not properly fulfilling all of the technical requirements when obtaining your breath and/or blood sample.
4. The police errors may taint the evidence against you and the court may not be able to

accept that evidence.

5. If everyone insisted on their constitutional right to go to trial, the justice system would grind to a halt.
6. In some cases which require mandatory minimum sentences which are harsh, there is absolutely no risk in going to trial.

Five things that are crucial to your defence and the success of your case:

1. A thorough and critical review of the crown attorney's evidence.
2. A thorough investigation of the facts from your perspective and the perspective of any of your witnesses.
3. Skillful cross-examination at trial.
4. A thorough understanding of your *Charter* rights.
5. An experienced criminal lawyer.

Three ways the police officers' testimony can be discredited:

1. Inconsistent statements by the police officers involved in the arrest.
2. Failure on the part of the police officer to recollect important details of your case.
3. Failure to make important notations in the officer's notebook. For example, failure to record the time of the arrest and the time of the breathalyzer.

Two things you need to know before deciding to plead guilty or before going to trial:

1. How strong is the crown attorney's case against you?
2. What will be the implications of a conviction in your particular circumstances?

Five motions that should be considered in your case, and the danger to you if they are not:

1. Motion to exclude evidence on the ground that you were unconstitutionally detained.
2. Motion to exclude evidence on the grounds that there was an unconstitutional search and seizure.
3. Motion to exclude statements for failure to advise you of your right to remain silent and your right to consult a lawyer.
4. Motion for disclosure of all of the crown attorney's evidence.
5. Motion to dismiss the charges for unreasonable delay because the case is taking too long to get to trial.

If these motions are not filed by an experienced criminal lawyer, your case may not be dismissed when it should be. If your case is not dismissed when it should be, you may be found guilty and suffer great jeopardy. Plain and simple.

CHAPTER 15

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The *Canadian Charter of Rights and Freedoms* is part of our Canadian Constitution and is law.

The *Charter* protects every person in Canada from unlawful actions by the Government. In a criminal case, any suspect or accused person is guaranteed many protections under the *Charter.* The following are eighteen ways the *Charter* protects you when you are charged with a criminal offence*:*

1. You have the right to remain silent.
2. You have the right to a lawyer, including the right to consult with that lawyer privately.
3. You have the right to a fair trial.
4. You have a right to a trial without un-reasonable delay.
5. You cannot be detained arbitrarily (except in some limited circumstances).
6. You cannot be detained without being brought before the court within twenty-four hours.
7. You have a right to a trial in French or English.
8. You cannot be subjected to an unreasonable search of person, your home or your car.
9. You have the right to know why you have been arrested.
10. You are presumed innocent until proven guilty.
11. You have the right not to testify against yourself.
12. You have the right to an interpreter in court.
13. You cannot be tried twice for the same

offence.

14. You have a right to an impartial tribunal.
15. You have a right to reasonable bail.
16. You have the right to be tried by judge and jury for many offences.
17. You cannot be convicted of an offence that is overly broad.
18. You cannot be convicted of an offence that is sexist, racist otherwise discriminatory.

What if your Charter rights are violated?

Evidence which was obtained as a result of your *Charter* rights being violated may be excluded from use against you at trial. If the evidence is excluded, there is no case and the charges will be dismissed!

If you are charged with an offence that violates the *Charter*, the offence and the charges with it, may be struck down.

If your trial was delayed too long the charges against you could be dismissed for unreasonable delay.

If the violation of your *Charter* rights brings the administration of justice into disrepute, evidence may be excluded or your charges may be dismissed.

Do these Charter remedies happen automatically?

No.

1. *Charter* remedies are usually only granted where the criminal lawyer files a formal written *Charter* application and asks the judge to hear the argument on the day of trial.
2. Your criminal lawyer must carefully review the file looking for *Charter* violations.

3. Your criminal lawyer must prepare, file and actually argue *Charter* motions before the trial judge.
4. Make sure your criminal lawyer knows the *Charter* and uses it to your full advantage.
5. Ask your criminal lawyer what motions he or she will bring on your behalf.
6. Ask your criminal lawyer whether he or she regularly brings *Charter* motions.
7. Ask your criminal lawyer whether he or she regularly wins *Charter* motions.
8.

CHAPTER 16

AM I GOING TO HAVE A CRIMINAL RECORD?

Not necessarily.

We have resolved many charges, out of court, where our clients do not end up with a criminal record.

How is this possible?

