

A Guide to Aboriginal Harvesting Rights

Fishing, Hunting, Trapping, Gathering

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A Guide to Aboriginal Harvesting Rights

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This booklet explains the law in general. It isn't intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help. The information in this publication is up to date as of December 2017.

See the back cover to find out how to get free LSS (Legal Aid BC) publications.



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What are Aboriginal rights?

Aboriginal rights are practices, traditions, and customs that are unique to each Aboriginal community.

Aboriginal rights are based on **traditional activities** that:

- were practised before contact with Europeans (for First Nations and Inuit) or were practised before Europeans took control over the area (for Métis);
- are important to the distinct culture of each Aboriginal community; and
- have continued to present day (although they can be in modern form — for example, you can hunt with a gun instead of a bow and arrow).

Generally, Aboriginal rights only apply within the **traditional territory** of your Aboriginal community. This means the area where your Aboriginal ancestors lived.

Aboriginal rights are held by:

- First Nations, including status and non-status Indians,
- Inuit, and
- Métis.

In Canada, Aboriginal rights are protected under section 35 of the Constitution.

Aboriginal people may also have **treaty rights** protected under section 35 of the Constitution. The extent of treaty rights depends on the terms of the treaty. They may apply within the entire traditional territory of your Aboriginal community or only within a certain area described in the treaty. See page 12.

In this booklet, words that you might not know are **bold**. These words are defined or explained, usually within the same sentence or paragraph. Sometimes you'll be referred to a different page, where the word is explained in detail.



What's in this guide?

This guide outlines:

- the Aboriginal harvesting rights of:
 - status Indians (page 4),
 - non-status Indians (page 5) and
 - Métis people (page 10).

This guide also discusses:

- treaty rights and harvesting (page 12),
- conservation, public health, and public safety rules (page 16),
- pre-harvest checklists (page 20),
- where to get more information about harvesting in BC (page 23), and
- where to get legal help if you're charged with a harvesting offence (page 25).



Traditional harvesting activities

Aboriginal rights are based on traditional activities and include:

- fishing;
- hunting;
- trapping; and
- gathering plants, fungi, or timber.

These activities were practised by Aboriginal ancestors before European contact. They have great cultural, social, and economic importance to First Nations and Métis people throughout the province.

Right to trade, barter, or sell the harvest

Aboriginal rights may also include the right to trade, barter, or sell the harvest, but this right isn't recognized in provincial regulations. Currently, the government won't recognize a right to sell unless your right has been proven in court or negotiations.

You're more likely to be charged for using your right to trade, barter, or sell than using a right to harvest for food for cultural use. If you've been charged with an offence, you have the right to get a lawyer. A lawyer can work with you to defend your Aboriginal rights or treaty rights. A lawyer can also help you decide what your best course of action is based on the circumstances of your case. See page 25.

Who enforces harvesting regulations?

In BC, the Ministry of Forests, Lands, Natural Resource Operations, and Rural Development interprets and enforces the *Wildlife Act* and the *Fish and Seafood Act*. This includes hunting, freshwater fishing, aquatic plant harvesting, and trapping regulations.

The federal department of Fisheries and Oceans Canada (DFO) interprets and enforces the *Fisheries Act*, which regulates marine fishing including harvesting shellfish.

The federal department of Environment and Climate Change Canada regulates hunting of migratory birds.



Harvesting rights for status and non-status Indians in BC

This section applies to status and non-status Indians who don't have treaty rights. If you have treaty rights, see page 12.

Hunting, trapping, and freshwater fishing

If you're a status Indian

If you're a status Indian and a BC resident, you don't need a licence or permit to hunt animals or migratory birds, trap, or freshwater fish. But the harvesting must be:

- for food, social, or ceremonial purposes; and
- within areas you can prove your First Nation traditionally used.

You must also follow:

- conservation, public health, and public safety regulations (page 16); and
- any laws your First Nation may have about harvesting.

It's best to bring your Indian status card with you when you're harvesting.

Status Indian is a person recognized by the federal government as registered or entitled to be registered under the *Indian Act*. Registered status Indians are issued a Certificate of Indian Status (sometimes called a *status card*).

Non-status Indian, in this guide, is a person who is a descendant of a First Nation community, identifies as a First Nation person, and is recognized by the community as someone who has the right to use the First Nation's Aboriginal or treaty rights. A non-status Indian is not registered under the *Indian Act*.



If you're a non-status Indian

If you're a non-status Indian, the regulations in BC don't recognize your right to hunt, trap, or freshwater fish without a licence. You may still have an Aboriginal right, but you may be charged for using this right without a licence.

The best way to avoid being charged is to buy a hunting or fishing licence and follow all regulations. Contact your First Nation and the BC Fish and Wildlife Branch at **1-877-855-3222**.

To hunt migratory birds, you need to buy a permit at **permis-permits.ec.gc.ca** or call the Canadian Wildlife Service at **1-855-869-8670**.

