

CROWN ATTORNEY'S OFFICE

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Hours of operation: Monday – Friday 8:30 a.m. to 5:00 p.m.

Introduction

The Crown Attorney is the Attorney General's representative in the criminal courts. Each county in Ontario has one Crown Attorney and most have a number of assistant Crown Attorneys. The Crown Attorney prosecutes Criminal Code offences on behalf of the public. The Crown does not act on behalf of the victims of crime or provide legal representation to individual victims of partner abuse.¹¹ However, in order to fulfill the Crown's role as prosecutor, the Crown Attorney must consider the circumstances and concerns of the victim. The Crown Attorney will make him/herself reasonably available to the victim for consultation and information sharing which is an important part for effective prosecution, and which helps prepare the victim for trial.

The Crown Attorney's office works independently of, but in cooperation with all the police services within Hastings County. The police decide if charges should be laid in any particular case. If charges are laid after the police have investigated an allegation of partner abuse, the case is forwarded to the Crown Attorney's Office. The Crown Attorneys have a dual role; to prosecute criminal offences and to act as Ministers of Justice.

The Crown Attorney will review the information, commonly referred to as a "Crown Brief", to ensure that the case can and should proceed. The standard of proof required for the police to lay charges is lower than the standard of proof required for prosecution. The decision to prosecute or to withdraw the charges is made by the Crown Attorney in accordance with the law and with policy established by the Attorney General of Ontario.

The Crown Attorney's office works to uphold the Victims Bill of Rights. In addition, the Crown Attorney's Office has a commitment to community coordination and has

¹¹Victims of partner abuse rarely require or arrange independent legal representation for themselves in relation to criminal proceedings against their offender. Victims may wish to discuss this issue with V/WAP staff in order to ensure that they fully understand the roles of the Crown Attorney vs independent legal representation for the victim vs defence counsel for the accused.

collaborative service agreements with the Hastings County Children's Aid Society and Police Services and participates in HART and Bail Notification.

In very general terms, there are three phases to the prosecution of charges: arrest/bail; remand; and plea/trial/sentencing.

Arrest/Bail: The accused person has been investigated, arrested and charged. The accused may be released on conditions by the police in less serious situations, or held in custody for a bail hearing before a Justice of the Peace in more serious situations. Many accused persons arrested for partner abuse are held in custody for a bail hearing to determine whether or not they will be released pending trial and if so on what conditions. The Crown Attorney's Office becomes involved once the accused person appears before the Court. The Crown Attorney's Office will use all information in the Crown Brief and any additional information provided by police, VWAP, and any other relevant sources in making bail related decisions.

Remand: After the issue of bail (release or detention of the accused person) is decided, there are generally several court appearances while the accused person receives disclosure (a copy of the Crown brief), retains counsel, and considers his options. During this phase, the lawyer/counsel for the accused person will meet with the Crown Attorney to discuss the case. The Crown Attorney considers all information provided by VWAP during this phase of the prosecution and is available to meet with victims as arranged through VWAP.

At the Bail Hearing or First Appearance, the Crown Attorney will ensure a Ban of Publication protecting the identity of a victim is in place or sought in cases where the order must be made upon application of the Crown (generally offences of a sexual nature). The Criminal Code allows for applications for a Ban of Publication on other offences, where the Judge is of the view that the order is necessary for the proper administration of justice. In such cases, the Crown Attorney may make such an application on behalf of the victim, or the Crown Attorney and VWAP may assist a victim in filing the application for herself.

Trial or Guilty Plea/Sentencing: The accused person must choose to plead guilty to the allegations or to plead not guilty and proceed to trial. If the matter goes to trial and the accused person is acquitted, the matter is concluded. If the matter goes to trial and the accused person is found guilty, or if the accused person pleads guilty without a trial, the case proceeds to the sentencing stage.

The Crown Attorney will meet victims to gather input on sentencing when VWAP arranges such meetings. The Crown, with VWAP, will also assist victims in understanding their right to file a Victim Impact Statement if desired, along with providing the proper forms and instructions on how to file the statement.