A critical review of the crown attorney's evidence by a skilled criminal lawyer can result in a withdrawal of your charges before trial. The crown attorney has an obligation not to proceed with charges against a person accused of a crime where there is no reasonable prospect of conviction. A criminal lawyer who takes the time to look at your file before proceeding to trial may be able to end the case at an early stage by highlighting to the crown attorney the deficiencies in the case.

The *Criminal Code* prescribes a number of sentencing options for many criminal offences. In some cases (not impaired driving cases), it is possible to receive an "absolute discharge" or a "conditional discharge" as a sentence. Where a discharge is ordered, a finding of guilt is made by the court, but no criminal record of conviction is entered.

Sometimes it is possible to resolve certain types of charges with a "peace bond." In many of these cases, the charges are actually withdrawn. In return, the client signs a time-limited bond agreeing to keep the peace and be of good behaviour. Sometimes a peace bond has other conditions, such as avoiding persons with criminal records or the person making the complaint that led to the criminal charge.

In many situations, we have successfully negotiated with the crown attorney to have clients enter a diversion program. For example, in the context of domestic assault, there may be an option to attend an anger management program. In certain situations, the charges against you may be dropped upon successful completion of the program.

CHAPTER 17

WHAT TO EXPECT WHEN YOU ARE CHARGED— PRACTICAL QUESTIONS AND ANSWERS

1. What happens at my first court appearance? Is it a trial date?

Our clients sometimes wonder if the "first appearance" date on their police documents is their trial date. No trial date is held on the first appearance court date. Often there are many appearances before even setting a trial date. Typically, trial dates are set to proceed many months after the date of the charges being laid.

The reasons for the multiple court appearances are to permit you to hire a lawyer, to permit the crown attorney to complete gathering the disclosure (evidence) and to provide it to you and your lawyer to review.

Your lawyer will need to review the disclosure to make a recommendation to you about the defences available and the likelihood of success at trial. Your lawyer also needs the disclosure to determine how long the trial will be. Be sure that you ask your lawyer if he or she has carefully studied all of the disclosure. You are entitled to review the disclosure with your lawyer and you should do so. Look for inconsistencies in the witnesses statements and tell your lawyer how your version of the events may differ.

2. Who attends the first court appearance?

We will generally attend court, or arrange to have an agent do so, on behalf of our clients. These attendances are generally referred to as "remands". In Ottawa, remands are held at 8:30 am in courtroom #5 of the Ottawa Court House. Other jurisdictions have their own schedules.

Depending on your release conditions, the type of charges and whether or not you have signed a "Designation of

Counsel", you may or may not have to accompany your criminal lawyer to court. In most instances, the client does not have to attend once we are hired. We will discuss whether you need to attend when we review your case with you.

3. What if I do not attend court when I am supposed to?

If you do not attend court and are not authorized to send a lawyer in your place, in most cases a warrant will be issued for your arrest. This must be avoided because you can be immediately arrested by the police and incarcerated.

4. Will I get a report from my lawyer after every court appearance?

Remand court usually lasts about one minute per client. If no
additional disclosure is received and no trial date is set, there is often nothing to report.

You can be assured that we will report to you at every significant juncture of your case. For example:

- When the crown attorney's disclosure is complete, we will contact you to arrange to meet and review the evidence;
- If we attend a meeting with the crown attorney or both the crown attorney and a judge, we will advise you of what was discussed, any plea offers made and any other details. We will also give you advice based on what was discussed at the pre-trial;
- If our own investigation requires your input, or anything significant is uncovered, we will advise you;
- If we have advice for you about treatment or other steps we feel you should take to improve

your position we will advise you, make the arrangements where appropriate and follow up with you in relation to these steps;

- If your trial date needs to be set, we will contact you to determine your availability; and
- Along the way, we will advise you of our views on the likely success of your defences at trial and assist you to make appropriate decisions to achieve the best possible outcome.

At other times, you can always call our office for an update.

5. Do I have to have my fingerprints taken?

If you are arrested for an indictable offence, the police will want to fingerprint and photograph you. It is likely they will schedule an appointment for you to be fingerprinted. If you are charged with bodily harm or death while operating a motor vehicle, you will likely be fingerprinted.

Carefully review the papers the police gave you at the police station. Often these papers contain a date for you to attend for fingerprinting. If you do not attend for the date noted, you may be arrested and charged.

Your fingerprints will be added to the Canadian Police Information Centre (CPIC).

If you are acquitted, discharged or the charges are stayed or withdrawn against you, you can apply to have these records destroyed.

6. In addition to my criminal charges, I was also given a ticket. Should I pay it?

Make sure your lawyer knows about any tickets you receive related to your criminal charges. You may have received liquor infraction tickets or a *Highway Traffic Act* ticket.