If you hunt without a licence, you risk being charged and convicted of *Wildlife Act* or *Migratory Birds Act* violations. To reduce your chances of being charged and convicted, you can:

- get a letter from the Chief and Council of your community stating you're a community member or descendant of the community;
- confirm with your community that the way you're hunting, trapping, or fishing is based on a traditional practice;
- hunt, trap, or fish only in areas your community traditionally used; and
- hunt, trap, or fish only for food, social, or ceremonial purposes.

You must also follow:

- conservation, public health, and public safety regulations (page 16); and
- any laws of your First Nation.



Gathering plants, fungi, and timber

Plants and fungi

Gathering plants (other than timber) and fungi on public land that's not a national or provincial park is generally allowed. But it's not allowed if the plant species is listed in the *Species at Risk Act* and you're harvesting on federal land.

You can reduce your chances of being charged for harvesting plants and fungi if you:

- confirm with your community that how you're harvesting is based on a traditional practice and consistent with any of your First Nation's laws that may apply;
- harvest in an area traditionally used by your First Nation;
- harvest only for food, social, or ceremonial purposes; and
- don't harvest species listed under the *Species at Risk Act*, on federal land. To read the list of species at risk, go to **Canada.ca**. In the search bar at the top right, put in "Species at Risk Public Registry."



Timber

Aboriginal rights can include rights to harvest timber, but BC doesn't recognize an Aboriginal right to harvest timber without a licence or permit in its *Forest Act* or *Forest and Range Practices Act*.

You may still have an Aboriginal right, but you're likely to be charged if you use this right without a permit. If charged, you may be asked to prove your Aboriginal right to avoid conviction.

The best way to avoid being charged is to apply for a **Free Use permit**. This is the permit the Ministry of Forests, Lands, Natural Resource Operations and Rural Development issues for harvesting timber for traditional and cultural activities.

- The application form is available at www2.gov.bc.ca. In the search bar at the top right, type "Free Use Permit Forest Tenures."
- You can return it to FrontCounter BC at one of their locations, which are listed at frontcounterbc.gov.bc.ca — click Where — FrontCounter BC locations.

If you choose to harvest without a permit, you can reduce your chances of being charged if you:

- harvest timber only for traditional or cultural purposes or domestic use;
- confirm with your community that how you're harvesting timber is based on a traditional practice and consistent with any of your First Nation's laws that may apply;
- harvest in an area traditionally used by your First Nation; and
- harvest on Crown lands (not private lands).

Marine fishing

The federal department of Fisheries and Oceans Canada (DFO) issues a **communal licence** to each First Nation. This licence lists the species of fish and amounts your First Nation is entitled to harvest for food, social, and ceremonial purposes. It also says where the fish can be harvested.

Contact your First Nation for more information about your Nation's communal licence. Your First Nation may ask you to report what you caught to them.



Your Aboriginal right to fish may go beyond the terms on the communal licence, but if you fish outside of the terms of the communal licence, there's a risk you'll be charged. If charged, you may have to prove your Aboriginal right to avoid conviction.

If you choose to fish outside of a communal licence, you can reduce your chances of being charged if you:

- confirm with your community that how you're fishing is based on a traditional practice;
- fish in an area traditionally used by your First Nation;
- fish only for food, social, or ceremonial purposes;
- follow public conservation, public health, and public safety regulations and any laws of your First Nation; and
- avoid harvesting species listed in the *Species at Risk Act*. To read the list of species at risk, go to **Canada.ca**. In the search bar at the top right, put in "Species at Risk Public Registry."



If you want to harvest outside your traditional territory

Aboriginal rights only apply within the traditional territory of your Aboriginal community. If you want to hunt, trap, or fish on another First Nation's territory, contact that Nation. They may give you permission to hunt or fish in their territory.

It's a good idea to get a letter from the Chief and Council of the Nation that says you have their permission to hunt in their territory. Carry this letter with you when hunting or fishing.

If you can't get a letter, it's a good idea to record on paper who you spoke to at the Nation and when they gave you permission to hunt or fish. Governments and conservation officers don't always honour agreements between First Nations, so there's a chance you may still be charged.

If you're a status Indian, you don't need a hunting or fishing licence to hunt on another First Nation's land. If you're a non-status Indian or Métis, it's best to get the required hunting and fishing licences as well as permission from the Chief and Council of the Nation where you would like to hunt or fish.

When harvesting on another First Nation's territory, you should follow any laws of that First Nation and all other BC hunting and fishing regulations.



Métis harvesting rights in BC

The Aboriginal rights of Métis people are also protected under section 35 of the Constitution. Like other Aboriginal rights, Métis rights apply to the traditional practices that were important to Métis culture. Since Métis communities developed after contact, Métis rights are based on traditional practices that developed before Europeans took control over the area.

Métis rights may include:

- fishing;
- hunting;
- trapping; and
- gathering plants, fungi, or timber.

