

## **MADD Canada - Glossary of Legal Terms**

If you are involved in any legal proceeding, you will probably hear terms you are not familiar with. Feel free to ask your lawyer or community legal worker the meaning of these terms. Following, however, is a list of definitions of common legal terms, which can help you to understand legal problems and procedures. Please note, these definitions are short and should not be relied on to conduct your legal affairs.

### **Absolute Discharge:**

An offender who receives an absolute discharge is deemed not to have been convicted of the offence. However, since the offender pleaded or was found guilty, he or she will still have a federal criminal record. A judge can only order a discharge if it is in the offender's best interests and not contrary to the public interest. A discharge cannot be given if the offence carries a minimum punishment or is punishable by imprisonment for 14 years or life.

### **Acquittal:**

A finding of not guilty in a criminal case.

### **Act:**

A law passed by Parliament or a provincial legislature. Also called a statute.

### **Action:**

A judicial proceeding in either civil or criminal law.

### **Adjournment:**

A temporary postponement of court.

### **Affidavit:**

A sworn, written declaration that a certain set of facts is true.

### **Affirmation:**

A non-religious oath given before testifying.

### **Allege:**

To suggest that something is true without necessarily being able to prove it.

### **Appeal:**

Examination by a higher court of the decision of a lower court or tribunal. The higher court may affirm, vary or reverse the original decision.

### **Appearance Notice:**

A notice issued by a police officer requiring the accused's appearance before a judge or justice of the peace to answer a charge. An appearance notice is typically given instead of arresting the accused.

**Arraignment:**

The process in criminal law by which the accused's name is called, the charge is read, and the accused pleads guilty or not guilty. If the offence is one that gives the accused a choice, he or she will also elect at the arraignment to be tried by a judge or by a judge and jury in a higher court, or by a judge in a lower court.

**Bail:**

Monetary or other security put up by the accused or by someone on the accused's behalf to insure the accused's appearance at trial.

**Bench Warrant:**

A court order empowering the police to arrest a person. These warrants are most often issued in cases of contempt of court, failure to appear or where an indictment is being laid.

**Beyond a Reasonable Doubt:**

This is the rigorous standard of proof that the Crown prosecutor is required to meet in a criminal case. This means that the evidence must be so complete and convincing that any reasonable doubts as to the guilt of the accused are erased from the mind of the judge or jury. The Crown must prove each element of the offence beyond a reasonable doubt.

**Cause of Action:**

The legal basis underlying the plaintiff's civil suit against the defendant.

**Class Action:**

An action or lawsuit brought by a representative plaintiff(s) on behalf of a group of people who have been similarly affected.

**Counterclaim:**

An action brought by a defendant against a plaintiff. The defendant's counterclaim is dealt with in the same trial as the plaintiff's claim.

**Conditional Discharge:**

Similar to an absolute discharge, except that the offender is subject to specified conditions contained in a probation order. If the offender violates these conditions, the discharge may be revoked. A conviction will then be entered, and an appropriate sentence imposed.

**Contempt of Court:**

A criminal offence that typically involves interfering with the administration of justice, ignoring the rules of court or defying a judge.

**Corroborating Evidence:**

Evidence that confirms or strengthens evidence already presented to the court.

**Crown Attorney:**

The lawyer representing the Crown in a criminal prosecution.

Damages:

Monetary compensation for financial or property losses, emotional or physical injuries, loss of earnings, and costs of care.

Defendant:

The person sued in a civil action or charged with a criminal offence.

Dual Procedure Offence:

In Canada, all criminal offences are divided into one of three categories: summary conviction, indictable, and dual procedure offences. In a dual procedure (hybrid or Crown electable) offence, the Crown prosecutor has the choice to proceed by summary conviction or by indictment. The distinction between summary conviction and indictable offences is based on the formality of the procedures used to try them. Once the Crown has made its decision, the offence is subject to the normal rules of procedure for a summary conviction or indictable offence.

Election by the Accused:

The Criminal Code gives accused charged with certain offences the choice to be tried by judge and jury or by a judge alone in a higher court, or by a provincial judge in a lower court.

Election by the Crown:

In cases involving dual procedure offences, the procedure by which the Crown decides to prosecute a case as a summary conviction offence or as an indictable offence. The Crown is more likely to proceed by indictment if the circumstances of the offence are more serious than a typical case, or if the accused is a repeat offender.

Examination for Discovery:

In civil actions, the parties are given an opportunity to question each other prior to trial to discover the details of the other side's case. The examination for discovery allows the parties to narrow the issues and focus the trial on contested matters.

Habeas Corpus:

A writ issued by a judge ordering the release of a person who is being detained or imprisoned unlawfully.