Your lawyer will provide advice to you about the best course of action. Often it makes sense to defend these charges as well.

Pleading guilty to these tickets or ignoring them because they seem insignificant can jeopardize your criminal case.

7. My teenage child was charged with impaired driving, should we bother with a lawyer?

There is a general misconception that criminal findings of guilt before adulthood have no impact once the person becomes an adult. This is false!

A young person's record does not cease to exist simply because the individual turned 18. If the person becomes an adult and re-offends before the "non-disclosure period" has passed, the young person's record can be used in court.

In addition, where the young person becomes an adult and tries to get a job there can be problems. If the job requires that a security clearance must be granted by the government, a youth's criminal record may be disclosed.

Private sector employers who wish to see the young person's record can make a formal request in youth court and convince the judge that they have a substantial interest in the record.

Further, some employers ask candidates to make a request to the police for their youth records (young people are able to access their own criminal record). In that situation, the candidates have a dilemma: they can agree to provide their record or they can refuse and let the employer assume the worst. While technically an employer is not supposed to ask these questions, it is a reality that they do.

Given what is at stake, and given that there are often effective ways to address criminal charges against a young person, it is important to ensure that your son or daughter has excellent legal representation.

8. What is a pre-trial and will I have one?

It is common for the criminal lawyer and the crown attorney to hold a pre-trial to discuss each case before a trial date is set. Sometimes these are face-to-face meetings, other times

they are telephone calls.

Pre-trials are usually informal and can be a useful tool for trying to persuade the crown to withdraw the charges. This requires preparation and compelling points to make about the weaknesses in the crown's case and the positive features about the accused as an individual.

If the pre-trial does not result in successfully persuading the crown to withdraw the charges, the pre-trial can be used to accomplish any or the following other objectives:

a) Negotiating a plea bargain or a resolution of the case that is acceptable to the accused and to the crown, without the need for a trial. Often this can be a plea of guilt to a charge that is less serious than the charge originally laid against the accused;

b) Where a trial will likely last a few days, a pre-trial with a judge is often required. Practical issues such as the length of time for trial and the number of issues and witnesses are discussed;

c) discussing and determining the length of a preliminary hearing or trial; and

d) resolving or narrowing the evidence which will be called at the preliminary hearing or trial.

The pre-trial judge may give an opinion of what he or she believes would be the likely outcome at trial. The pre-trial judge's opinion on the merits is not communicated to the trial judge and very useful to the defence and the crown in terms of trying to resolve the case.

Clients do not attend criminal pre-trials. It is important that the client and the criminal lawyer meet in advance of the pretrial in order to discuss strategy and goals for the pretrial. It is equally important that the client and the criminal lawyer meet after the pre-trial in order to review the crown's position, the judge's opinion on the matter and the options and strategies for going forward in the case. If the case is not resolved favourably soon after the pre-trial, the client and the

criminal lawyer will want to start planning for trial possibilities.

9. If I go to trial, will I have to testify?

A person accused of a crime does not have to testify at his or her own trial. You cannot be forced to testify at your own trial. Even the judge cannot force you to testify at your own trial. You have the legal right to not testify at your trial and you have the legal right to insist that the crown attorney prove the case without your assistance

However, there are times when the best chance for success at trial requires a client to testify. The decision about the client testifying
or not at trial is one of the most important decisions to be made.

This decision can dramatically impact the outcome of the trial. We use our experience to very carefully consider the decision about testifying or not. We give you our advice about whether or not you should or need to testify. However, in the end, the client always makes the final decision about testifying. If our advice is that you testify, we will spend the time necessary to help you prepare so that you will be comfortable and confident about testifying at your trial. Any person that testifies in court must tell the complete truth at all times.

Generally, the law states that if the accused testifies and is believed, the accused must be acquitted. If the accused testifies and is not believed but there is still a reasonable doubt left by the accused's testimony, the accused must be acquitted. If the accused testifies and the testimony does not raise a doubt, if all of the other evidence raises a reasonable doubt, the accused must be acquitted. The purpose of this law is to make sure the trial judge or jury is not left to choose between trying to decide to believe the accused or another witness.

10. What should I wear to court?

If you attend remand court, you should dress neatly and as conservatively as you can. You do not need to wear a suit, but you should not wear clothing that someone (like the Justice of the Peace) might find offensive. This is not the day to wear t-shirts with edgy slogans, marijuana leaves or gang colours.

Apart from religious headdress, it is not permitted to wear a hat in the courtroom.

For your trial, if at all possible, you should wear a clean conservative suit and, if you are a man, a tie.