To hold an Aboriginal right as a Métis person, you must meet all of the following criteria:

- self-identify as Métis (think of yourself as Métis and tell people that you're Métis),
- have Métis ancestors who were part of the community that holds the Aboriginal rights, and
- be accepted by the modern Métis community that holds the Aboriginal rights.

Proving your Métis rights will depend on a number of factors. BC doesn't recognize a Métis person's right to hunt without a licence in the *Wildlife Act*. To avoid being charged and convicted for wildlife or fishing offences, it's a good idea for Métis people to follow the recommendations outlined for non-status Indians on pages 4 to 9.



Getting a Métis harvester card

Métis Nation BC citizens can apply for a harvester card. The harvester card makes it easier for you to confirm that you have a connection to the Métis community and that you have its support.

The harvester card *only* allows you to hunt migratory birds. It replaces the Federal Migratory Bird licence.

The harvester card does *not* authorize hunting any animals other than migratory birds. If you want to fish, trap, or gather plants, fungi, or timber, it's best to still buy government licences and permits to avoid being charged, and follow the recommendations for non-status Indians (pages 4 to 9). If you don't have a hunting or fishing licence, a conservation officer may charge you with an offence.

For more information about harvester cards, call Métis Nation BC at **1-800-940-1150**. Or see Métis Nation BC's website:

1. Go to **mNBC.ca**.
2. Under Directory at the top, choose Harvesting.

To get a harvester card, you need to be a Métis Nation BC citizen and will need to fill out a BCMANR harvester application form. Call Métis Nation BC at **1-800-940-1150** to ask for this form. Or apply online from the Harvesting page above. Under Links, click Apply For A Harvester Card.



Treaty rights

Treaty rights are rights set out in a treaty with the government and are protected under section 35 of the Constitution. This includes rights agreed to in historic treaties, and in modern **land claim settlements** (modern treaties).

Many treaties were made across Canada between the 18th century and the early part of the 20th century. These older treaties usually included a promise of harvesting rights. For example, the Douglas Treaties give some First Nations on Vancouver Island the right to “hunt over the unoccupied lands” and carry on their fisheries “as formerly.” Treaty 8 gives First Nations in northeastern BC the “liberty to hunt over unoccupied lands.” The rest of BC isn’t covered by historic treaties.

There are also a small number of modern treaties in BC. The Nisga’a, Tsawwassen, Maa-nulth, and Tla’amin First Nations have negotiated final agreements that set out their harvesting rights in greater detail than historic treaties.



Harvesting rights and modern treaties

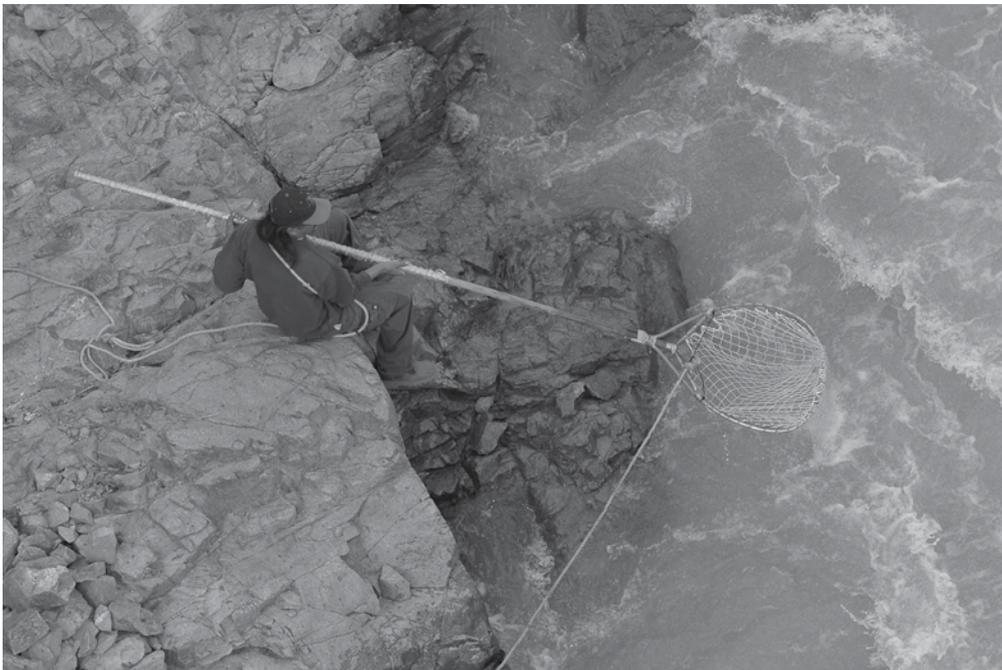
The terms set out in your treaty define First Nations' treaty rights to harvest resources, including hunting, trapping, fishing, and gathering.

Contact your First Nation to get a copy of the treaty. You can get information on your rights under the treaty and find out what laws may apply to these rights.