It is especially important that victims/witnesses understand the following in relation to their involvement with the Crown Attorney's Office:

1. The Crown Attorney does NOT act as the victim's lawyer. Any information shared with Crown counsel is subject to disclosure requirements in accordance with the law. Control of the prosecution and responsibility for the decision to proceed to trial rests with the Crown Attorney. The Crown Attorney's Office does NOT require the victim's permission or approval to:
 - Accept a guilty plea to the offences(s) charged;
 - Accept a guilty plea to a lesser offence;
 - Proceed to trial on charges laid;
 - End the prosecution without a trial
2. Victims who must travel from out of town to testify are entitled to be reimbursed for their mileage and meals they must buy. Receipts are required for approved meal expenses. The Crown Attorney will sign the necessary paperwork after it is prepared by the Investigating Officer. The Crown Attorney may seek approval to cover travel expenses to prepare for trial, or make other arrangements.

Overview of Specific Procedures and Services

The roles of the Designated Domestic Violence Crown:

1. The Crown Attorney will designate a person to fill the role of Domestic Violence Crown.
2. The Domestic Violence Crown along with the Manager from the Victim Witness Assistance Program will co-lead the Domestic Violence Court Advisory Committee.
3. The Domestic Crown is assigned all partner abuse prosecutions after the bail hearing and acts as a resource person for other Crown Attorney's in the office.
4. The Domestic Violence Crown is responsible for:
 - Prosecuting cases that are heard in the Domestic Violence Court
 - Ensuring that partner abuse briefs received in the office are flagged as to be readily identifiable;
 - Reviewing information provided by the Police on all partner abuse briefs to ensure that the investigation is complete;
 - Managing partner abuse files until the prosecution is complete or the file is assigned to a specific Crown;
 - Screening files to determine an initial sentencing position;
 - Providing relevant background information to the Partner Assault Response (PAR) program in accordance with the Crown/Par information sharing agreement;

- Keeping both the Police and the victim advised in a timely fashion of significant steps or developments in the prosecution of the case in consultation with the Victim Witness Assistance Program.

Crown Tasks presented in chronological order as they usually occur.

1. BAIL HEARING/SHOW CAUSE HEARING

After an accused is arrested and taken into police custody, he may be brought before a Justice of the Peace for a Bail Hearing¹² within 24 hours. The hearing may be adjourned to another day. Crown counsel appears at the hearing and there is usually a lawyer for the accused person, either a private Defense Counsel or (free) Duty Counsel. The Crown may seek a detention order, in which case s/he must show that there is cause to keep the accused in custody; alternatively, the Crown may suggest appropriate conditions for release.

The Crown shall consider many factors when determining whether or not to seek a detention order such as the safety and protection of the victim, her family, witnesses, any other potential victims and the community at large; the specific history of violence in the relationship; fears or concerns of the victim; and the opinion of the investigation officer(s). The onus is on the Crown to prove that it is necessary for the protection of the public, or in the public interest to detain a person who has not yet been found guilty of an offence. Generally, victims are not called to testify at a Bail Hearing, nor must they attend at the court, unless under subpoena. Victims may choose to attend and can watch bail proceedings unless ordered to leave the court by the Justice if the Justice makes an order to exclude (potential) witnesses from hearing any evidence.

If there is insufficient cause for detention and the accused is to be released, a court order that normally includes conditions for release that prohibit the accused person from communication or association, directly or indirectly, with the victim, an order not to attend her residence and perhaps other places, and an order prohibiting the accused person from possessing weapons is made. There will be many other conditions and often a requirement that someone a “surety” will supervise the accused person in the community while he is on bail. While on bail, the accused person is entitled to apply to the Court to have specific conditions varied. For example, the conditions prohibiting contact between the accused and the victim may be changed to allow contact through a third party so that arrangements might be made to facilitate access to children. The Crown will obtain victim input on any variations of conditions pertaining to her, generally through VWAP.