If you do not have a suit and cannot borrow one, you should at least wear pants or a skirt (not denim) and a dress shirt or sweater.

11. I am innocent, why can't I just tell the police my side of the story?

Our experience tells us that clients generally do best when they are polite to the police but do not tell their side of the story at the police station, either before or after they are arrested. When the police show up, you are upset and not necessarily "at your best". If you are "innocent" and have things to say to help your case, wait to discuss this with your lawyer who will decide when and what to tell the police. If done correctly, there are techniques that can help make it a win-win situation for you!

There are times when our clients do talk to the police. However, before our clients engage in these types of discussions, we put arrangements in place to ensure that our clients can never be prejudiced by what is said.

If you have an alibi defence, we will disclose this defence to the crown attorney and police when the time is right.

It is an enormous risk to think you can talk your way out of trouble with the police. Our experience is that cases are more difficult, and more costly, to defend if the accused has spoken to the police.

12. I was released from custody with a curfew that conflicts with my work schedule, am I stuck?

It is often possible to vary bail conditions where there is a legitimate reason to do so. Sometimes the crown attorney will consent to the bail condition being changed. Other times there will be a contested hearing. Either way, a bail variation must be approved by the court.

It is important to follow your conditions until they are formally changed by the court. If you do not follow these conditions, you could be charged with breaching your conditions. A "breach" charge is another serious *Criminal Code* charge that could result in a criminal record and will often make it more difficult to resolve your case favourably. Breach of bail charges can result in your incarceration until trial.

13. If I am convicted, will I go to jail?

There are a wide range of sentences that can follow a criminal conviction. The type of sentence depends on the offence and the circumstances of the client. Some sentencing options are available for some offences but not others.

Sentences available in Canadian criminal courts include the following:

Absolute or Conditional Discharge

A discharge is an option available to a court when an individual pleads or is found guilty of certain offences. It is an option that serves as an alternative to convicting the offender. In other words, an offender who is discharged absolutely or with conditions is deemed not to have been convicted of the offence. Where the discharge is "conditional," the person must satisfy specific terms similar to a probation order.

Suspended Sentence

The court has the option to suspend the passing of sentence on an individual who has been convicted of an offence where there is no minimum punishment prescribed by law. In these cases the court considers the age and character of

the offender, the nature of the offence as well as the circumstances surrounding the commission of it.

Probation

Probation is a community sentence option available to the court. A term of adult probation usually accompanies a suspended sentence or a conditional discharge and results in an offender being subject to court ordered conditions to be adhered to as part of the sentence. The conditions are set out in the probation order and may include the requirement to report to a probation officer.

Restitution

There may also be an order for "restitution"—that is, the person must make a payment to someone and/or some organization that has suffered a loss because of his or her acts.

Fine

There can be an order made requiring the person to pay a fine upon conviction. This may be combined with other sentences.

Conditional Sentence

A conditional sentence is an option available to a sentencing court when an individual is convicted of an offence that does not call for a minimum term of imprisonment and the offence does not call for more than two years of imprisonment. The sentencing court can direct that the term of imprisonment be served in the community subject to the offender complying with a number of conditions.

This is often referred to as "house arrest" because the person is confined to their home, rather than a jail. We typically negotiate or ask the court to permit the person to leave their home for certain reasons such as employment, medical, religious or to purchase the necessities of life.

Intermittent Sentence

An "intermittent sentence" is a custody sentence option that permits the person to serve the sentence on weekends. This

can be advantageous because it can mean the client can keep his or her job or continue going to school. While in the community during the course of the sentence, the person is required to comply with the conditions of a probation order.

Custodial Sentence

This is a sentence that will be served in either a provincial or federal institution. Sentences of less than two years are served provincially. Longer sentences are served federally.

14. Am I eligible for a diversion program that will take me out of the criminal justice system?

Various alternative programs exist across Canada for persons accused of a crime. We can help you determine if you are eligible for one of these programs.

Examples of these programs include Restorative Justice, Drug Treatment Court and Young Persons Extrajudicial Sanctions.

Even where, strictly speaking, no established program applies, in appropriate cases we can successfully resolves charges in a way that does not involve criminal sanctions.

15. How much will my case cost in legal fees?

Every lawyer charges differently.

Your initial consultation with our firm, either by telephone conference or in person, is free.

In most cases we will ask you for an initial retainer (deposit) when you hire us. We will discuss the initial retainer with you during our first meeting.

Factors that affect the amount we request for fees are the complexity of the case and the amount of disclosure (evidence) we expect to receive from the crown attorney. For the most part, this relates to the types of charges.