Modern treaties are also available online at bctreaty.ca. (Under Negotiations, choose Treaties and Agreements in Principle.)

Look at your First Nation's treaty to find out:

- where you can harvest resources,
- what resources you can harvest,
- how you can harvest resources,
- what you can do with your harvest, and
- whether provincial, federal, and First Nation laws may apply.



For example, you may:

- have to get a licence or permit to hunt for migratory birds and wildlife;
- have to get a licence or permit to fish in certain areas at certain times;
- only be allowed to fish or hunt for personal use; and/or
- be allowed to trade, barter, or sell some of your harvest.

If you don't follow the terms in the treaty and any laws that apply, a conservation officer may charge you with an offence.

Some modern-treaty nations issue membership, citizenship, or harvester's cards. These cards can be used as identification and evidence of your membership in the First Nation.



Harvesting rights and historic treaties

The language in historic treaties is often broad, and First Nations, the provincial government, and the federal government disagree on what the treaty promises mean. Currently, provincial and federal fish and wildlife regulations in BC don't recognize rights for First Nations with historic treaties.

Your safest bet to avoid being charged is to follow the regulations for harvesting under Aboriginal rights for status and non-status Indians outlined on pages 4 to 9.

If you choose to use your treaty right to harvest without getting any required permits or licences, you may be charged and you may have to prove your treaty right to avoid conviction. You can reduce your chances of being charged and convicted if you:

- get a letter from the Chief and Council of your community stating you're a community member or descendant of the community and that your community signed a Douglas Treaty or Treaty 8;
- confirm with your community that you're hunting, trapping, or fishing in a way that's based in a traditional practice and that the community understands is protected by the treaty right;
- hunt, trap, fish, or gather resources only in areas your community traditionally used and that are covered by the treaty;
- hunt, trap, fish, or gather resources only for food, social, or ceremonial purposes;
- follow public safety, public health, and conservation regulations; and
- follow any laws of your First Nation.



Conservation, public health, and public safety

There are limits to Aboriginal harvesting rights. Courts have found that governments may restrict Aboriginal harvesting rights for conservation, public health, and public safety reasons.

The *Wildlife Act* and its regulations set out the rules for hunting in BC. These rules can vary based on where you're hunting, when you're hunting, and what species you're hunting.

Conservation

Some examples of conservation rules that apply to Aboriginal hunters and fishers are:

- No hunting in areas that require a Limited Entry Hunting permit unless you have this permit (see the next page).
- Limits on hunting in certain areas to protect species with conservation concerns.
- No hunting of individual animals below a certain size.
- No wasting carcasses.
- No killing species listed under the *Species at Risk Act*.

If you want to know if there are conservation concerns or restrictions for the area or the species you're hunting or freshwater fishing, contact the BC Fish and Wildlife Branch at **1-877-855-3222** or the Conservation Officer Service at **1-877-952-7277**.

To find out about conservation concerns for marine fishing, contact your First Nation or the regional DFO office in your area. A list of offices is at dfo-mpo.gc.ca/contact/regions/index-eng.html.

If you don't follow conservation regulations, you're taking the risk you may be charged and convicted.



Limited Entry Hunting

If conservation is an issue, you may have to apply for a **Limited Entry Hunting (LEH)** permit. LEH applies even if you're a status Indian and intend to hunt in your traditional area.

The LEH system helps to limit the number of hunters and number of certain animals that may be harvested. Through the LEH system, hunting permits are awarded to resident hunters based on a random draw.

Contact the BC Fish and Wildlife Branch at **1-877-855-3222** to find out whether an LEH permit is required for the species you're hunting and the area you're hunting in.

The Fish and Wildlife Branch provides information on how Limited Entry Hunting works and a *Limited Entry Hunting Regulations Synopsis* every year. It is available at www2.gov.bc.ca. In the search bar at the top right, type in "LEH."

You can apply for an LEH permit online at www2.gov.bc.ca. In the search bar at the top right, type in "LEH Application."

You can also contact the LEH office by phone at **250-356-5142** or email: LimitedEntry.Hunting@gov.bc.ca.

Bag limits and hunting seasons

A **bag limit** is a law that limits the number of animals within a species or group of species that hunters may kill or trap. Bag limits and hunting seasons don't generally apply to status Indians who are using Aboriginal harvesting rights and live in BC. *But* a conservation officer may enforce bag limits and hunting seasons if there are conservation concerns about certain species.

It's best to contact your First Nation and the BC Fish and Wildlife Branch before you go hunting to make sure there are no conservation restrictions that may apply to you.

Bag limits and hunting seasons do currently apply to non-status Indians and Métis people. While non-status Indians and Métis can hold Aboriginal harvesting rights, the provincial government and the federal government will generally enforce all hunting regulations against non-status Indians and Métis. Following *all* harvesting regulations is the best way to avoid being charged.



Harvesting in national parks and provincial parks

All hunting, trapping, fishing, and gathering is prohibited in national parks. While you may still have an Aboriginal harvesting right, you're likely to be charged if you exercise it in a national park — unless your First Nation has an agreement with Parks Canada.

