



Client Workbook

Privileged – For Client and Lawyer Only.

Name:



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Introduction

This workbook has information about some important parts of the criminal trial process.

First, we talk about what information your lawyer gets, and what you need to tell your lawyer.

Next, there is information about your involvement in the trial process – what decisions you have to make, and what your lawyer will do as a result of your instructions.

Finally, there is some information about the Disputed Facts Procedure, Sentence Indication Hearings, and Discounts for Pleading Guilty Early.

You are entitled to a fair trial. Part of that is advice from your lawyer so you can make the important decisions about the trial. You need to be involved so your lawyer can give you proper advice, and you can make informed decisions.

As you read the workbook you should note questions you have for your lawyer, and any information that you need to remember to give him or her. Take the workbook to meetings with your lawyer.

If reading or writing are difficult for you it may help to have someone else read the workbook to you. You wouldn't need to discuss your case with that person if you didn't want to.

What information does my lawyer get?

Your lawyer gets all the paperwork to do with the Police investigation that led to the charges against you. This is called “disclosure”. It includes the statements by the people that will be witnesses at any trial of the charges.

You can have a copy of most things for yourself, or your lawyer can explain it to you. Discuss with your lawyer which way of dealing with it is going to work best for you and your case. Some people have a friend or family member who helps them work through the paperwork.

Whichever way you do it, it is important that you understand the evidence that there is against you, and what evidence will be given.

What do I need to tell my lawyer?

Your lawyer will talk about the charges with you, and ask you questions about them.

The two of you will talk about the evidence, and which parts of it you don't agree with. Usually the more information you can give your lawyer, the better they are able to advise you. It is very important to tell your lawyer everything about the prosecution case that you don't agree with.

You will probably know a lot more about some of the witnesses than the lawyer learns from the disclosure material. Make notes about anything in particular you think your lawyer should know about any witnesses or incidents or documents.

Sometimes you will dispute some of the disclosure material, and it will be possible to make further enquiries (for example, a witness might say that she lived in a house for 2 years, but your memory is that she only lived there for 6 months). You and your lawyer will discuss who is going to make the further enquiries.

Note any jobs that you have (like contacting witnesses or getting photos):

What is my defence?

The decision about this is for you to make. If you have more than one charge you may have different defences for some of them.

You will talk about the available defences with your lawyer before you decide which one (or more) applies to your case.

Sometimes the defence is simply that the prosecution can't prove all or part of its case.

Whatever the defence that you decide on, it is important that you and your lawyer both understand what it is, and how it will affect the way your case is run.

Make notes here about things you want to tell your lawyer.

If I plead Not Guilty, will I have a jury trial?

This is for you to decide after talking with your lawyer.

Unless you are charged with murder or manslaughter, or a few other very serious crimes, you can choose to have a trial with a Judge only, or a Jury Trial.

All charges of sexual offending (like rape and indecent assault) can now be decided by a Judge without a jury, if that is what you choose.

Note any questions for your lawyer:

Will I give evidence?

This is a decision that you make. Your lawyer's job is to make sure that you have as much information as you need to make the decision.

Some of the things that can be taken into account when you make this decision are:

- Did I make a good statement to the police?
- Is there anything I want to say in evidence that is not in that statement?
- Do I want to or need to explain telling lies to police?
- Will I get upset or angry giving evidence?
- How likely is it that I will be convicted if I don't give evidence?
- How am I going to feel if I don't give evidence, and I am convicted?

After making sure that you have all the necessary information, your lawyer will probably tell whether they advise you to give evidence or not give evidence. Your lawyer will give you reasons for this advice.

It is important to understand that you do not have to accept your lawyer's advice about this. Your lawyer will accept and act on your decision to give evidence or not give evidence, whether or not your decision is the same as their advice.

Deciding about giving evidence can be difficult. You do not need to make your final decision until all the evidence has been given for the prosecution. But, as your lawyer will explain, it is important for your lawyer to know from the beginning of the case, what you will say if you do give evidence.

Can the defence call witnesses?

Your lawyer can call witnesses to give evidence at the trial.

You and your lawyer will discuss what witnesses could be available, and what they might say.

Once it is known what a witness could say, your lawyer will give you his or her view about whether the witness should be called to give evidence.

However, the final decision about whether a witness is called to give evidence is your decision.