If you wish, we will provide you with a fee quote to take the case to trial once we have received all of your disclosure. At that time, we are in a position to provide an accurate estimate

of what is involved in your case.

We understand that you probably did not budget for legal fees. For that reason, we will assist you with a payment plan to ensure that your fees are paid prior to trial.

16. Why is my case taking so long to get to trial?

It is nerve-wracking to wait until your trial date which is always months and sometimes years after the date of the alleged offences.

For less serious offences, requiring a one-day trial, it is not unusual for a trial date to be twelve months or more after the date the charges are laid. The delay is often caused by any of the following factors:

- The crown attorney is delayed in obtaining some or all of the evidence from the police;
- The police officers are unavailable for trial dates because they have other court commitments or are on leave at the time defence counsel is available;
- Scientific testing of evidence is delayed; and
- There are no judges available to hear your trial before a certain date because the courts are backlogged.

You do have a constitutional right to a trial without unreasonable delay. Whether the delay is unreasonable in your situation will depend on how long the wait has been, what the reason is for the delay and how serious or complex the charges are.

We keep careful watch over how long our matters take to go to trial. If the delay is unreasonable, we bring an application to the trial judge to enforce our clients' *Charter* rights.

17. I was convicted of a criminal offence in the past. Can I get a pardon?

Pardons are granted by the National Parole Board of Canada. Becoming eligible for a pardon depends on the type of offence you were charged with (summary or indictable) and the severity of the sentence imposed on you.

Currently, we understand that the pardon process can take from
eighteen months to thirty-six months from the period of eligibility due to backlog. As a result, it may be wise to begin the process as soon as you are eligible to do so.

For general information on the pardon process, see:
http://www.npb-cnlc.gc.ca/prdons/pardon-eng.shtml

18. How can I get a copy of my criminal record?

If you live in Ottawa and you want a copy of your criminal record, you should proceed through the Ottawa Police Service. The process is described on their website as follows: ***http://www.ottawapolice.ca/EN/ServingOttawa/RecordsChecks/index.aspx***

CHAPTER 18

TEN QUESTIONS TO ASK BEFORE YOU HIRE A CRIMINAL LAWYER TO DEFEND YOUR CRIMINAL CHARGES:

1. **How long have you been practicing?** Richard Auger has been defending accused persons' rights since 1997.
2. **Where were you trained?** Many criminal lawyers come out of law school and hang up their shingle. By contrast, Richard A u g e r was trained by the country's pre-eminent criminal lawyers including Eddie Greenspan.
3. **What is your win-loss ratio?** Fewer than 10% of our clientsend up with a criminal record. Very high percentages have t h e i r charges withdrawn or dismissed before the need to proceed with a trial.
4. **Will you push the envelope for me and my case?** Some lawyers encourage their clients to plead guilty when the going gets tough. Sometimes, that is the client's only recourse—but often there is another solution that takes more thought and effort. Richard Auger will take the time and spend the effort to get the best possible result, in every case.
5. **How much time will you spend preparing for my trial?** We know that cases are won by out-preparing the other side. If a point of law arises in your trial, you can be certain that we will have a thoroughly prepared case book to hand to the judge. In addition, we will know the facts better than the crown attorney, the police, the judge and the witnesses.
6. **Will you investigate my case?** There are many times when a case can be won by uncovering information or facts surrounding

your case that are not apparent from the file provided by the crown attorney's office. Where appropriate we will hire private investigators, handwriting experts, polygraph technicians, toxicologists and other experts required to defend your case properly.

7. **What kind of trial lawyer are you?** We are fierce cross-examiners who are well-versed in the law of evidence and the substantive criminal law. Richard Auger teaches trialadvocacy to law students at the University of Ottawa, Faculty of Law.

8. **Do you accept payment plans?** We understand that you probably were not planning to be charged criminally. We will discuss payment arrangements with you and we will be as clear as possible about what your case will cost.

9. **I am charged outside of Ottawa, will you still handle my case?** We regularly handle cases in Perth, Gatineau, Cornwall, Pembroke, L'Orignal, Brockville, Kingston, Peterborough, Toronto and many other places in Ontario

10. **Do you handle appeals?** Yes. We have successfully argued appeals on cases lost by other criminal lawyers.

CHAPTER 19

OUR THIRTEEN-PART CLIENT SERVICES GUARANTEE

When you hire our services, we promise you will receive…

Answers to Your Questions. Before you make an important decision, you want information. This includes not only a general understanding of your problem, but also answers to specific questions. We have dedicated our law practice to helping people understand their problems and the solutions we can provide. The basis of this understanding is having a lawyer who will respond accurately and completely to your questions and concerns.