Aboriginal harvesting rights can be used in some provincial parks during open season and specific time periods. Aboriginal harvesters are subject to public health, safety, and conservation regulations.

For more information on hunting in provincial parks, go to env.gov.bc.ca. In the search bar at the top right, type “hunting in BC parks.”



Public health and safety

Some examples of public health and safety rules that apply to Aboriginal hunters and fishers are:

- No hunting or shooting near residential neighbourhoods, roads, or recreational areas.
- No clam fishing in areas that are closed due to contamination.
- No hunting at night with a spotlight (in some cases).

If you don't follow public health and public safety regulations, you're taking the risk you may be charged and convicted.

Firearms licensing requirements

The federal government requires Aboriginal harvesters to have a firearms licence. There are specific regulations for Aboriginal people that are supposed to make the process of getting a firearms licence easier.

For more on this process, go to rcmp-grc.gc.ca. Type in "Firearms Licence" in the search bar at the top right.



Pre-harvest checklists

If you're harvesting under an Aboriginal harvesting right and not following the same regulations as non-Aboriginal harvesters, there's always a chance you'll be charged. This may be because the government or the conservation officer disagrees about what is included in your Aboriginal harvesting right.

But, there are some steps you can take to make it less likely you'll be charged, and less likely you'll be convicted if charged.

If you're a status Indian

Before you go harvesting:

- Talk to your First Nation to confirm:
 - the harvesting you want to do is based on a traditional practice of your community, and
 - the harvesting you want to do is in your traditional territory.
- Call the First Nation whose territory you're harvesting in and the Fish and Wildlife Branch (or DFO for marine fisheries) to find out whether there are conservation, public health, or public safety regulations, or any laws of the First Nation that will apply to your harvest.
- If you're harvesting in another First Nation's territory, get a letter from their Chief and Council giving you permission to harvest in the territory.

Bring with you when you harvest:

- your Indian status card;
- your firearms licence (if using a firearm);
- letter from your First Nation saying your First Nation has signed a treaty and you're a member of that First Nation (if harvesting under a treaty right);
- your citizenship, membership, or harvester's card (if your First Nation issues these); and
- letter of permission from the First Nation (if harvesting in another Nation's territory).



If you're a non-status Indian

Before you go harvesting:

- Purchase any licence required (best option) OR talk to your First Nation to confirm:
 - the harvesting you want to do is based on a traditional practice of your community, and
 - the harvesting you want to do is in your traditional territory.
- Call the First Nation whose territory you are harvesting in, and the Fish and Wildlife Branch (or DFO for marine fisheries) to find out whether there are conservation, public health, or public safety regulations, or any laws of the First Nation that will apply to your harvest.
- If you're harvesting in another First Nation's territory, get a letter from their Chief and Council giving you permission to harvest in the territory.

Bring with you when you harvest:

- your citizenship, membership, or harvester's card (if your First Nation issues these);
- letter from your First Nation confirming you're a member or a descendant of a member (if your First Nation doesn't issue citizenship, membership, or harvester's cards);
- your firearms licence (if using a firearm);
- letter from your First Nation saying your First Nation signed a treaty and you're a member of that First Nation (if harvesting under treaty right); and
- letter of permission from the First Nation (if harvesting in another Nation's territory).



If you're Métis

Before you go harvesting:

- Purchase any licence required (best option) OR talk to your Métis community to confirm:
 - the harvesting you want to do is based on a traditional practice of your community, and
 - the harvesting you want to do is in your traditional territory.
- Call your Métis community and the Fish and Wildlife Branch (or DFO for marine fishing) to find out whether there are conservation, public health, or public safety regulations, or any laws of the Métis community that will apply to your harvest.
- If you're harvesting in a First Nation's territory, get a letter from the Chief and Council giving you permission to harvest in the territory.

Bring with you when you harvest:

- your Métis harvester card,
- your firearms licence (if using a firearm), and
- letter of permission from the First Nation (if harvesting in a First Nation's territory).



Where to get more information

Your First Nation's traditional hunting practices

Contact your First Nation if:

- you have any questions about your traditional Aboriginal harvesting practices, including where your First Nation traditionally harvested, or
- you want to make sure you have the community's support.

If you want to hunt on another First Nation's traditional territory, contact that Nation.

Hunting and fishing licences

For more information about hunting and freshwater fishing licences and permits:

- call the Fish and Wildlife Branch at **1-877-855-3222**, or
- go to **frontcounterbc.gov.bc.ca**:
 1. Click Info about Natural Resource Applications.
 2. Click Fish and Wildlife. This will take you to a list where you can choose information about hunting, fishing, and trapping licences.

You can also visit FrontCounter BC at many locations across the province. Locations are listed at **frontcounterbc.gov.bc.ca** — click Where — FrontCounter BC locations.

