

PARENTS GLOSSARY

LEGAL TERMS

Absolute Discharge

A court decision in the best interest of the accused and not contrary to the public interest, a person who has been found guilty or has pleaded guilty may be discharged by that court without conditions.

Acquittal

The legal and formal certification of the innocence of a person who has been charged with a crime. A release or clearance from a charge of an offence by process of trial at law. For statistical purposes dismissed is regarded as a synonym.

Adjournment

The postponement of a hearing or court sitting, usually because the scheduled proceedings were not completed or ready to proceed, and usually to be a specified time and date.

Adjourned Sine Die

The postponement of a court hearing – but the time and date is not specified, and is usually arranged later.

Affirmation

A solemn declaration allowed to be made instead of an oath.

Appeal

The removal of a case, or of some proceeding in a case, from an inferior to a superior court for review.

Summary Conviction:

- conviction – Queen’s Bench
- stated case – Court of Appeal
- only one, not both

Indictable:

- conviction – Court of Appeal
- sentence – Court of Appeal
- both



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Appearance Notice

A written notice issued by a peace officer to a person alleging the commission of a crime and requiring that person to attend court at a specified time and date for hearing. In addition, it may direct a person to appear at a police station to be fingerprinted and photographed. It can only be issued where the power of arrest without a warrant exists.

Arraignment

The procedure whereby the accused is brought before the court to plead to the criminal charge in the Indictment (formal accusation charging a person with a crime) or Information (substance of the charge).

Arrest Warrant

The legal document authorizing those to whom it is addressed to apprehend a person and compel that person to return to custody with the arresting officer.

Bail Application

An application before a Judge, giving particulars of the offence, the accused past appearance record, and record of conviction, whereby the Judge exercises his judicial discretion in the accused candidacy for bail, (e.g. held in custody pending trial; or released).

Bench Warrant

Process issued by the court for the arrest of an accused who does not appear for trial as required or to bring in a witness who does not obey the subpoena or a juror who does not obey a summons.

Commit (for Trial)

To officially consign an accused person for trial as a result of a preliminary hearing of the charges.

Concurrent Sentence

A sentence which allows the convicted prisoner the privilege of serving simultaneously, two or more sentences; the length of sentence being determined by the longest sentence imposed.



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Conditional Discharge

Where a court decides that in the best interest of the accused and not contrary to public interest, a person who is found guilty or pleads guilty, may be discharged by the court on certain terms and conditions as set forth in the order. If all conditions are met the record is expunged and there is no criminal record.

Conditional Sentence

Where a court would normally impose a sentence of incarceration but is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing. The court would order the offender to serve the sentence in the community subject to the offender's complying with the conditions set out in the conditional sentence order. The CSO results in a criminal record. If the offender does not abide by the conditions set out in the Order, the offender may be breached.

Consecutive Sentence

Two or more sentences to be served, one immediately following the other.

Conviction

The result of a criminal trial, which ends in a judgement or sentence, that the accused is guilty as charged.

Discharge

The court order by which a person held to answer a criminal charge is set free.

Conditional: the relief of an obligation or responsibility based on some condition, the failure of which defeats the release (e.g. charges are withheld pending the conditions of release).

Absolute: complete; perfect; final; without any condition or encumbrance (charges are dropped completely without qualification or condition).

Dismiss

To refuse further court hearing. To refuse to commit a charge for trial.

Election

An election is the legal term for a choice. An accused often has an election, or choice, about which level of court he wishes to be tried in. The Crown sometimes has an election about which procedure it will use (e.g. by way of Summary Conviction or by way of Indictment).



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Habeas Corpus

Known as the great writ and means you have the body. The writ or order is used to bring a prisoner before a court to inquire whether their confinement is lawful. The right of habeas corpus is a protection against unjust imprisonment.

Incarcerate

Imprison; confinement in a jail or penitentiary.

Included Offence

In criminal law, a crime which is part of another crime; (e.g. included offence of first degree murder is second degree murder).

Indictable Offence

Subject to being indicted. An offence, the nature of which is proper or necessary to be prosecuted by process of indictment — a charge, which must be proved at trial beyond a reasonable doubt before a defendant may be convicted.

Indictment

A written accusation of crime against one or more persons which has been preferred by the Crown and presented upon oath after a person has been committed for trial by a provincial court or trial has been preferred by the Attorney General.

Information

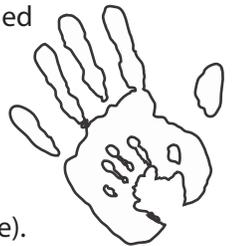
A written complaint upon oath by someone (usually a police officer) stating that he has personal knowledge or reasonable cause to believe that a person has committed an offence.

Judgement

The decision or sentence of a court in a legal proceeding.

