

You didn't get released – now what?

My professional life has been a bit challenging lately but I am starting to get some serious complaints about my failure to write the next chapter in the justice system story: “You didn't get released: now what?” In my life squeaky wheels get greased so here is the grease:

You will recall that you can be detained in custody if Justice of the Peace believes on the basis of evidence before him/her, that you will not show up for Court, that you will commit further offences or interfere with witnesses, or that releasing you would make the justice system look bad.

I should add that for most matters, it will be either a Territorial Court judge or a Justice of the Peace who will make the order keeping you in custody, however, for more serious offences like murder or alarming the Queen (yes this is an offence), the order has to be made by a Supreme Court judge. Generally, JPs and Judges are reluctant to keep legally innocent people in jail so there is normally a good reason for detention. When that is not the case, there is a form of appeal remedy.

When you do not get released at a show cause hearing, you end up waiting in jail until your matter is dealt with. You may decide that you want to fight the charges or you may decide you want to enter a guilty plea. No matter what course of action you decide to follow, you will be waiting behind bars. Normally this is referred to as being on remand or remanded.

It is unusual for men to be remanded to a correctional centre other than North Slave, but there are rare occasions when prisoners end up in Fort Smith or Hay River on remand. Women are generally remanded to the Women's Correctional Centre in Fort Smith.

After you consent to your detention (because you know you have no hope of release) or a Justice of the Peace decides that it is not safe to release you. The next step is an appearance in Territorial Court to set a date. Normally the objective is to try and get what is known as “disclosure” into the hands of defence counsel prior to the next

appearance for the accused.

Section 7 of the Charter of Rights and Freedoms guarantees that, absent unusual circumstances, a complete copy of the Crown's file (which is composed of almost everything the police have generated in the course of their investigation) is disclosed to the accused. That material is known as "disclosure". In French it is called "divulgation" which sounds like something related to a stomach ailment.

Two things happen in connection with disclosure 1) the Crown vets out personal information that might create problems if it ended up in the hands of the accused and 2) the Crown decides if it has a reasonable prospect of conviction.

If the Crown concludes that the case against the accused is so weak that it is not likely that the charges will be proven beyond a reasonable doubt, if the gaps cannot be filled, the Crown will stay or withdraw the charges.

It normally takes a week or so for police to turn the results of their investigation into something suitable to hand to the Crown. It then takes a week or so for the Crown to copy, inventory and vet the disclosure.

Given that the idea is to get the disclosure to counsel for the accused, these time constraints mean that the next appearance for an in-custody accused is normally 2 to 4 weeks after s/he is ordered detained.

What is likely to happen at that appearance?

The answer to this question is another FAQ sheet – What happens at your first appearance in Court?