

A Survivor's Guide to Sexual Assault Prosecution



NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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Contact information

Department of Justice Victim Service Centres

Victim Services has 4 regional offices and operates 4 core programs. Victim Services also provides expertise and policy advice and develops special initiatives in response to the needs and concerns of victims of crime.

Dartmouth Centre

Serving Halifax, Dartmouth & Halifax County

Phone (902) 424-3307

Kentville Centre

*Serving Annapolis, Kings, Hants, Lunenburg, Queens,
Shelburne, Yarmouth & Digby Counties*

Phone (902) 679-6201

Toll free 1-800-565-1805

New Glasgow Centre

*Serving Pictou, Guysborough, Antigonish, Colchester
& Cumberland Counties*

Phone (902) 755-7110

Toll free 1-800-565-7912

Sydney Centre

Serving Cape Breton, Richmond, Inverness & Victoria Counties

Phone (902) 563-3655

Toll free 1-800-565-0071

To find support and counselling services in your area visit

<https://breakthesilencens.ca/where-to-get-help>

Department of Justice Victim Services

https://novascotia.ca/just/victim_Services/contact.asp



You have made a difficult decision and reported to police that you were sexually assaulted. The police have investigated and they have charged the person or people they think are responsible.

What should you do next?

As a sexual assault survivor, you will be referred to Victim Services at the Nova Scotia Department of Justice. If you are not referred, you should contact them directly. The role of Victim Services is to help and support you as your case moves through the criminal justice system. You can expect them to do these things:

- Give you general information about the police, prosecution, courts, and corrections.
- Give you information about your case.
- Help you contact the Crown Attorney.
- Help you prepare to testify in court.
- Help you prepare your Victim Impact Statement.
- Help you apply for Criminal Injuries Counselling if you think that's something that you want.
- Refer you to other agencies that may help you.

Where is the person or people police have charged?

Depending on the seriousness of the charge and whether a judge thinks the accused will run away, they may be home or in jail. If they are home, they must stay away from you or face going to jail.

How long will the whole court process take?

The length of your court case depends on 2 things:

- whether there is a realistic prospect of conviction



- whether the case is heard in Provincial Court or Supreme Court

The process should take between 18 and 30 months to complete.

DEFINITION

Accused – *the person or people the police have charged with sexually assaulting you.*

Realistic prospect of conviction

Throughout your case, the Crown Attorney assesses whether there is a realistic prospect of conviction. They continually assess whether there is enough evidence of the crime that a judge or jury, reasonably instructed in law, would be more likely to find the accused guilty than not guilty. If, at any time during the prosecution process, the Crown Attorney finds that there is NOT enough evidence to form a realistic prospect of conviction, they will withdraw the charges and end the case. They will explain this to you before it happens. This does NOT mean that the Crown Attorney does not believe you, or that they think the sexual assault did not happen. It means that they don't think they have enough evidence to prove that the accused is guilty of the crime with which they are charged beyond a reasonable doubt.

DEFINITION

Jury – *12 members of the public chosen to decide the outcome of a criminal trial. The jurors must all agree on the same verdict.*



You too can end your case. If you change your mind and decide you don't want to testify in court, unless there were witnesses to the assault, the Crown Attorney will likely conclude that there isn't enough evidence for a realistic prospect of conviction and end your case. You can choose to stop participating in your case at any time.

The Public Prosecution Service does NOT force anyone to continue with a case when they don't want to.

Crown Attorneys are also known as *Crown Prosecutors*, or *prosecutors*. They are lawyers who represent the public interest. While they may explain the prosecution process to you and even prepare you for your court appearance, they are NOT your lawyer. They may even disagree with you at times.

It is the Crown Attorney's job to present evidence fairly. They argue for a proper verdict based on the evidence. Crown Attorneys do NOT aim to win convictions.

A Crown Attorney may appeal a verdict of not guilty if they believe a judge made an error that led to that verdict. They may also appeal a sentence if they believe the sentence does not fit the crime.

DEFINITIONS

Verdict – the decision made by a judge or jury.

Sentence – the punishment given to a person found guilty of a crime.

Provincial Court or Supreme Court?

Depending on the seriousness of the charge, your case will be heard in either Provincial Court or Supreme



Court. If it is held in Provincial Court, the procedure should take no longer than 18 months to complete. If it is held in Supreme Court, the procedure should take no longer than 30 months to complete. The Crown Attorney will explain to you why your case is proceeding in Provincial Court or Supreme Court.