Close Personal Attention. We promise to provide you with the highest level of personal service, meet with you as often as you wish, and do everything possible to get you through the stressful court process.

Immediate Access. If we're in the office and available when you call, we promise we will speak with you immediately. If we're out of the office or with a client, we will return your call as soon as possible. We do not screen calls based on who pays the highest fees or who demands the most attention.

Prompt Return Calls. We promise we will make every effort to return your phone calls promptly. If we are tied up and can't return your call, we'll ask our legal assistant or law clerk to call you and set a time for our telephone appointment.

Quick Response to Your Requests. Whenever you need something from our office, please do not hesitate to call. If we're not available at that moment, feel free to ask our legal assistant or law clerk to help you. If they cannot fulfill your request, we'll handle it for you as soon as we're available.

Confidential Service. All legal services are performed by our experienced lawyers and legal staff. Our staff is trained in the importance of confidentiality and professionalism.

Convenient Appointments. We promise to set appointments at a time and place that are convenient for you. If, for some reason, our office is not convenient, we'll be happy to come to your office or home, if you prefer.

Time-Saving Telephone Conferences. We look for ways to help you save the time and expense of coming to our office. Speaking with you over the telephone is an efficient, effective way of getting answers to our questions. We have found that we can accomplish a lot on the phone without asking you to come to our office.

Current Knowledge. We work hard to maintain the highest level of knowledge in the areas of law in which we practice. We eagerly attend continuing legal education classes, seminars and workshops so you benefit from the latest knowledge in our areas of law.

Competent Services. The seminars and workshops we attend allow us to provide you with the latest information, most effective techniques, and most efficient methods so you receive the full legal protection the law allows.

Aggressive Representation. We have spent a large part of our legal careers in court. As a result, our opponents know we will not hesitate to take them to trial to get the results you deserve. This makes a big difference in how our opponents respond to our clients' cases.

Value in Every Respect. Our goal is to make sure you feel that the value you receive from us is always greater than our fee. While we can't guarantee our fees will always be low, we can guarantee that they will always be fair. We want you to receive more value from us than any other lawyer you know. And we'll work hard to make sure you do.

More Than You Expect. If you think of some way we can provide you with better service, or better meet your needs, please tell us how. Even though we work together on a specific file, we're not mind readers. If you have something troubling you — or if you have a concern or a problem — please discuss it with us. If we can help you, we will. And if we can't help you, we may know someone who can. A good lawyer-client

relationship deals with all types of problems, not just legal problems. So if something crosses your mind and you want our input, we'll be happy to help.

Defending All Criminal Charges in Ontario

Auger Hollingsworth has successfully defended many clients charged
with all criminal offences ranging from simple assault, to fraud and tax evasion to murder.

Call us at **(613**) **233-4529** so we can use our experience to help you.

MEET RICHARD AUGER

Richard Auger is a nationally respected criminal lawyer based in Ottawa. He is a founding partner in the law firm of Auger Hollingsworth. Richard is an aggressive, results-driven lawyer who achieves success for his clients.

Skilled Representation: Richard represents clients in the areas of impaired driving and white collar crime, as well as all other serious criminal charges.

Tough Reputation: Richard is well known for his meticulous preparation, his fearsome cross-examinations and his relentless research of the law. Court opponents know that if a point of law arises on a case, Richard will have a complete case book and detailed knowledge of the pertinent law in the area. Richard understands that many cases are won by "out-preparing" the other side.

With his background, expertise and success, Richard is a top-tier lawyer with a solid reputation. He has successfully grown his law practice through word-of-mouth referrals by satisfied clients. Significantly, a large number of Richard's clients have been referrals from other lawyers who appreciate that Richard will service their clients well.

Two Tough Areas: Early in his legal career, Richard honed his trial skills by representing hundreds of clients accused of committing crimes. Richard handles all aspects of criminal law, from bail hearings and reviews to preliminary inquiries,

trials and appeals. He aggressively represents clients in all types of high-profile cases, from multi-million dollar frauds and tax evasions to murder.

Unique Perspective: Since his call to the Ontario Bar in 1997, Richard has represented clients charged with a wide range of offences. Also, he has conducted countless administrative hearings and civil litigation trials. As a result, Richard is uniquely positioned among lawyers to respond to clients' needs in both the criminal and civil litigation arenas, where most lawyers limit their practices to one area or the other.