For more information on marine fishing, contact your First Nation or the regional DFO office in your area. The offices are listed at **dfo-mpo.gc.ca/contact/regions/index-eng.html**.

Hunting, fishing, and trapping regulations

To get a copy of the *Hunting and Trapping Regulations Synopsis*, go to **www2.gov.bc.ca**. In the search bar at the top right, type "Hunting and Trapping Regulations."

To get a copy of the *Freshwater Fishing Regulations Synopsis*, go to **www2.gov.bc.ca**. In the search bar at the top right, type "Freshwater Fishing Regulations."



Harvesting offences in BC

Most Aboriginal harvesters are charged with offences because:

- they weren't harvesting within their traditional territory;
- they weren't given permission to harvest by the First Nation whose traditional territory they were hunting in;
- they're hunting in a way that's unsafe or against conservation regulations; or
- the government or the conservation officer doesn't agree that they were following a traditional practice. For example, they were hunting at a particular time of year that wasn't part of their traditional practice.

In some cases, they're charged because the government has a different view about what's included in their Aboriginal harvesting right or what regulations they must follow for conservation, public health, or public safety.

If you're charged with a harvesting offence, you should contact a lawyer. See the next page for how to contact a lawyer.



Getting legal help

If you've been charged with a harvesting offence (such as illegally hunting or selling your harvest):

- you have the right to get a lawyer, and
- you may have a defence based on your Aboriginal rights or treaty rights.

A lawyer can work with you to defend your Aboriginal rights or treaty rights. A lawyer can also help you decide what your best course of action is based on the circumstances of your case.

Call Legal Aid BC

Aboriginal harvesting offences are covered by Legal Aid BC. Call Legal Aid immediately to find out if you qualify for a free lawyer.

604-408-2172 (Greater Vancouver)
1-866-577-2525 (elsewhere in BC)

Whether you qualify for a free lawyer through Legal Aid depends on:

- your legal problem, and
- your income.

Legal Aid provides a range of free services to people with low incomes. This includes **legal information**, and may include **legal advice** or a lawyer to take your case. (Legal information is general information about the law. It helps you identify what your legal issue is and what options may be available to you. Legal advice involves applying the law to a specific situation. A lawyer will give you their legal opinion and advice about what to do next.)

If you've been arrested or **detained** (denied bail), or you're being investigated for a crime and you're in **custody** (jail) but not yet charged, you can call the Brydges Line to talk to a lawyer for free: **1-866-458-5500**. This service is available 24 hours a day, seven days a week.



If you don't qualify for legal aid — Other options

Find a lawyer

To find a lawyer who's experienced with Aboriginal rights cases, call the Lawyer Referral Service. They will give you the name and phone number of a lawyer who practises the area of law that applies to your case. You'll have to phone the lawyer to make an appointment. You can meet with the lawyer for half an hour to find out whether you have a case. The meeting will cost \$25 (plus taxes).

604-687-3221 (Greater Vancouver)

1-800-663-1919 (elsewhere in BC)

The cost of hiring a lawyer depends on the circumstances of your case.

Ask your Aboriginal community for help

Your community might be willing to help you to raise money to cover the costs of your case. These costs could include:

- your legal fees,
- court costs,
- travel expenses, and
- the use of experts to prove your Aboriginal right.

Whether your community will help you likely depends on the circumstances of your offence and the circumstances of your community.

Duty counsel

You may be able to get free legal advice from duty counsel in Provincial Court if you:

- don't qualify for a lawyer through Legal Aid, and
- can't afford to hire a lawyer.

Duty counsel are lawyers who give free legal advice on or before the day of court.

Call Legal Aid to find out when and where to find the duty counsel in your area.

604-408-2172 (Greater Vancouver)

1-866-577-2525 (elsewhere in BC)



What does my lawyer need to know?

When you meet with your lawyer, bring the particulars (details) of your case. Also bring any other information that the **Crown counsel** (government lawyer) gave you. The information the Crown counsel gives you is sometimes called “**disclosure.**”

Your lawyer also needs to know the information listed on the next three pages.

Where are you from?

Your lawyer needs to know:

- your address,
- whether you’re a status or a non-status Indian,
- which Aboriginal community you’re connected to, and
- if you’re connected to a First Nation, whether it has a treaty.

Where did the offence take place?

Your lawyer needs to know:

- where you were harvesting, and
- whether that area is part of your Aboriginal community’s traditional territory.

Did you have permission to harvest where the alleged offence took place?

If the area where you were harvesting isn’t part of your traditional territory, it’s important to let your lawyer know if:

- another First Nation gave you permission to harvest in its territory; or
- your Aboriginal community has an understanding or agreement with the First Nation whose land you were on that allows you to harvest there.

Some First Nations manage their own natural resources. Tell your lawyer if you were harvesting resources under your First Nation’s authority.



Who can your lawyer contact in your Aboriginal community?

