

Chapter 5: Extrajudicial Measures and Sanctions

This chapter will focus on different ways that your situation might be dealt with instead of going through the formal court system.

1. If I break the law will I always be charged by the police and go to court?

No. There are a number of other things that the police or prosecutor can do to hold you responsible for your actions. These are called Extrajudicial Measures.

2. What are Extrajudicial Measures (EJM)?

They are methods to hold you responsible for having done something wrong without creating a youth “criminal” record and without making you go through the formal court system. There are different kinds of Extrajudicial Measures as described below. The police are required to keep a record if they give you an Extrajudicial Measure, but it is not a criminal record.

s. 115(1.1)

3. What are the different kinds of Extrajudicial Measures?

Instead of charging you, a police officer can do any of these things:

- The police can give you a warning,
- In some places the police can give you a formal or written caution, or
- The police can send you to a community program that will help you to stop committing offences. The police can only use this option if you agree to go to the program.

s. 6

Another possibility is that if you have already been charged, and in some places even before you are charged, the police or prosecutor* can give you an Extrajudicial Sanction, which is the most serious kind of Extrajudicial Measure.

See questions 7- 14 below for more information.

4. When is a warning, caution or community program appropriate?

Warnings, cautions, and programs are only used for offences where no one was physically hurt

R. v. C.D., [2005] SCJ No 79

The police officer might use a warning, caution, or program if he or she thinks that:

- It would be a good way of holding you responsible for what you have done wrong;
- The long court process would not be as effective at changing your behaviour;
- You are able to fix the wrong thing you’ve done without the court having to force you to fix it; or
- It allows your family, the community and the victim to be involved in dealing with your behaviour.

s. 5

5. Is it only the police who can caution someone?

No. The crown attorney or prosecutor can also give you a caution instead of having you charged. Even if you have already been charged, the prosecutor can withdraw the charge and give you a caution instead.

s.8

6. If a warning, caution, or community program is not appropriate, are there other options?

Yes. If the offence is too serious, or if you have a record of too many other serious offences, then the police can give you an Extrajudicial Sanction. This is the most serious kind of Extrajudicial Measure.

s. 10

7. What are Extrajudicial Sanctions (EJS)?

A sanction is a consequence or a punishment. An Extrajudicial Sanction means that you will get some punishment for your actions. An Extrajudicial Sanction is more serious than other Extrajudicial Measures but you will still not go through the formal court system and you will not be punished by a judge. An Extrajudicial Sanction is part of a special program that you agree to participate in. If you have already been charged by the police you may have to appear in court before the program starts. The program will be much quicker than going through the regular court process.

s.10

8. When can I get an Extrajudicial Sanction (EJS)?

You can get an Extrajudicial Sanction only if:

- there is an Extrajudicial Sanction program where you live;
- the police or the prosecutor thinks that the program is the right thing for you and for the community; and
- you are willing to accept responsibility for what the police say you have done wrong.

s. 10(2)

9. What rights do I have before accepting an Extrajudicial Sanction (EJS)?

Before accepting an Extrajudicial Sanction:

- You must be told all about the program and then you must freely agree to participate; you cannot be forced to accept the Extrajudicial Sanction,
- You must be given a chance to talk to a lawyer about the Extrajudicial Sanction program, and
- The prosecutor must believe that he or she has enough evidence against you to continue with the charge; if not the prosecutor must withdraw the charge.

s. 10 (2)

10. When can I NOT get an Extrajudicial Sanction (EJS)?

An extrajudicial sanction **cannot** be used if:

- you deny being involved in the offence;
- you want to have a trial in court; or
- you are not accepted into the program

s. 10(3)

In these situations, your case will stay in the youth court system.

11. If I agree to participate in an Extrajudicial Sanctions (EJS) program, what will I have to do?

Different places have different types of Extrajudicial Sanction programs. You may be asked to do some kind of community service, participate in a conference*, write an essay or letter of apology, go to workshops, do a mediation, or perhaps do something else that would be relevant to you or the offence.

12. What happens if I complete all the conditions of the program?

Then any charge that has been laid against you will be dismissed, stayed or withdrawn, and you will not have to go back to court for this matter.

s. 10(5)(a)

13. What happens if I only complete some of the conditions of the program?

The prosecutor could bring the matter back to the court, and the judge may or may not dismiss the charges against you depending on the circumstances. The closer you have come to completing the program the more likely the charges will be dismissed. If it is your own fault that you did not complete the program, the judge is less likely to dismiss the charges.

s. 10(5)(b)

14. If I successfully complete the program, will I have a “Youth Court Record”?

No. This is one of the advantages of extrajudicial sanctions. However, even though there is no criminal record, a separate record will be kept for 2 years about your participation in the program.

s. 119(2)(a)

See Chapter 10 - Records, Fingerprints, Photos, DNA

15. Will anyone know that I have done an Extrajudicial Sanction program?

Yes. If you participate in an extrajudicial sanction program your parent(s) will be informed. Also, if the victim wants to know your identity and to hear about your program, the victim will be given that information.

ss. 11-12