In Provincial Court, only a judge hears the case. There is no preliminary inquiry so you will only have to testify once.

DEFINITION

Preliminary inquiry –
*a hearing to decide
if there is enough
evidence to have
a trial.*

In Supreme Court, the accused can choose whether they want a judge to hear the case alone or whether they want it heard by a judge and jury. The accused can also ask for a preliminary inquiry. If they do this, you will have to testify twice, once at the preliminary inquiry and once at trial.

Read more about the preliminary inquiry in *Testify at the preliminary inquiry* and *Step 4: Preliminary inquiry*.

Do you need your own lawyer?

Most survivors of sexual assault do not have their own lawyers during a sexual assault prosecution. You may choose to have a lawyer for 2 reasons:

- to give you some legal advice
- to protect your private records



Free legal advice for sexual assault survivors

As a survivor of sexual assault, you have the right to 4 hours of free legal advice through the Nova Scotia Department of Justice. Just call 211 and say that you were sexually assaulted in Nova Scotia and you want to talk to a lawyer. This service is available to sexual assault survivors 16 years old or older and whose assault took place in Nova Scotia.

DEFINITIONS

Private records – *these records include medical, counselling, and school records as well as personal journals and diaries.*

Defence lawyer – *the lawyer who works for the accused in a criminal trial.*

Right to lawyer to protect private records

If the defence lawyer wants to put your private records into evidence, they must get permission from the judge to do so. The judge will only give permission if they think the information is relevant to your case. This happens in a separate and private hearing. If this becomes an issue in your case, the Crown Attorney will discuss it with you.

You have the right to have your own lawyer argue against putting your private records into evidence. Your own lawyer will represent you in this hearing and argue that this information is NOT relevant to the case. The government may pay for this lawyer. The Crown Attorney will also participate in this hearing.



Right to lawyer to protect sexual history

Before a defence lawyer can ask you about your sexual history, they must get permission from the judge to do so. The judge will only give permission if they think the information is relevant to your case. This happens in a separate and private hearing. The Crown Attorney will participate in this hearing.

There is currently a proposed law before Parliament that would allow you, as a sexual assault survivor, to have your own lawyer argue against allowing a defence lawyer to put your sexual history into evidence.

What will you have to pay for?

You will have to pay for your own lawyer should you choose to hire one. Other than that there are no fees for you to pay and there are no court costs.

If you have to travel to participate in your case, the government will pay for your travel expenses.

How are you expected to participate in your case?

The main way you are expected to participate is to testify at trial. You may have to testify at a preliminary inquiry. To prepare for both of these events, you will be expected to meet with the Crown Attorney.

What if you're uncomfortable speaking English?

If you are uncomfortable speaking English, translation services can be made available to you.



Meet with the Crown Attorney

You are expected to meet with the Crown Attorney so they can prepare you to testify in court. They will discuss the circumstances of your assault in detail and prepare you for questions that may be embarrassing or difficult to answer. They will also prepare you for the strong emotions you may feel as you tell the story of your assault. They will go over your testimony so that you are as comfortable as you can be telling your story.

You can expect the following from the Crown Attorney:

- that they will treat you with compassion and respect
- that they will explain the prosecution process to you
- that they will prepare you for every time you have to go to court
- that they will tell you how your case is proceeding

Testify at the preliminary inquiry

You are expected to testify at the preliminary inquiry if there is one. You are also expected to testify at the trial. We understand that this may be difficult for you. The accused will be in court when you testify. The Sheriff guards the accused so they cannot harm you.

Most sexual assault survivors testify in open court within view of the accused and the public but there are other ways to testify.

If you are under 18 or have a mental or physical disability

You **have the right** to testify outside the courtroom or from behind a screen so you don't have to see the accused.



You also **have the right** to have a support person at your side as you testify.

If you are 18 years old or older and you do NOT have a disability

You **may** be able to testify outside the courtroom or from behind a screen so you don't have to see the accused. You **may** also have a support person by your side as you testify. You may want to take advantage of these options if you feel they will help you to testify honestly, leaving nothing out. Ask the Crown Attorney about these options as you prepare to testify.

The Crown Attorney must ask the permission of the judge. The judge decides if this treatment is appropriate.

You can have a family member or support person sit in the courtroom with you as long as that person is not a witness.

