

Differences Between Criminal & Family Court in Cases Involving Partner Abuse
Adapted from Luke's Place Resource

	Criminal	Family
Purpose	To determine if someone who has been charged with a criminal offence is guilty or innocent. Criminal court also offers peace bonds (not covered in this document)	To help a family plan for what will happen when parents have separated. Key issues covered in family court are: custody and access, child and spousal support, and division of property. Child protection is part of family court. In cases of partner abuse, family court can also be used to obtain restraining orders or orders for exclusive possession of the matrimonial home.
What People are Called	<p>Victim/Complainant: the person who has experienced the criminal act. When a person first reports a crime, they are a victim, once the statement is given and charges are laid they become complainants.</p> <p>Witness: Anyone who testifies in a criminal case for either side. Accused: The person who has been charged.</p> <p>Offender: how the accused is often referred to if found guilty.</p> <p>Defence Lawyer: the lawyer representing the accused person.</p> <p>Crown Attorney: responsible for prosecuting cases on behalf of society. They are paid by the government.</p> <p>Duty Counsel: lawyers providing services at the criminal court to accused people, especially at bail hearings. They are paid by Legal Aid Ontario.</p> <p>Justices of the Peace: presides over most bail hearings, guilty pleas, handles peace bond applications and less serious criminal matters.</p> <p>Judge: Presides over many criminal proceedings including trials. Without a jury, the judge makes all decisions in the case. If there is a jury, the judge's role is to decide what evidence can be presented as well as manage the trial. In Canada, even if there is a jury, judges always decide the sentence when someone is found guilty.</p>	<p>Parties: people directly involved in a family law case. This is usually the two parents who are separating but in some cases, it's the grandparents or person who is pursuing custody/access.</p> <p>Duty Counsel: lawyers who can assist parties who do not have a lawyer if they qualify. They are paid by Legal Aid Ontario</p> <p>Judge: the person who oversees and makes the decisions in all family court cases. The judge often encourages the parties to come to a compromise.</p>

	<p>Jury: Certain kinds of charges give the accused person the right to ask for a trial by jury. The jury must consider all the evidence and, by following the judge’s guidance, decide whether the accused is guilty beyond a reasonable doubt. This must be a unanimous decision.</p>	
<p>The Parties to Proceedings and their Legal Representation</p>	<p>The accused and the Crown Attorney are the parties. In the Court of Appeals or Supreme Court, other people or organizations (called intervenors) become parties. The victim is not considered a party because the case is not about the victim, it is about the guilt or innocents of the accused. The victim is the Crown Attorney’s witness and therefore does not have the right to legal representation. The Crown Attorney is not the victim’s lawyer- the Crown is there on behalf of Canadian society.</p>	<p>Both people in a family law case are parties to the proceedings and have the same rights and responsibilities. They can have legal representation if they can afford to pay for a lawyer. If not, they can apply through Legal Aid Ontario to get financial support.</p>
<p>Accountability</p>	<p>The criminal court is accountable to the public. Canada has the <i>Criminal Code</i> that clearly states what is illegal and the penalties a person will face if they are found guilty. In Canadian law, anyone who breaks the law is seen to have committed a crime against not only the victim but the community.</p>	<p>Family court is not about accountability. It is about assessing the information and deciding on a fair outcome.</p>
<p>Standards of Proof</p>	<p>Before a judge or jury can find someone guilty, the evidence must prove that the accused is guilty beyond a reasonable doubt. It is the Crown Attorney’s job to prove that the accused did it and it is the Defence’s job to provide the judge or jury with reasonable doubt. The defence does not need to prove the accused is innocent, they just must create doubt in the minds of the judge or jury.</p>	<p>The standard of proof in family court is called “balance of probabilities”. This is a considerably easier standard to meet; the judge must decide whose story is more believable. This means that even if someone is found not guilty in criminal court, the decision in family court can be completely different.</p>
<p>Responsibility for Proving the Case</p>	<p>The burden of proving the case is completely on the Crown Attorney.</p>	<p>Both parties have the same requirement to provide evidence. It is the family court judge’s job to decided which person’s story is more believable. The judge will choose the case that makes the most sense and that has enough evidence to support the legal factors the judge is required to consider.</p>
<p>Presumptions</p>	<p>In Canada, anyone charged with a criminal offence is presumed innocent until a criminal court finds him/her <i>guilty beyond a reasonable doubt</i>. The judge or jury needs to be open to the idea that the person did not commit the crime.</p>	<p>Because family court is not about whether someone is guilty or innocent, there is no presumption of innocent or guilt.</p>

<p>Outcomes</p>	<p>If the accused is found guilty there are consequences that can range from minor (a conditional discharge or probation) to more serious (a fine or jail time).</p>	<p>Because family court is not about determining whether someone is innocent or guilty, the outcome is very different. Many cases end in a compromise between the two parties; some with happy outcomes and others, not so much. In some extreme cases the judge can hold a person in contempt of court, which means a person will be held in jail until they stop doing something, or start doing what the judge orders them to. Either party causing the trouble within the process may have to pay fines and all the legal fees related to the process. The police may become involved if that person refuses to follow court orders, especially custody, access or restraining orders. In extreme cases, a person can face criminal charges for their behaviour.</p>
<p>Services</p>	<p>The Victim/Witness Assistance Program provides important information and support for victims and witnesses who must testify in a criminal trial and operates as a liaison between victims/witnesses and Crown Attorney.</p> <p>Duty counsel lawyers are available to assist accused people at various stages of the criminal process, including bail hearings, adjournments and sentencing. They can also assist someone in applying for a legal aid certificate so that they can hire a lawyer.</p>	<p>Family Law Information Centres (FLICs) are available at most family courts in Ontario and provide basic information about the family court process as well as community resources and services.</p> <p>Family Court duty counsel assist parties who qualify financially and do not have a lawyer with matters that are in court that day. They can assist with adjournments, minor matters in the courtroom, applications for legal aid and filling out documents.</p> <p>Many family courts have on-site mediation available. The mediator can assist people with issues that are currently in court. This service is free.</p> <p>Family Court Support Workers (FCSWs) provide victims of domestic violence who are involved with family court, a wide range of services. Some FCSWs are based in the court while others work out of community agencies and only come to court when required to assist a client. FCSW are free and do not require a financial eligibility test.</p>
<p>Public Access</p>	<p>Criminal courts are open to the public. This means that with rare exceptions anyone can attend any criminal court proceeding and have access to criminal court documents such as transcripts. In some cases, the court may impose a ban on disclosing a client's name (age of the victim) and in extreme cases there can be a complete ban on publication of any evidence.</p>	<p>Like criminal court, family court is open to the public. This means that anyone can attend and anyone can have access to family court files.</p>