Your lawyer needs to meet with the people who represent your Aboriginal community. Members of your community who can help your lawyer get a better understanding of your case might include:

- the elected Chief and Council;
- the Hereditary Chief or the Council of Hereditary Chiefs;
- Elders;
- a representative from your First Nation's lands, fisheries, forestry, or natural resources department; and
- the manager of your community's restorative justice program (if any).

Your lawyer will want to meet with your community representatives as soon as possible. This is because your lawyer needs to know whether your Aboriginal community supports you in your case.

If your community feels that you had a right to do what you were doing when you were charged, this will strengthen your case. This is true even if your Aboriginal community can't support you financially.

Tell your lawyer if your Aboriginal community doesn't support you.

Your lawyer also needs to get an idea of what kind of relationship your Aboriginal community has with the agency that charged you. This might affect your options for dealing with your charges.

Do you have a record?

Your lawyer needs to know whether you've been charged with:

- a similar offence in the past, or
- any other crimes now or in the past.



Sometimes when you're charged with a harvesting offence, you might also be charged with criminal offences related to your situation at the time you were charged. This could include:

- uttering threats,
- obstruction of justice,
- firearms offences, or
- assaulting a peace officer.

Will you be available to attend court?

Your lawyer needs to know if you'll be available to attend court. If your case goes to trial, it could take more than a year for the court process to finish. How long your case will take depends on a number of factors, including the court location.

It's very important for you to be prepared to attend every day that your case is before a judge. This is especially true once the trial has started. If you can't attend court, let your lawyer know as soon as possible so they can ask the court to excuse you.

Your lawyer may be able to attend court on your behalf for short **preliminary appearances**. These are appearances before the trial starts — for example, to schedule the trial dates.

The only time you don't have to attend a day of trial is if the court has excused you due to **extenuating circumstances**. (Extenuating circumstances are good reasons that help explain your absence. For example, if you're really sick or if you have a family emergency.)

Let your lawyer know when you have important commitments, such as cultural and harvesting activities. Your lawyer can try their best to work with the court and schedule court dates accordingly.



Gladue rights

If you're Aboriginal, you have **Gladue rights**. This means the judge must consider your Aboriginal background and circumstances when setting bail or during sentencing. The judge must consider all reasonable options other than jail. For more information, see our website aboriginal.legalaid.bc.ca (under Your rights, click Bail and sentencing).

It's your right to have Gladue rights applied to your case, but you or your lawyer must inform the judge you're Aboriginal. Your lawyer should do everything possible to make sure your Gladue rights are respected. You can also choose to **waive** your Gladue rights. (When you waive your rights, you tell the judge not to consider your Aboriginal background.)

What can I expect from my lawyer?

Once your lawyer meets with you to discuss the details of your case, they will:

- do some research to find out more about your Aboriginal community's harvesting rights, and
- find out more about the laws for traditional harvesting activities and harvesting rights.

Your lawyer may also:

- meet with your Aboriginal community, and
- let you know what your community's position is on your charges.

Once your lawyer has the information they need about your case, they will:

- let you know what your options are, and
- discuss with you whether your community's position changes how you want to proceed.

If you decide to go ahead with a trial, your lawyer will develop a strategy to defend you. They'll need to work with you closely to develop your strategy.



What happens in court?

Harvesting offences are heard in provincial criminal court.

Harvesting rights trials can take a long time. This is because there may be complex constitutional issues involving your Aboriginal rights or treaty rights.

Depending on your case and where you live, a trial will take a number of months before it's resolved. Most cases are likely to take more than a year.