Tell the truth; leave nothing out

When you testify, you are expected to tell the truth. This may sound obvious but you may be asked questions that you are embarrassed to answer. It is important to answer them clearly and truthfully and not leave anything out. The judge (and jury if there is one) needs to understand exactly what happened. You may be asked if you had been drinking or doing drugs when you were assaulted. You may be asked if you consented to some sexual activity. Answer those questions truthfully.

Drinking, doing drugs, or consenting to some sexual activity does NOT excuse a sexual assault.

If you tell the court that you were doing something illegal when you were assaulted, remember that the case is NOT about what you have done but about what the accused has done to you.



If you don't understand a question, tell the person asking it that you don't understand. Do NOT try to answer a question that you don't understand.

Testify at trial

Whether or not there is a preliminary inquiry, you have to testify at trial. The same rules about telling the truth and not leaving anything out apply to your trial testimony.

Who will be in court?

The courtroom is open to the public. You can expect these people to be there:

- your friends and family if you want them to be
- family and friends of the accused
- members of the media such as television, radio, and news reporters

Tell the Crown Attorney if anyone in the courtroom makes you uncomfortable.

Will your name be in the news?

No. At the arraignment, the first step in the prosecution process, the Crown Attorney will ask the judge for a publication ban on any information that could identify you. They may also ask for a publication ban on the name of the accused if that person is related to you. This way, the news media or anyone else is NOT allowed to publish your name or anything else that would let people know who you are. If you want to have your identity published, you can ask the judge to lift the publication ban.



PROSECUTION PROCESS

1

Arraignment

2

Bail hearing

only if the accused is in jail

3

Election

depends on the seriousness of the charge

4

Preliminary inquiry

only if the case is held in Supreme Court and the accused has NOT waived their right to a preliminary inquiry

5

Trial

only if there is a realistic prospect of conviction

6

Verdict

only if there is a trial

7

Sentencing

only if the accused pleads guilty or is found guilty

8

Appeal

only if the Crown Attorney or defence lawyer decides to appeal the verdict or sentence



These are the steps you are expected to participate in.

The steps listed here may not always occur in every case.



A step-by-step guide to the prosecution process

The steps in the prosecution process happen in this order. But it can take months between steps, particularly between the election and the preliminary inquiry, and between the preliminary inquiry and the trial. It can even take up to a month between the trial and the verdict. Finally, you can expect to wait one to two months after a verdict for the sentence. This is to allow for the preparation of pre-sentence reports.

The first 3 steps in the process concern only the accused. You may attend these hearings but you don't have to. You may have to ask someone from Victim Services at the Department of Justice when these hearings take place.

- **STEPS 1, 2, & 3:**
Arraignment, bail hearing, and election

Arraignment: The clerk of the court reads the charge aloud to the accused. The accused can plead guilty or not guilty at this time or wait for the police report.

Bail hearing: There is only a bail hearing if the accused was put in jail after they were arrested. At the bail hearing, the Crown Attorney tells the judge why they think the accused should stay in jail until the trial is over. The defence lawyer will argue why the accused should be freed. The judge decides whether the accused will stay in jail or be released with conditions. One of the conditions will be that the accused stay away from you.

Election: Depending on the seriousness of the charge, the accused may choose to be tried by a judge alone or by a judge and jury. This is called electing a court. (See: *Provincial Court or Supreme Court?*)



● STEP 4: Preliminary inquiry

This is the first time you will have to testify in court. This only happens if the case is heard in Supreme Court and the accused has chosen to have a preliminary inquiry. As mentioned earlier, the Crown Attorney will prepare you to testify. (See: *Meet with the Crown Attorney*)

The goal of the preliminary inquiry is for the judge to decide whether there is enough evidence to take the case to trial. The Crown Attorney presents their evidence. Your testimony is part of that evidence. The defence does NOT have to present evidence at this stage.

● STEP 5: Trial

If there is no preliminary inquiry, this is the only time you will have to testify in court.

The goal of the trial is to determine whether the evidence proves beyond a reasonable doubt that the accused is guilty of the charges. Our justice system presumes that all accused are innocent until they are proven guilty.