Your lawyer will call the witnesses that you want called. But if the only evidence that the witness can give is evidence that the Judge would not allow to be given (either because it is not relevant to the issues in the trial, or the law says that the evidence is not allowed), then the lawyer will not call that witness.

Your lawyer is not allowed to call a witness to give evidence if the lawyer knows that the evidence is not true. For example, if you tell your lawyer you were at a fight, but your sister will give evidence that you were at home with her, the lawyer will not call your sister to give evidence.

Sometimes your lawyer will ask you to get possible witnesses to contact him or her, and sometimes your lawyer will ask you for the contact details for a possible witness. It is important that you and your lawyer understand what responsibilities each of you has so that possible witnesses do not get overlooked or not contacted.

Witnesses can be paid expenses for coming to Court.

Witnesses can be summonsed to come to Court – that means that the Court orders them to turn up to give evidence whether they want to or not.

Make a note of any possible witnesses that you think of before you see your lawyer.

Make notes with your lawyer about who will contact possible witnesses and what your jobs are:

Communicating with your lawyer

Getting hold of your lawyer

Everyone is frustrated from time to time when it is hard to get hold of their lawyer. Usually the lawyer is busy with someone else's case, so can't answer your questions at the time you want to ask them. The following ideas might help:

Give your lawyer all your details

Make sure your lawyer has your cellphone number, email address, and any other numbers that you use (home phone, work phone, girlfriend's number, Dad's number – wherever your lawyer might have to go to find you when they need to talk to you).

Be clear in messages you send

It is easier for your lawyer to understand messages that are clear, and not all written in slang or text speak. If writing is hard for you, ask someone to help you if you need to write a letter or email to your lawyer.

Make sure your lawyer knows why you are trying to contact them.

Sometimes it is easier for a busy lawyer to return a call or text when they can tell that a short answer or conversation is all that is necessary. For example "I need to change my bail address. Please phone me".

If you know that what you want to talk about will take some time, send an email or text saying this. For example, "I have found out the

name of a neighbour who saw me before the incident, and she says her friend saw me too. When can I meet you to talk about this?"

Appointments

Make appointments with your lawyer to discuss your case, and keep them. Make sure you and your lawyer both have enough time to get through the issues you need to talk about.

Notes

Take your notes to all meetings with your lawyer, including this workbook.

Cellmate confessions

If you are in prison waiting for your trial it is likely that other prisoners will want to talk to you about your case.

Sometimes other prisoners can get advantages for themselves (like bail or shorter prison sentences) by making statements and giving evidence about things you have said that might show you are guilty of your charges. If you think someone is trying to get you to say things that they can repeat to the police, then tell your lawyer.

It is a good rule to never say anything to another prisoner that you wouldn't want the jury or Judge in your case to hear before deciding whether you were guilty. Also keep whatever your lawyer has told you to yourself, because this is "privileged" – no one can know about it unless you say so.

You can also say to anyone who asks about your case "my lawyer has told me not to talk to anyone about my case". This is our advice whether a prisoner says they are trying to help you, or just want to talk.

Disputed Facts Procedure

Sometimes you admit that the charge itself happened, but you don't agree that everything in the Summary of Facts is right. Or you admit that something happened, but say it was less serious than the charge against you.

You can talk to your lawyer about asking Police to change the charge, or pleading guilty and having a Disputed Facts Hearing.

If you admit the charge, but there is a disputed fact, the possibilities are:

1. The Police will change the Summary of Facts without a hearing;
2. The Judge will say that the issue is not important, so there is no hearing needed; or
3. There has to be a hearing with witnesses, so that all the important facts are known before you are sentenced.

Early Guilty Plea Discounts

Usually the Court will give you a discount on the sentence for your charges if you plead guilty early, and it saves the Police and the Court time. You can still get a discount if it takes time to sort out the Summary of Facts, and it is sorted out the way you wanted. Ask your lawyer what the discount would be likely to be in your case.

Sentence Indication Hearings

You can ask the Court to indicate what sentence you would get if you pleaded guilty to the charge, and accepted the summary of facts. The Judge will also take into account any previous convictions you have, and information about the victim.

The Judge will indicate what sentence, or what range of sentences, would be likely if you pleaded guilty to the charge/s. You can then decide whether to plead guilty or not guilty.

If you then decide to plead not guilty, it can't be used against you that you had asked for a sentence indication.

Notes
