**Trial Procedure Information**

**Ontario Courts**

**Case for the prosecution**

**i) Crown opening statement:** The judge might ask the Crown to give an overview of the allegations against you and the evidence to be called. This “opening statement” is not evidence.

**ii)  Examination-in-chief:** The Crown calls his or her witnesses first. The Crown will ask his or her witnesses questions in order to bring out evidence that supports the Crown’s case. This is called examination-in-chief. You have the right to object to questions asked by the Crown or evidence given by a witness that you believe are irrelevant or improper. It is generally improper to ask questions that suggest the answers (called “leading questions”) in examination-in-chief.  For example, it would be proper to ask a witness “What colour was the car?” It would be improper to ask “Was the car red?”

**iii)  Cross-examination:** Generally, you will be allowed to cross-examine each Crown witness after the Crown finishes the examination-in-chief of that witness.  When you cross-examine the Crown’s witnesses, you may ask them questions to test the reliability, accuracy or truth of what they have said.

You may also ask the Crown’s witnesses questions about things that you think might help your defence. The questions you ask of the witnesses in cross-examination will not be treated as evidence.  It is only the answers of the witnesses that are considered evidence. You may use the prior statement of a witness to show inconsistencies between what a witness has said at the trial and what the same witness said at some other time. If you believe an inconsistency exists and that your defence would benefit by bringing the inconsistency to the judge’s attention, you should ask the judge for direction about how to proceed.

You are not permitted to argue with witnesses. You are also not permitted at this stage of the trial to make statements about why you should be found not guilty. You are allowed to put your version of the events directly to the witness in cross-examination. Unlike in examination-in-chief, you are also allowed to suggest answers that will assist your case. For example, you may ask “Was the car red?”  instead of asking “What colour was the car?”  When you suggest facts to a witness, they can agree with all, part or none of your suggestions.

If you intend to call defence evidence that is different from what a Crown witness has told the court, you should suggest your version of the facts to that Crown witness during your cross-examination. This gives the witness a chance to agree or disagree with your version of the facts. If you don’t suggest your version of the facts to Crown witnesses, the judge may give less weight to your version or the Crown may be allowed to call the witness again in “reply”. (See below under “Crown reply”.)

You are entitled to ask the judge to see the notes of any Crown witness, and to use those notes while cross-examining the witness.  For example, you might want to cross-examine a witness about any inconsistencies between his or her notes and what he or she has said in the courtroom.

You will be allowed to cross-examine the Crown witnesses about whether they have a criminal record.

**iv)  Re-examination:** When you finish your cross-examination of a witness, the Crown might be allowed to re-examine that witness about anything new brought out in your cross-examination.

**v)  Notes of police and other Crown witnesses:**  The Crown might ask the judge whether a police officer or other witness may use his or her notes to refresh his or her memory while testifying. You are entitled to see the notes, and you may agree that the witness be allowed to use the notes, or you can ask the judge to make a ruling about this issue. If you do not agree that the witness should be allowed to use the notes, the judge will hold a mini-hearing during the trial (called a voir dire) to determine the issue. You will be allowed to ask questions to show the witness should not be allowed to refer to his or her notes by exploring when and how the notes were made, and the witness’s reasons for needing the notes.  You will also be allowed to make submissions explaining why the witness should not be permitted to refer to the notes.

**vi)  Statements you might have made to a police officer or other person in authority:** Sometimes the Crown will want to introduce evidence of a statement that you are alleged to have made to a police officer or other person in authority. The judge must be satisfied that you made the statement and the Crown must prove beyond a reasonable doubt that you did so voluntarily. These issues will be determined during a mini-hearing during the trial called a “voir dire“. You may ask the trial judge to explain the “voir dire” process to you before it starts.

**vii)  Hearsay:** A witness usually is not permitted to give evidence about what someone else said: this is “hearsay”. There are some exceptions to the rule against hearsay. For example, evidence about what someone else said usually is allowed to explain later conduct of a witness or to describe background events. Another, and important, exception is that the Crown can ask witnesses about statements they say you made.  You, however, may not ask witnesses what you said unless the Crown has asked them about it first (because doing so is considered self-serving).  There are also special rules to follow when the statement was made to a police officer or other person in authority (see above).

**Close of Crown’s case**After the Crown has finished calling all of his or her evidence and has “closed” the case for the Crown, you will have the following options:

(i) You may move for a “directed verdict” of acquittal. This means that you are asking the judge to dismiss some or all of the charges at this stage because there is no evidence in relation to at least one of the essential elements of the offence that the Crown must prove. If you move for a directed verdict and the judge rules against you, you will then be allowed to decide whether or not to call a defence. If the judge rules for you, you will be acquitted.

(ii) You may decide not to call evidence in defence and not to testify in your own defence. If you choose not to testify and not to call any witnesses, the judge will decide the case based only on the evidence presented during the Crown’s case. At this point, you will be convicted only if the judge finds that every essential element of the offence has been proven beyond a reasonable doubt.

(iii) You may decide to call evidence in defence

**Calling a defence**You have the right to remain silent: you do not have to testify or call defence witnesses. If you choose to call a defence, your defence evidence may be your testimony or testimony from your witnesses or both. As well, you may wish to file evidence such as documents, diagrams, or photographs. If you call defence witnesses, the examination-in-chief, cross-examination and re-examination processes described above also apply to your defence witnesses. The Crown will be allowed to cross-examine your witnesses, not just about their evidence but also about whether they have a criminal record. These rules apply to you as well if you choose to testify.

**Crown reply (also known as “rebuttal”)**If you call defence evidence, the Crown might be allowed to call reply evidence if your evidence has raised some new matter or defence that the Crown had no opportunity to deal with earlier in the trial and could not reasonably have anticipated.

**Closing submissions**After all the evidence is presented, the judge will give you and the Crown an opportunity to make closing submissions about why you should be found not guilty or guilty. Closing submissions must be based on evidence that the trial judge heard during the trial from either a Crown or defence witness (including you if you chose to testify), and inferences that can be drawn from this evidence. You will not be permitted to give evidence as part of your submissions: If you want to testify about your version of the events, you must do so during the defence part of the trial (see above “Calling a defence”).

**Judgment**The judge will find you not guilty or guilty, either immediately or after an adjournment to later in the same day or even to another day. The judge has an obligation in every case to provide clear and meaningful reasons for judgment, explaining the basis upon which the case was decided either for or against you.

**Sentencing**If you are found guilty, the judge may sentence you immediately or adjourn sentencing to another date. The sentence for a criminal offence can include a discharge, a fine, probation, jail, and other orders.  It is up to the judge to decide what sentence to impose and he or she may impose a sentence different than what you or the Crown suggest independently or as a joint submission, and can also order a jail sentence even if the Crown has not asked for this.

Before you are sentenced, the judge will hold a sentence hearing at which you and the Crown will have the opportunity to tell the judge what you think the appropriate sentence should be and why.  You are entitled to call evidence and make submissions at your sentencing hearing.  A judge must take into account the circumstances of aboriginal offenders when considering the appropriate sentence. The judge may order a Pre-Sentence Report before passing sentence. These reports usually take about six weeks to complete and your sentencing may be delayed for this time. The Crown may also file a Victim Impact Statement at your sentencing.