Nationwide Recognition: Richard gained national recognition when he represented a key witness at the Gomery Commission of Inquiry into the Sponsorship Program. Richard was among the youngest counsel to act for a major player at the Gomery Inquiry. His involvement with the Gomery Inquiry followed on the heels of his work on the high-profile Computer Leasing Inquiry in Toronto, where he also acted for a central figure. His representation of high-profile clients continued when he represented a central figure in the 2007-2008 Parliamentary Ethics Committee's study into the Mulroney-Schreiber matter and again at the Oliphant Commission on the same issue.

Media Presence: Richard is a legal authority who speaks to reporters often. Since the firm's inception, Richard has conducted more than a dozen media interviews, including an interview on CTV's "Canada AM". He has been quoted in every major newspaper, including *The Ottawa Citizen, The Globe and Mail, The National Post, The Montreal Gazette* and *The Toronto Star.* This level of exposure is unparalleled among professional service providers of Richard's seniority.

Education: In 1991, Richard earned his undergraduate Bachelor of Arts Honours Degree in Law/Psychology from Carleton University in Ottawa. In 1995, Richard earned an LL.B. (Bachelor of Laws Degree), graduating *Cum Laude* from the University of Ottawa, Faculty of Common Law. Richard was called to the Bar of Ontario in 1997.

Legal Training and Experience: Richard gained experience

as a lawyer by working in the well-known legal firms of McCarthy Tétrault LLP and Greenspan Partners. The exposure and access to Canada's leading civil and criminal practitioners provided him with unparalleled training in all aspects of litigation and are at the root of his success today. His tenure in these reputable firms also enabled him to develop keen preparation skills and sharpen his innate researching skills. Richard is a firm believer in continuous learning and is a regular participant in professional development seminars focused on enhancing his litigation skills, including the various annual criminal lawyer conferences.

Court Admissions and Representations: Richard has successfully represented clients at all levels of court in Ontario, including the Ontario Court of Justice, the Superior Court of Justice, the Ontario Court of Appeal, Federal Court, Commissions of Inquiry and numerous administrative tribunals. He works regularly as an agent for cases at the Supreme Court of Canada.

Bar and Lawyer Group Memberships: Richard is a member of the Law Society of Upper Canada, the Advocates' Society, the Ontario Trial Lawyers' Association, the Criminal Lawyers' Association, the Canadian Bar Association, the Defence Counsel Association of Ottawa and the County of Carleton Law Association.

Commitment to Teaching and Legal Writing: Richard is an adjunct professor of law in the Faculty of Law at the University of Ottawa. Richard coached and mentored the University of Ottawa's Arnup Cup team for a number of years. The Arnup Cup is Ontario's premier trial advocacy moot court competition for the six Ontario law schools. Richard's team won the Arnup Cup in February 2006 and placed third at the national level competition, the Sopinka Cup, in March 2006. Richard is rewarded by sharing his knowledge and experience with students and contributing to their professional development. Richard is an associate editor of *Ontario Civil Practice 2008, 2009, 2010* as well as the upcoming 2011 version, the legal reference Bible used by all civil litigators in Ontario.

Charitable Organizations and Contributions: Richard is a member of the President's Council of the Ottawa Hospital Foundation. He joined the Legal Pursuit Team of the Foundation's $100 million Legacy Campaign to raise funds for facilities upgrades, new equipment, leading-edge medical research and ongoing education.

In addition, Richard is a regular supporter of a number of charitable organizations, including the Multiple Sclerosis Society, the Canadian Cancer Society, United Way, Canadian Paraplegic Association Ontario and the Ottawa Food Bank.

YOU'RE INVITED TO CALL OR E-MAIL!

"If you or a family member has been charged with a criminal offence, please don't hesitate to call. I will gladly speak with you over the telephone or in person, whichever you prefer — without cost or obligation. You're welcome to call me anytime. I promise I'll do everything I can to help you."—Richard

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FROM ANYWHERE IN ONTARIO

GLOSSARY

Alibi: This is a defence that can be raised where the accused could not have committed the offence because he or she was not physically present at the location of the offence when it occurred.

Absolute or Conditional Discharge: where a discharge is ordered, a finding of guilt is made by the court, but no criminal record of conviction is entered.

Aggravating or Mitigating Circumstances: factors about the offence or the offender that should increase or decrease the sentence.

Appearance Notice: a notice that includes the name of the accused, the criminal charge and the time, date and place where the accused must attend court and can require the accused to attend the police station on a certain date for fingerprinting.

Arraignment: before the start of trial, the court clerk will read the charges in open court to the accused.

***Autrefois Acquits* or *Autrefois Convict*:** pleas based on the principle that no person should be placed in jeopardy twice for the same cause. In other words, if you have been prosecuted again on a charge already prosecuted, the accused can plead the previous conviction or acquittal as a complete defence to the second charge. The accused would have to prove that the facts or issues in both charges are the same.

