

Your First Appearance - I've a feeling we're not in Kansas anymore Toto

A “first appearance” is the first time someone shows up in Territorial Court in respect of a particular charge. Regardless of how many first appearances you have had, Court always seems a bit strange. Legal terms, legal slang, legal outfits what does it all mean?

Is it so strange that you need to hire your own lawyer? Probably not - duty counsel, the lawyer who is going to be there thanks to the Legal Aid Commission, will likely be all that you need to get you through your first appearance.

Keep reading and you will learn most of what you need to know about your first appearance; duty counsel, courtesy of Legal Aid, will help you with the rest.

Don't panic!

The first thing you need to know about your first appearance is that regardless of what happens, the Court will always grant you a reasonable adjournment to figure out what you want to do in respect of your charges. You may only need a few days or you may need a few weeks. The Court will grant any reasonable request.

A number of things should happen at your first appearance – whether they actually happen depend on the specifics of your case, but, in theory, they **should** happen.

Crown Election:

The Crown should make its election. The most common of the offences that end up in criminal court are what is known as hybrid offences. That means that the Crown gets to “elect” or chose what procedure is going to be used and what maximum penalty is going to be in play.

Assault, for example, is a hybrid offence. If the Crown elects to proceed by what is called summary conviction procedure or “summarily” the maximum sentence you are exposed to is 6 month's jail. If the Crown decides to proceed by what is called indictment and you are convicted, you are looking at a maximum jail sentence of 5 years.

Assault causing bodily harm is another common charge. It has a maximum sentence of 18 months' jail, if the Crown proceeds summarily; if the Crown elects to proceed by indictment, however, the maximum sentence is 10 years.

In almost every case where the Crown proceeds by indictment, you have a right to a trial with a judge and jury and a preliminary hearing. Your choice is called the “defence election”.

Obviously, the Crown's election is a pretty important variable for you and with a view to letting you know where you stand, the Crown tries to make its election as quickly as possible. In the normal course, you should expect to know what the Crown election is at your first appearance.

Disclosure:

An even more important part of your first appearance is called “disclosure”.

Accused persons have a constitutional right to know all of the results of the police investigation that led to charges being laid. Whether it helps the Crown's case or hurts it, you have a right to a copy of everything in the possession of the Crown that relates to your matter. Generally speaking, the police give the Crown a copy of everything in their possession that relates to the case. The Crown creates an inventory of what they receive from the police, vets (removes some private details) the material and then “discloses” a copy of everything to the accused or his/her lawyer.

When I say everything, I mean everything – photographs, computer entries, police officer notes, witness statements, audio recordings, transcripts of audio recordings, you get it all. The idea behind this process is to give the accused an opportunity to assess the strength of the Crown's case. You always have a right to say “not guilty” which means “prove it” but if you have nothing to offer by way of a defence and the Crown's case looks strong “prove it” may not be the wisest approach.

Crown Position:

Another important thing (maybe the most important thing) you should expect from the

Crown at your first appearance is a Crown position (the start of plea bargaining). A Crown position is an indication, either in writing or by means of a discussion between duty counsel and the Crown, of what charges the Crown will drop and what penalty the Crown will seek if you plead guilty. The fact that the Crown is asking for a certain penalty does not mean that the Crown will get what it is asking for. It is a starting point for a discussion.

In thinking about its position, the Crown is also supposed to determine whether some form of diversion to a justice committee of special Court is a preferred alternative. It may be that if this is your first offence and it is minor in nature that you should be meeting with a justice committee and figuring out how to avoid this kind of foolishness in the future. Maybe Wellness Court or Domestic Violence (DVTO) Court is a better place to deal with your charges. At your first appearance, the Crown will usually tell you whether it is prepared to see your charge dealt with by way of an alternative to normal Territorial Court.

Don't forget, the Court will always grant you a reasonable adjournment to decide what you want to do with your charges so don't panic about any of this.

It takes some time to get disclosure together and, as a result, a first appearance date is going to be weeks (or maybe even months) away from the day you were charged but the delay, in the normal course, means that the Crown can provide disclosure, a position and make its election at your first appearance.

A first appearance may also involve some clean up. It may be that investigation subsequent to the laying of the charge, has produced information that suggests that the charge laid was too serious or not serious enough or that more charges should be laid. If the Crown wants to proceed on new or different charges, you will frequently learn about that at your first appearance too.

Finally, the Crown is always supposed to assess whether it has a reasonable prospect of conviction – if all of the witnesses show up and testify as they have told police they will, is it likely that a Court will convict the accused? It may be that having had a chance to review and think about the evidence collected by police, the Crown decides that it does

not have RPC for some or all of what brings you before the Court. If that is the case, the Crown may enter a stay of proceedings for some or all of the charges bringing some or all of the prosecution to a halt. Although if what is missing is subsequently found, it is possible to start things up again – that is rare.

In summary:

At your first appearance, the Crown will usually make its election and give you your disclosure, give you a position and make any amendments to the charges you face so that you know just how much trouble you are in or give you the happy news that you are not in as much trouble as you thought.

Do you need to pay a lawyer to help you?

Probably not - if you are prepared to accept some uncertainty. With duty counsel, you will likely have to wait until your first appearance to get this information. If you hire a lawyer, s/he may be able to obtain some of this information for you in advance of your first appearance.

Ultimately, you need to figure out 1) whether the Crown has a case, 2) what plea you should enter, 3) whether you wish to accept the Crown position, and 4) if available, what your election should be. You do not want to do this on your own. However, Legal Aid in the NWT operates a system of presumed eligibility – until you actually enter a not guilty plea, you are presumed to be eligible for **free** legal help.

Duty Counsel:

In the normal course, duty counsel will get a copy of your disclosure a week or so before Court along with a Crown position (although sometimes it is delivered by the Crown at your first appearance). Duty Counsel should be able to give you some advice about the disclosure and your charges and help you decide on plea and election. You should ask duty counsel to let you review your disclosure so that you know what lies ahead for you – read everything. Normally, disclosure is provided directly to duty counsel, but you have a right to review it yourself and if arrangements are made with the Crown, you can

get your own copy.

Further, if you decide that you want to plead guilty, duty counsel will help you get everything out of the way at your first appearance (if that is what you want) or help you enter a guilty plea at a later date and then ask that your sentencing hearing be adjourned to another date.

It may be that a pre-sentence report (detailing the events in your life that help explain where you are) would help the Court understand your history and to impose a sentence that takes your life into account. Duty counsel can help you enter your guilty plea and request a PSR for you. When the PSR is available (normally they take about 6 weeks to prepare) duty counsel will take care of you at your sentencing hearing.

Presumed eligibility ends, once you enter a not guilty plea. Legal Aid is not going to help you fight the charges unless you show that your income is such that you qualify for Legal Aid.

The bottom line is that there is free legal advice to help get you through your first appearance with the information you need to make a solid decision about where you are headed.

As I write and post them, there will be more FAQs dealing with:

- 1) Presentence Reports
- 2) A Sentencing Hearing
- 3) A Guilty Plea
- 4) Diversion
- 5) Alternate Courts
- 6) Defence Election