Jurisdiction

Jurisdiction means the limits of the authority of any court, whether defined territorially (limited to cases arising or persons residing within a defined county or judicial district), according to the class or subject of cases to be decided or according to the type of persons involved. The unconditional right of a magistrate to adjudicate without the consent of the accused in specific criminal code cases is referred to as absolute jurisdiction.



Magistrate

Minor officials or officers with limited judicial authority (i.e justices of the peace, or Provincial Court Judge).



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Manslaughter

Culpable homicide committed in the heat of passion caused by sudden provocation.

Mens Rea

An evil intention – guilty mind.

Murder – First Degree

Culpable homicide when it is planned and deliberate or the victim is a person employed for the preservation and maintenance of the public peace. A permanent employee of a prison who is acting in the course of his duties, a person employed at work or if the death results from committing or attempting to commit designated Criminal Code offences. Also, if a person charged has been previously convicted of either first or second-degree murder.

Murder – Second Degree

Culpable homicide that is not planned or deliberate or described as either manslaughter or first degree murder in the Criminal Code of Canada.

Oath

A requirement that a statement be made by a party before God to witness that all subsequent statements are true. A person with no religious beliefs may affirm as to the truth of all statements.

Pardon

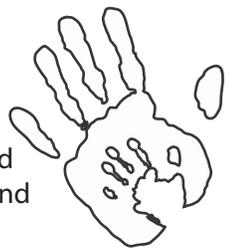
The crown's exemption of an individual from the punishment or part of punishment, which the law has inflicted on a crime committed. Upon the recommendation of the National Parole Board, the Governor in council may grant a pardon under the Criminal Records Act to any individual, which removes a particular offence from his criminal record.

Parole

To release a person from prison subject to certain conditions and penalty of return should he default; to report to a probation officer regularly.

Preliminary Inquiry (Hearing)

Is a hearing held before a Provincial Court Judge to determine whether there is sufficient evidence to justify the accused going to trial before a Superior Court Judge (in Court of Queens' Bench). It is only held in those indictable cases where the accused has chosen to be tried by a Superior Court Judge or Judge and Jury. If there is sufficient evidence, the accused is "committed for trial"; if there is not, he is "discharged".



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Probation Order

A formal court document requiring an offender to observe certain specified conditions and obligations, while remaining at large in the community, for a stipulated period of time.

Quash

To annul a law or decision or part of proceedings, which have been improperly carried out. To reject a writ or indictment as invalid. To stop completely legal proceedings. For statistical purposes “quashed” is regarded as withdrawn-dismissed when referring to legal proceedings.

Reasons for Judgement

Usually the written judgement given by a Judge after the conclusion of a trial.

Recognizance

Is a form filled out by an accused in order to secure his release. It is basically a promise to appear in court when required, combined with a written acknowledgement of a debt of a certain amount to the Crown. If the accused appears each time he is required to do so, the debt is wiped out. If he fails to appear, it can be collected.

Re-election

The act of reversing or changing the original choice of an alternative (e.g. from Judge and Jury to Judge alone).

Remand

To commit or recommit an accused person to custody until further legal proceedings are possible; to remit a prisoner, indictment, record, etc. back to the original court or judge for trial or other action as to a lower court from a higher one. An accused is said to be “on remand”. A case is said to be “remanded” until the proposed trial date.

Remand Warrant

A legal document issued by a court official (usually a Justice of the Peace) ordering a person charged with a stated offence to be held in custody until the trial date.

Seized With a Trial

A Judge has to continue with the trial; another Judge cannot take over the trial.



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Sentence

The order of the court made upon conviction; a term of imprisonment, probation, fine, penalty, forfeiture or other punishment imposed by a court on an individual.

Stay of Proceedings

A stoppage or suspension of a judicial proceeding before judgement has been handed down. The proceeding must be reinstated within a year if the charge is to be pursued. The Crown is dropping the charge.

Suspended Sentence

A deposition in which the court, having regard to the age and character of accused, the nature of the offence, may suspend the passing of sentence in cases resulting in conviction. An individual receiving a suspended sentence is released upon conditions prescribed in a probation order. A suspended sentence results in a criminal record.

Trial Record

A compilation of all pleadings in an action prepared for use by the Judge at trial.

Undertaking

An undertaking is a formal promise given by an accused to a Justice of the Peace that he will appear in Court when required. If an accused gives such an undertaking and is released, then he will be guilty of an offence if he unlawfully fails to appear.

Voir Dire

A trial within a trial. A preliminary examination of an issue by a judge in absence of the jury. It is commonly used to determine whether a statement of an accused made to the police is admissible in evidence.

Warrant of Committal

A legal document issued by a Court ordering a convicted person to a term of imprisonment for a specified period of time. The warrant may also order a payment of a fine with a term of imprisonment if the fine is not paid.



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