First, the Crown Attorney presents their evidence. Evidence includes witness testimony. Even if you gave a videotaped statement to police, you still have to testify in court. When you testify, you will be questioned by 2 people. The Crown Attorney will question you first; this is called direct examination. Then the defence lawyer will question you. This is called cross-examination. During cross-examination, the defence lawyer will try to raise doubts about your testimony. If the defence lawyer asks questions that are unfair or inappropriate, the Crown Attorney will object. Finally, the Crown Attorney may question you one more time; this is called redirect examination. If, when you testify, you are overcome with emotion, just ask the judge for a break. The judge will



stop the proceedings until you can continue. (See: *Tell the truth; leave nothing out*)

Your testimony may not be all the evidence the Crown Attorney presents. These are some of the other kinds of evidence that may be presented:

- witnesses other than yourself
- objects such as clothing, the results of a rape kit, or items belonging to the accused
- digital communications such as text messages, emails, and social media content

Once the Crown Attorney has presented all their evidence, the defence lawyer may present evidence including having other witnesses testify. The accused may or may not testify. You will NOT know what this evidence is until you see it in court.

Once both sides have finished presenting their evidence, each takes a turn to sum up the case. This is called closing arguments. When they have finished, the trial is over. The judge or the jury go away to think about the evidence and decide on a verdict.

● STEP 6: Verdict

Deciding on a verdict can take hours, days, or even weeks.

Judges and juries decide if the accused is guilty or not guilty. A verdict of not guilty does NOT mean that the judge or jury believes the sexual assault did not take place. Nor does it mean that the judge or jury believed the accused and didn't believe you. It means that, based on the evidence presented in court, the judge or jury has a reasonable doubt that the accused committed the crime for which they are charged. It may simply mean that after listening to all the evidence, the judge or jury isn't sure what happened. In this case, they must



give the benefit of the doubt to the accused. The Crown Attorney will discuss the verdict and the judge's reasons with you. Juries do not give reasons.

Hung jury

There is one more possible outcome if the trial takes place in front of a jury. The jurors may disagree on a verdict and tell the judge that they don't think they will ever agree. When that happens, it is called a hung jury. If this happens, the judge will order a new trial. At this point, the Crown Attorney will decide whether to go ahead with the new trial. If they do, there will be a new jury.

Not guilty verdict

When an accused is found not guilty, they are free to go. They cannot be tried for the same crime again unless a new trial is ordered.

Guilty verdict

When an accused is found guilty, the judge may sentence them right away but in most cases, the judge sets a new date for sentencing.

● **STEP 7: Sentencing**

A judge decides the sentence that will be given to the accused. Before this happens, the Crown Attorney will explain to you what kind of sentence to expect and why. The sentencing hearing may be weeks after the verdict. During this time, the Crown Attorney and the defence lawyer recommend the kind of sentence they think is appropriate. Sometimes they disagree and each presents their recommendations to the judge. Sometimes they agree and present a joint recommendation to the judge. It is up to you whether you want to attend this hearing or not.



Victim Impact Statement

One reason you may want to attend the sentencing hearing is that you have the chance to tell the judge how the sexual assault affected you. This is called a Victim Impact Statement. If you choose to make such a statement, you have to write it down and present it to the judge BEFORE the sentencing hearing. Victim Services can help you with this. At the hearing, your statement may be read out loud to the court by you or by the Crown Attorney. The statement does not have to be read aloud, you may simply file it with the court and the judge will take it into consideration. It's up to you.

● STEP 8: Appeal

Both the Crown Attorney and the defence lawyer have the right to appeal a verdict or sentence if they think the judge made a mistake in one of these areas:

- reasons for deciding a verdict
- reasons for deciding a sentence
- instructions to the jury

Lawyers must tell the court whether they intend to file an appeal within 30 days of the verdict or sentence.

DEFINITION

Appeal – request to a higher court to change a verdict, sentence, or other decision made by a lower court.



Stay strong

Reporting a sexual assault to police and participating in a criminal prosecution is NOT easy but it is important. You did the right thing in coming forward.

Remember that if the Crown Attorney ends the prosecution for any reason, or if your case ends in a not guilty verdict, it does NOT mean that you were not believed or that the people involved think the sexual assault did not happen. It simply means that there was not enough evidence to prove that the accused is guilty beyond a reasonable doubt of the crime with which they were charged. This may mean that the judge or jury found the evidence confusing and have a duty to give the accused the benefit of the doubt.

Remember too that there are people who will help you:

- the Crown Attorney
- Victim Services at the Department of Justice
- support and counselling services found at the website listed at the beginning of this brochure



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