Indictable Offences:

The category of criminal offences that are subject to formal and complex procedures. For example, most indictable offences give the accused the right to elect to be tried in a higher court by a judge or by a judge and jury. Generally, the indictable offences are more serious than summary conviction offences, and carry lengthy maximum sentences. For example, impaired driving causing death is an indictable offence, and is subject to a maximum sentence of 14 years imprisonment.

#### Information:

When someone reasonably believes that a person has committed an indictable offence, he or she may lay an information in writing and under oath before a judge or justice of the peace. If the judge or justice of the peace concludes that there is sufficient evidence of an offence, he or she may issue either a summons or warrant for the accused's arrest.

#### Injunction:

A court order restraining a party from doing some act (prohibitory injunction), or requiring the performance of some act (mandatory injunction). Injunctions may be permanent or temporary.

#### Intermittent Sentence:

A sentence of imprisonment that is served in intervals (usually weekends), over a period of time. Under the Criminal Code, a judge can only impose an intermittent sentence if the term of imprisonment is 90 days or less. The offender must comply with the conditions of a probation order when not in confinement.

#### Judicial Interim Release:

A judicial order releasing the accused from custody prior to trial. The release is unconditional unless the prosecutor shows cause to impose certain conditions. A judicial interim release cannot be granted for certain serious criminal offences, like murder, mutiny or treason.

#### Litigation:

The process of trying a dispute in court.

#### Legal Aid:

A program that assists those who require a lawyer but cannot afford one. In some provinces, legal aid may only be available for more serious criminal offences.

#### Mandatory Parole:

In most circumstances, an inmate will be credited with one day of earned remission for every two days served in prison. Mandatory parole is the term used to describe situations in which the inmate is released as a result of his or her accumulated earned remission. Inmates released under mandatory parole are subject to mandatory supervision by a parole officer.

#### Occurrence Number:

The identification number assigned by the police to a particular crime under investigation.

#### Parole:

The release of an offender from prison prior to the end of his or her sentence. The offender continues to serve the sentence outside of prison under the supervision of a parole officer, and must obey specific conditions or risk returning to custody.

#### Plea-Bargaining:

Negotiations between the defence counsel and Crown prosecutor concerning the charges and pleas of the accused. The Crown may accept a guilty plea on a lesser charge instead of incurring the expense and time of a trial on the original charge. The Crown may also agree to make a joint submission to the judge on the appropriate sentence, if the accused agrees to plead guilty.

#### Pre-Sentence Report:

Prior to sentencing, the judge may order a probation officer to prepare a pre-sentence report. The report summarizes the accused's family life, personal situation and background. Pre-sentence reports are used to help judges decide on an appropriate sentence for the offender.

#### Probation:

A sentence that requires the offender to obey certain stipulated conditions. Some conditions, like keeping the peace and being of good behaviour, are compulsory in every probation order. Others conditions are left to the judge's discretion. Probation is only available where the offence does not carry a mandatory jail term. The probation order can be no more than three years in duration. It is a federal criminal offence to violate any term of probation without a reasonable excuse.

#### Recognizance:

A formal promise made by the accused to appear and respond to criminal charges. Depending on the circumstances, the accused may enter the recognizance before a police officer or a magistrate.

#### Regulation:

A form of legislation enacted under the authority of a statute by the Governor-General in Council (the federal cabinet), the Lieutenant-Governor in Council (a provincial cabinet), a Minister or government official, or an administrative board. Typically, the regulations will set out detailed provisions that are not essential to include in the statute. This power to enact regulations permits the government to act expeditiously and introduce changes without having to enact a new statute.

#### Summary Conviction Offences:

The category of criminal offences that are subject to less formal and complex procedures. Summary offences are tried by justices or provincial court judges. They are usually less serious crimes than indictable offences and carry lower penalties.

#### Suspended Sentence:

A judge may choose to put an offender on probation and suspend the imposition of the sentence. If the offender breaches probation, the judge may order the offender returned to court, and impose a jail term for the original offence. As well, the offender may be charged with the federal criminal offence of breaching probation. In issuing a suspended sentence, the court must consider the accused's age and character, the nature of the offence and the circumstances surrounding its commission.

Testimony:

Statements made in court by a witness under oath or affirmation.

Tort:

A civil action arising from a wrongful act or omission, in which a plaintiff may sue a defendant for damages.

Writ:

A written order of a court.

Young Offenders Act:

A federal statute that establishes how young people will be treated, tried and sentenced for criminal offences. The Act applies to suspects who are over 12 years old and under 18. In certain limited circumstances involving very serious offences, those who are 14 or older may be transferred to adult court. Among other things, the Young Offenders Act dramatically limits the maximum punishment that might otherwise apply for an offence, and creates special record-keeping provisions to protect young offenders from the adverse publicity and consequences of having a criminal record.