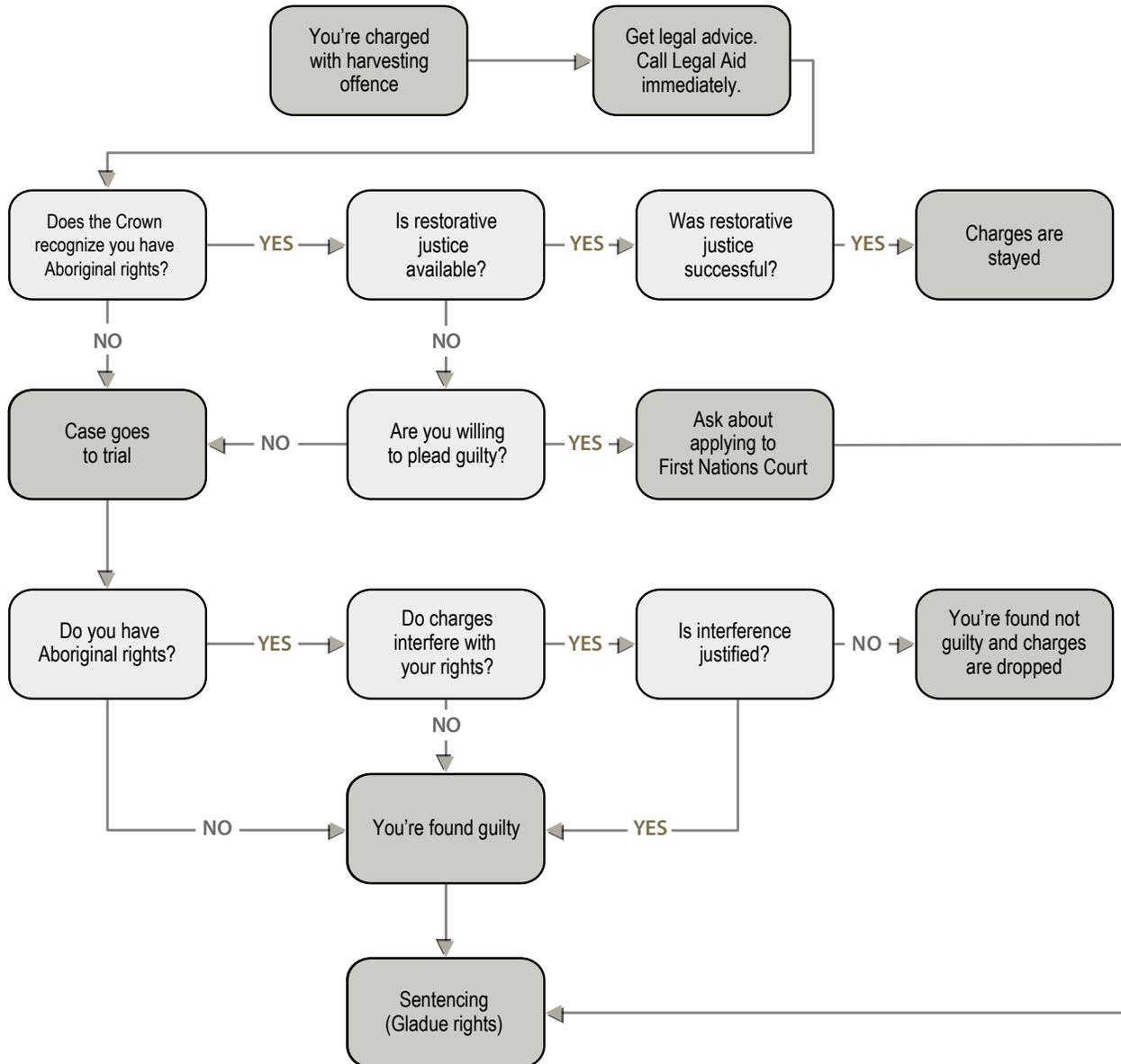
Because of the time and work involved in a trial, it requires a great deal of commitment from you. As well, if you don't qualify for legal aid, your legal fees could be expensive.

Depending on the circumstances of your offence, your lawyer may be able to convince the Crown to resolve the matter outside of court — without you pleading guilty. If you feel you can accept responsibility for the offence, you can ask your lawyer to talk to the Crown counsel about a possible restorative or alternative justice **disposition**. (A disposition is the sentencing or other settlement to your case.)

Talk to your lawyer about what's best for you. If you decide to go ahead with a trial, your lawyer will talk to the court to set up the trial dates. The chart on the next page gives an overview of the court process.



Harvesting rights — Court process



Legal Aid

604-408-2172 (Greater Vancouver)

1-866-577-2525 (call no charge, outside Greater Vancouver)

First Nations Court duty counsel

Apply to have your matter heard in First Nations Court

604-601-6074 (Greater Vancouver)

1-877-601-6066 (elsewhere in BC)

Where to find more information

Legal Aid BC has free information about First Nations court and Gladue rights

What's First Nations Court?

If you identify as Aboriginal and plead guilty to a crime, you may be able to go to one of BC's First Nations Courts for sentencing. This fact sheet explains:

- restorative justice,
- how you get into First Nations Court,
- where First Nations Courts are located,
- who's at First Nations Court, and
- what a healing plan is.

Your Gladue Rights

Plain language booklet about Aboriginal peoples' rights under the Criminal Code of Canada called Gladue rights. It explains:

- restorative justice,
- how Gladue is applied in court,
- the history of Gladue, and
- Gladue reports and oral Gladue submissions.

Gladue Rights at Bail and Sentencing

This infographic poster shows when Gladue rights apply for Aboriginal peoples during the criminal court process, and when to get a Gladue report or prepare an oral Gladue submission.

Gladue Submission Guide

Plain language guide for Aboriginal peoples, lawyers, and Native courtworkers about how to prepare an oral or written Gladue submission for a bail or sentencing hearing.

The guide explains:

- Gladue rights,
- what happens at a hearing,
- what's in a Gladue submission, and
- where to get help.

Includes a worksheet section to gather information to prepare a Gladue submission.





How to get *A Guide to Aboriginal Harvesting Rights* and other free Legal Aid BC publications

Read: aboriginal.legalaid.bc.ca/read

Order: crownpub.bc.ca

(under Quick Links, click BC Public Legal Education & Information)

Questions about ordering?

Phone: 604-601-6000

distribution@lss.bc.ca

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