It is the responsibility of the police to notify victims of the outcome of bail hearings. The Crown Attorney, through VWAP, is responsible for notifying victims of any bail reviews or variations of conditions.

¹² Bail Hearings do not always occur. In some instances, police officers may release the accused, with or without conditions, with instructions to appear in court.

2. ISSUE RESOLUTION MEETINGS

Cases in DVC are scheduled for an Issue Resolution Meeting after the initial remands have occurred. This meeting takes place between the DVC Crown and defense counsel. At this meeting, the Crown will advise counsel of the position on sentencing that the Crown intends to take in the event of a guilty plea. First time offenders on less serious matters may be eligible for a Conditional Discharge. Generally, one of the conditions of such a Discharge will be to attend the Partner Assault Response Program delivered by Conflict Resolution Services.

3. VICTIM-CROWN CONTACT

Victims may request to meet with the Crown at any stage of the prosecution. The Crown is available to meet with victims who wish to do so shortly after the charge has been laid and again to prepare for trial. Reasonable efforts will be made to accommodate other requests for meetings, either in person or via teleconference. The bulk of the communication is conducted by V/WAP and the Police.

In those instances when the case will be proceeding to trial and the victim must testify, Crown counsel will interview the victim prior to the court date. Interviews with the Crown provide the victim with an opportunity to familiarize herself with the Crown, ask any questions that she might have regarding the court process, and prepare for trial. They provide the Crown with the opportunity to obtain necessary information from the victim for effective prosecution, to review the victim's evidence, and to ensure that the victim is informed of and prepared for the court process. Reasonable efforts will be made to accommodate the victim when scheduling these interviews.

Interviews may be conducted at any time. They may take place several weeks before scheduled court appearances or as late as the morning of the trial.

In most instances, the Crown will meet with the victim in the presence of V/WAP staff, the investigating officer and/or a court officer. Victims and any non-witness support person(s) in attendance at these meetings will be informed that anyone present during the discussion of evidence may be called as a witness.

4. RESOLUTION OF CHARGES

In some instances, the Crown may: accept a guilty plea to the offence charged; accept a guilty plea to a lesser offence; or terminate proceedings without a trial, known as "staying" or withdrawing the charges. Whenever possible, the Crown will consult with the victim in advance of any such decision and take her views into consideration. However, the Crown does NOT require the victim's approval to accept a plea bargain or terminate proceedings. The Crown Attorney's decision will be made in consideration of the strengths and weaknesses of the case (reasonable prospect of conviction) and the public interest.

5. PROCEEDING TO TRIAL

In some instances, victims may become reluctant to proceed to trial; however, the public interest in prosecuting partner abuse is generally perceived to outweigh a victim's reluctance to testify. It is the Crown's position that it is not in the public interest to terminate a prosecution on the basis that the accused has directly or indirectly pressured the victim to either recant their statement or become a reluctant witness. Although the Crown Attorney's Office will take the victim's view into account, it will be made clear to victims that control of the prosecution rests with the Crown. The Crown Attorneys' Office may vigorously prosecute the charges even if the victim does not wish to go to trial. Under these circumstances, the victim will be advised by the Crown of the consequences of lying under oath to the police or the Court and/or failing to appear for the trial.¹³

6. PERSONAL INFORMATION RECORDS, THIRD PARTY RECORDS AND PRIVACY CONCERNS

In some instances, the facts of a case may raise issues regarding the privacy rights of the victim with respect to personal information records, including diaries and records held by a third party such as counselling or medical records held by a therapist or doctor, and/or records compiled by another agency such as the CAS. The Crown Attorney's, through VWAP office will advise the victim of her right to assert a privacy interest in relation to these records, and her right to seek legal advice and representation at the trial of the accused person.¹⁴ VWAP will ensure she is aware of the process for obtaining a legal aid certificate and provided with a list of lawyers in the province who are trained to represent clients in such circumstances. The Crown Attorney will ask the Court to order the Attorney General to pay the legal fees at the Legal Aid rate, where the woman does not qualify for Legal Aid.

7. SENTENCING

At the sentencing hearing, the Crown will make submissions to the Court based on the facts of the case and the law. The Crown may request various reports prior to making sentencing submissions, including pre-sentence reports prepared by Probation and Parole Services and Victim Impact Statements. In rare cases, the victim may be required to testify at the sentencing hearing.

The Crown will consider and address the effect of the crime on the victim, the victim's input regarding the sentence, safety concerns, addiction issues or the requirements for counselling, employment or child care considerations, and the need or desire for contact or no contact orders when preparing for a sentencing hearing. In most instances when significant bodily harm has been inflicted, the Crown Attorney will seek a term of incarceration, the length of which will be determined by the nature of the assault(s) and

¹³ If any witness subpoenaed for trial, including the victim, fails to attend as required, the Crown Attorney may request a warrant for the arrest of the victim/witness.

¹⁴ Victims may be eligible for assistance in retaining counsel through Legal Aid Ontario.

the prior criminal history of the offender. The Crown Attorney's Office also has the right to initiate proceedings to have the offender declared a Dangerous Offender or a Long Term Offender in cases involving high risk and repeat offenders.

The Crown Attorney will also request that the Court require offenders to attend and successfully complete a program of counselling at an approved Partner Abuse Response (PAR) program or as term of a probation order imposed by the Court.

8. VICTIM IMPACT STATEMENTS

Victim Impact Statements address the impact of a crime, not the allegation themselves. Copies of blank forms and information Guides are available from the police, the Crown Attorney's Office, or the Victim/Witness Assistance Program. The Crown, the investigating officer or V/WAP personnel will ensure that the victim is informed of her right to make a voluntary Victim Impact Statement (VIS) and provided her with an Information Guide outlining the procedure for completion and submission of such a Statement.

Victims are reminded that the VIS will be disclosed to the offender and will become a public document once it is filed with the Court; as such, it may be used in other forums such as family court.

9. FIREARMS PROHIBITION/FORFEITURE

A firearms prohibition order is often mandatory in partner abuse cases, including criminal harassment cases and firearms offences. Crown counsel also has the option to request a firearms prohibition order in those instances when such an order is not mandatory. When requesting such an order, it is the Crown Attorney's responsibility to ensure that all relevant information is presented to the Court.

The Crown may also choose to remind the Court of the provision for forfeiture of weapons in the *Criminal Code* under appropriate circumstances.

10. APPEALS

The right to appeal, whether by the Crown Attorney or the accused person, is subject to certain rules. In the event that a case is appealed and a new trial ordered, the Crown Attorney will consult with the victim and consider her position when deciding whether to proceed with a second trial. The Crown Attorney's office will advise VWAP if any appeals of Ontario Court of Justice rulings are filed locally. Crown Law Office in Toronto handles appeals of Superior Court of Justice decisions or Ontario Court of Justice Appeals where the Crown elected to proceed by Indictment: there is a VWAP office attached to this office to carry out victim notification and provide ongoing service. Updates to the victims regarding the appeals process, including hearing dates, the outcome of any bail pending appeal hearings, conditions of release, and the outcome of the appeal process will be provided by VWAP personnel.

Accessibility

The Crown Attorney's Office, located on the second floor of 257 Pinnacle Street, is accessible to both electric and manual wheel chair users, including accessible alternate exit with automatic door opener, accessible washroom facilities, and designated wheelchair parking.

Accountability and Complaints

The Crown Attorney's Office will participate on the Quinte Coordinating Committee Against Violence, Hart and the Domestic Violence Court Advisory Committee. The Crown Attorneys office will maintain dialogue with community agencies to build mutual understanding and exchange relevant information as it relates to victims of partner abuse and victim safety.

Complaints or concerns regarding the quality or nature of services provided by the Crown Attorney's Office can be submitted to the Crown Attorney. In the event that the victim/witness is not satisfied with the action taken or resolution suggested by the Crown Attorney, she may direct her concerns to the Regional Director of Crown Attorneys, East Region.

Contact Information: Regional Director of Crown Attorney's East Region
Telephone: 613-239-1222
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