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Criminal Procedure Fundamentals

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Criminal Law Fundamentals - The Basics

Criminal Procedure Fundamentals

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INTRODUCTION

Criminal courts are fast paced environments where the players speak a second language, the language of criminal procedure. In provincial court, the volume of files and the limits of statutory jurisdiction require that the court (the judge and the clerk) “get it right”. Understanding your role as counsel, either Crown or Defence, in the courtroom will go a long way to making your court appearances brief and smooth.

In provincial court, there are three separate types of appearances: docket (includes bail), trials (includes preliminary hearings) and sentencing. Each appearance type has distinct rules and expectations from the court. The jurisdiction of the provincial court is limited to what is permitted in the *Criminal Code*. The Court of Queen’s Bench has “inherent jurisdiction” which means that some procedural lapses can be cured by that court and some extraordinary requests can be granted by that court.

The *Criminal Code* is an overwhelming document and the index can be cumbersome. It is important to remember that the Code is structured in chapters. Much of what you will need for a specific issue can be found in the related chapter. For example there is a chapter on summary conviction matters (Part XXVII – sections 785-840). There is a chapter on preliminary hearings (Part XVIII – sections 535-551). There is a chapter on sentencing (Part XXIII – sections 716-751.1). As well each chapter usually begins with a “definitions” section which defines words used specifically in that chapter. For example, s. 785 is the definition section for the summary conviction chapter. Section 2 of the is a comprehensive definition section for the entire *Criminal Code*.

This document has been prepared for the 2018 LESA seminar “Criminal Law Fundamentals”. The information in this document is current to September 2018. This is not an exhaustive list of all procedural rules for criminal appearances, but is designed as a starting point, or a base level of knowledge for new criminal practitioners. A criminal law changes weekly (literally) and there is no substitute for timely research. As well, as with most things in the law, there are exceptions to many of these rules. This keeps the practice of criminal law interesting.

DOCKET COURT

Docket court involves all pre trial appearances. In addition to being a court of record where all appearances are audio recorded, the court clerk completes an endorsement sheet for every appearance on every file.