Bail: the right to release from custody guaranteed under the *Charter of Rights and Freedoms*. Section 11(e) of the *Charter* states that no person should be denied reasonable bail without just cause. Reasonable bail means that the terms or conditions of the person's must be reasonable.

Burden of Proof, The: The crown always has the burden of proof in a criminal trial and therefore calls evidence first in every criminal trial.

Charter of Rights and Freedoms, The: a bill of rights in the

Constitution of Canada that lists the basic rights of Canadians

Conditional Sentence: often "house arrest" because the person is confined to their home, rather than a jail.

Criminal Code of Canada, The: an act of Parliament that sets out all of the specific criminal offences in Canada.

Cross-examination: the opportunity for your criminal lawyer to question the crown witness in a way that is helpful to your case. Cross-examination is a critical right of the accused to make full answer and defence and is guaranteed by the *Criminal Code* and the *Charter*.

Disclosure: the process that entitles you to receive and review all of the evidence that the crown or the police have to support the charges against you.

Guilt: requires both a guilty act and a guilty mind (*actus reus*) was committed by you and that you had the criminal mental intention (*mens rea*)

Indictable Offence: a criminal offence punishable by a range of maximum sentences ranging from life imprisonment to 14 years, 10 years, 5 years or 2 years.

Information, The: the charging document that will be before the court.

Joint Submission: when the criminal lawyer and the crown attorney agree on all of the terms of the sentence that the court should impose.

Notice of Appeal: a document filed to change a legal decision

"Over 80": refers to the amount of alcohol in your blood measured by a breath or blood test. The legal blood alcohol level in Canada is 80 milligrams of alcohol in 100 milliliters of blood.

Peace Bond: an agreement whereby the client signs a time-limited

bond agreeing to keep the peace and be of good behaviour. Sometimes a peace bond has other conditions, such as avoiding persons with criminal records or the person making the complaint that led to the criminal charge.

Plea Bargaining: Negotiation discussions between the crown attorney and the defence lawyer in order to try to resolve a criminal case without proceeding to a full contested trial.

Preliminary hearing: typically the first formal court proceeding where the crown presents evidence to a judge to support the charges.

Probation: usually accompanies a suspended sentence or a conditional discharge and results in an offender being subject to court ordered conditions to be adhered to as part of the sentence.

Publication Ban: a ban on information about the court proceedings prevent potential jurors in the local community from hearing evidence in the media and pre-judging a case that they may ultimately decide.

Recognizance: when the police release you directly from the police station if you promise to appear in court at a later date or forfeit an amount not exceeding $500 without deposit.

Self-Defence: a defence that may be available to a person who committed the wrongful act but did so necessarily to prevent harm to him or herself, to others under their protection or to their property.

Stay of proceedings: a dismissal of the charges.

Subpoena: a court order for a person or document to appear in court.

Summary Conviction: a criminal offence generally punishable by a maximum of 6 months imprisonment (unless the *Criminal Code* specifically states otherwise) and/or to a maximum fine of $2,000.

NOT GUILTY!
FIGHT AND WIN YOUR CRIMINAL CHARGES

If you are charged with a criminal offence you probably have many questions about how the legal process will unfold. This book was developed to answer your questions and to equip you with the knowledge and information you need. Richard Auger is an experienced criminal defence lawyer who believes that people charged with criminal offences are entitled to receive this important information so that they can play an active role in fighting for their rights and feel less anxious about what lies ahead.

When it comes to your case, justice means demanding that the police follow proper procedures, only legally admissible evidence is presented at trial, and you are not convicted based on someone's opinion or prejudice.

Nineteen full chapters will inform and educate you so that you can be an active participant in your case. Topics covered in the 19 chapters include:

- What steps you can take right now to help defend your case;
- What happens when the police arrest you;
- Understanding your criminal charges;
- Why you should not just plead guilty to your criminal charges;
- Possible defences and strategies that can lead to your charges being dismissed;
- The legal and financial consequences of being found guilty;
- Whether or not you are going to have a criminal record; and
- What questions to ask before you hire a criminal lawyer to defend you.

The author draws on his extensive criminal defence experience to provide a step-by-step, plain language description from the initial charge stage to the completion of the proceedings in the criminal justice system, including sentencing. This book offers practical advice on the preparation of your case and how you and your lawyer can work together, starting immediately, to achieve the most successful outcome possible.

If you or someone you know has been charged with a criminal offence, this book could make a real difference in your life now and your future.

ISBN: