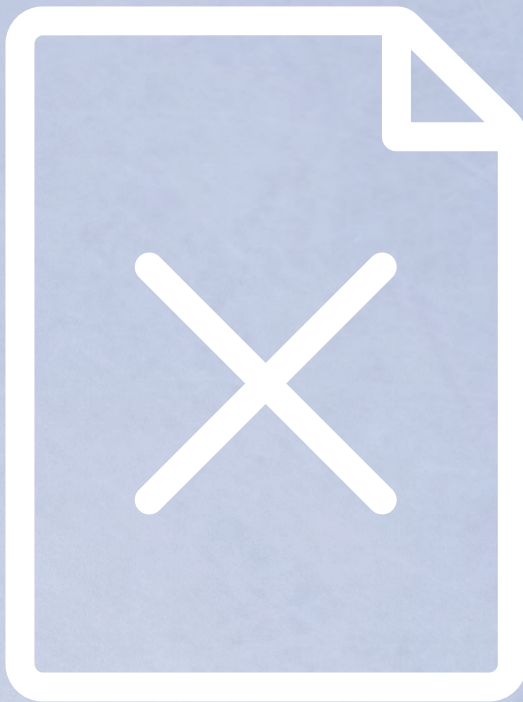


Defending Yourself

Breach^{of a} Court Order





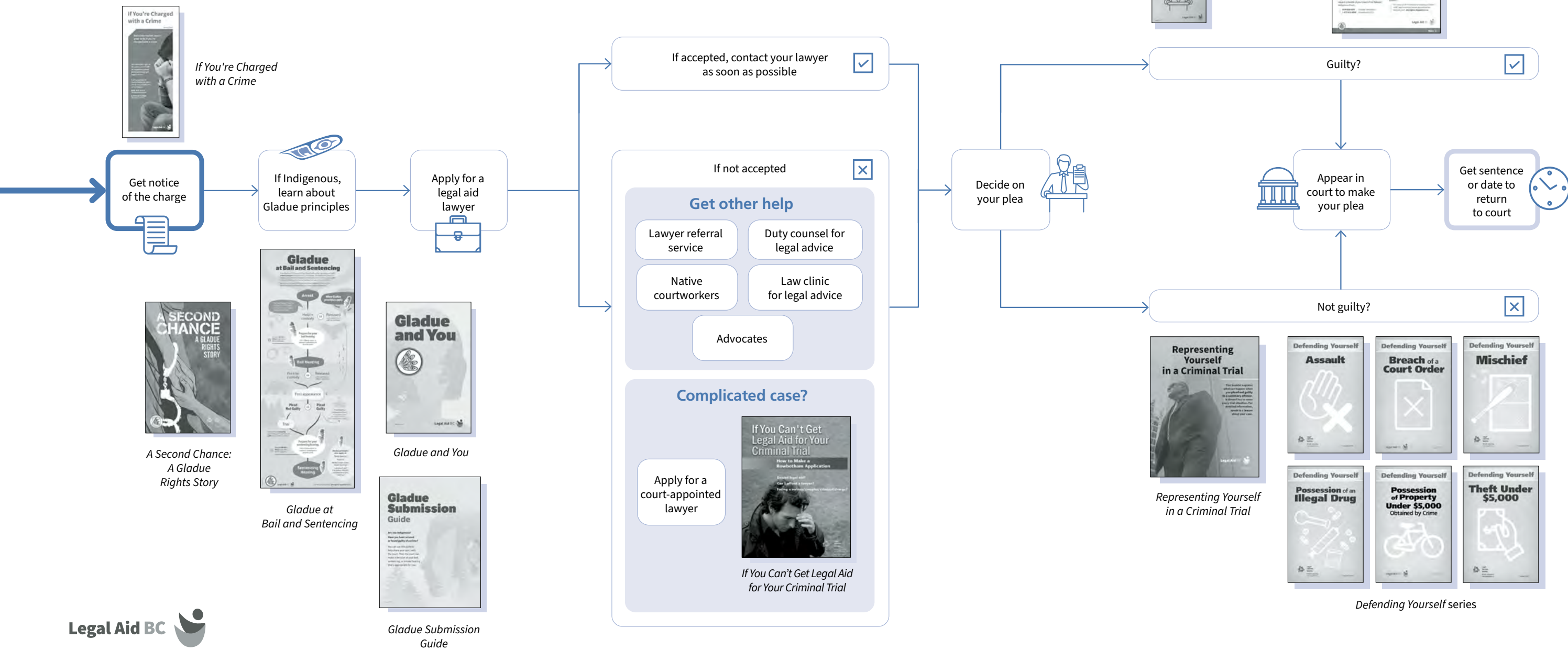
After you've been charged: A step-by-step chart

The flowchart under this flap shows how you can get help after you've been charged with a crime, including the free legal aid publications to help you at each stage.

Read these publications before you go to court. You can read all of them online at **legalaidsite.ca/read**. For some of them, you can order free printed copies (see the back cover).

Legal Aid BC publications to help you

From your criminal charge to your trial



© 2022 Legal Services Society, BC

Fourth edition: August 2022

First edition: April 2013

ISSN 2291-6849 (Print)

ISSN 2291-6857 (Online)

Published on the traditional unceded territory of the Coast Salish peoples, including the territories of the x^wməθk^wəyəm (Musqueam), Sk̓w̓x̓wú7mesh (Squamish) and sə́lilwətaʔt/ Selilwitulh (Tsleil-Waututh) Nations.

Acknowledgements

Editors: Jennifer Hepburn and Judy Clarke

Designers: Shelley Johnstone and Danette Byatt

Legal reviewer: Camran Chaichian

Development coordinator: Patricia Lim

Thank you to the many field testers who contributed to this booklet series.

This booklet may not be commercially reproduced, but copying for other purposes, with credit, is encouraged.

Defending Yourself: Breach of a Court Order is published by Legal Aid BC (LABC), a non-profit organization that provides legal aid to British Columbians. LABC is separate from the BC government, its primary funder. It also receives grants from the Law Foundation and the Notary Foundation (of BC).

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 booklet is up to date as of August 2022.

Contents



Introduction1

What is breach of a court order?.....1

Could I go to jail?2



Before the trial4

Prepare your defence4

If your probation order is under appeal
or invalid6



At the trial7

What must the prosecutor prove?7

Present your case10

What if the judge finds me guilty?11

Checklist:
How well did the prosecutor do?.....13



Where can I get legal help? 14



This guide is for people who want to plead **not guilty** to a charge of **breach of a court order**. Use this guide if you don't qualify for legal aid, you can't afford a lawyer, and you plan to represent yourself (be your own lawyer) in court.

You should represent yourself *only* if you don't qualify for legal aid and you can't afford a lawyer. If you choose to do this, be sure to talk to a lawyer for advice before your trial. Some legal help is better than none. See "Where can I get legal help?" on page 14.

This guide explains how to defend yourself when you're charged with breach of a court order. It doesn't try to cover every situation. For detailed information, speak to a lawyer about your case.



Are you Indigenous?

Indigenous peoples include First Nations, Métis, and Inuit. If you're Indigenous and charged with a crime, the judge must apply **Gladue principles** when sentencing you. This means the judge must consider your personal and unique circumstances as an Indigenous person and options other than jail. Gladue principles apply to *all* Indigenous peoples. They also apply whether you are status or non-status, or whether you live on or off reserve. For more information, see the Aboriginal Legal Aid in BC website at aboriginal.legalaid.bc.ca (click Courts & criminal cases then Gladue principles).





Introduction

What is breach of a court order?

A breach of a court order is to disobey or to **fail to comply with** (fail to follow) a condition ordered by the court. The condition can be *to do* or *not to do* something as part of:

- a peace bond,
- a family law protection order (made in a family law case),
- a judicial interim release order (bail order),
- a probation order (after you've been sentenced), or
- a conditional sentence order (generally means house arrest).

There are many types of conditions that can be ordered by the court, including:

- a no contact order (you mustn't have direct or indirect contact with a particular person)
- a condition not to go to a specific area or place
- a condition not to be in possession of drugs or alcohol, or not to use them
- a condition to obey a curfew
- a ban from having weapons

You may be charged with a breach of a court order (a "breach") if you fail to follow any court-ordered condition such as those above. Or you could be charged if, for example, you don't do the following:

- Pay **restitution** (pay money to someone, usually the victim), when ordered by the court.
- Attend counselling, when ordered by the court.

- Complete community service work hours that were ordered as part of a probation order or conditional sentence order.
- Keep the peace and be of good behaviour while on bail or on probation.
- Keep away from a person you were ordered not to have contact with.
- Stay away from a place you were ordered not to go to.

Could I go to jail?

Depending on the details of the breach and your criminal record, the Crown prosecutor (the government lawyer who presents the case against you) can choose to charge you with either a **summary** or **indictable** offence. You could get a jail sentence for either type of offence. Judges view a breach of a court order as a serious matter. They want to make sure court orders are respected and not ignored.

A summary offence is a less serious crime. If the prosecutor proceeds “summarily,” generally the maximum sentence a judge could give you is two years less a day in jail, or up to a \$5,000 fine, or both. Or you may have to serve the rest of your house arrest in jail if you’ve breached a conditional sentence order, or wait for your trial in jail if you’ve breached your bail. But the judge could give you a shorter sentence (and possibly no jail time), especially if you haven’t been convicted of a breach before.

An indictable offence is a more serious crime. If the prosecutor proceeds “by indictment,” the judge could give you a longer jail sentence of up to two years for a breach of bail, or four years for a breach of probation.

The first time you’re in court, ask the prosecutor if they’re proceeding “summarily” or “by indictment.” The prosecutor should also say whether they’re asking for a jail sentence.

What to do if your sentence could be strict

If the Crown prosecutor says they'll:

- proceed “by indictment,”
- ask for a sentence that includes jail, or
- ask for a sentence that will have other serious consequences for you,

immediately ask the judge to **adjourn** (postpone) your case so you can get legal help.

If the prosecutor proceeds “by indictment” (or is asking for a jail sentence), you’ll usually have a better chance of getting legal aid — so be sure you understand how the prosecutor will proceed. Legal Aid BC may change its decision to not cover your case.

You can ask the court to appoint a government-funded lawyer to your case (**a Rowbotham application**) if:

- you can’t afford a lawyer and were denied legal aid;
- the prosecutor says that they’ll seek a jail sentence if you’re found guilty, or will seek any other type of sentence that will have serious consequences for you; and
- your case is too complicated for you to handle.

For more information, see *If You Can’t Get Legal Aid for Your Criminal Trial*.





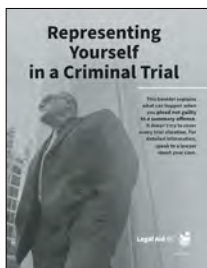
Before the trial

Prepare your defence

When you prepare your defence, think about what **evidence** (information about the crime) you can use. Evidence includes documents, witnesses, videos, recordings, or your own personal **testimony** (telling your story under oath, in court).

Make sure the Crown prosecutor has given you all the evidence that they'll use (called the **disclosure**), such as security videotapes or witness statements before the trial date. The prosecutor should also tell you who they'll call as a witness. You can send them a letter or email asking for this information. (See a sample letter in *Representing Yourself in a Criminal Trial*.)

Prepare to provide truthful and relevant evidence to the court.



For more information about the trial process, such as how to use witnesses, prepare questions, and decide whether to **testify** (speak) yourself, see *Representing Yourself in a Criminal Trial*. Remember you have the right to not testify; *speak to a lawyer before you decide whether you should testify*.

To defend yourself against a charge of breach of a court order, you may be able to use one (or more) of the following four points if they're true:

☐ “I didn’t know I had that condition.”

If you weren’t aware of a condition or were confused by the explanation you were given about the meaning of it, the judge may find that you didn’t intend to breach the court order.

☐ **“It was impossible for me to comply.”**

There might be situations outside of your control that prevented you from following the court order. For example, the judge may find that you had a good reason or a “reasonable excuse” for not completing the community service work hours on time if you were seriously ill during that period and couldn’t work. Or, perhaps you were asked to pay restitution (money) as a condition of your probation and you lost your job and couldn’t pay. As well as giving a reasonable excuse, you’ll have to explain why you didn’t come to court and ask to change the condition or ask for more time.

For more information on whether your situation might be considered a good reason, get legal advice. To avoid problems, you can ask the court to change any condition that you believe is impossible to follow.

☐ **“I didn’t do it.”**

You may agree that you were fully aware of the court order and its validity, but you don’t agree that you breached the order.

☐ **“My Charter rights were violated.”**

If the police got evidence of the breach by violating your rights under the Charter of Rights and Freedoms, the judge might not let the Crown prosecutor use that evidence. And if that happens, and there’s no other evidence proving your guilt, you can ask the judge to dismiss the charge against you. Under the Charter, the police must do the following when they arrest you and tell you what they’ve arrested you for:

- tell you immediately that you can talk to a lawyer, and let you do so in private before questioning you or taking any samples;
- give you access to a phone to speak to a lawyer; and

- tell you that you can get free legal help. (Legal Aid BC has lawyers available 24 hours a day to talk over the phone for free to people in police custody. This is called the “Brydges Line.”)

Don’t make any statements to the police or anyone else before speaking to a lawyer.

If the police didn’t do all of these things, you can say that they violated your rights. You would then say that the prosecutor shouldn’t be able to use any statements you made or other evidence that the police got by violating your rights.

However, the judge won’t automatically throw out the evidence in question. You must also show that accepting the evidence will reflect badly on how justice is carried out in Canadian courts.

If you plan to argue that your Charter rights were violated, talk to a lawyer before your trial. Using the Charter is complicated and usually requires legal research. Judges expect you to *tell the prosecutor in advance* if you plan to use this type of an argument.

If your probation order is under appeal or invalid

If you’re accused of a breach of a probation order that is under appeal or you think is invalid, talk to a lawyer as soon as possible. The fact that you’re appealing your probation order is *not* a defence to a charge of breach of probation. Any probation order is in effect until:

- the appeal court cancels it, or
- you apply for a **variation** (apply to change it) and the sentencing court changes it.



At the trial

What must the prosecutor prove?

At the trial, before you present your defence, the Crown prosecutor will present the **Crown's case** against you.

The prosecutor must prove **beyond a reasonable doubt** that you're guilty of all the parts (the **elements**) that make up the crime of breach of a court order. To do this, the prosecutor presents evidence to the court, using witnesses, documents, videos, or recordings.

In the case of a breach of a conditional sentence (house arrest), the prosecutor needs only to present evidence to the court that shows that you more probably committed the breach than not (prove your guilt on a **balance of probabilities**). The prosecutor doesn't have to prove beyond a reasonable doubt that you're guilty of breaching the conditional sentence order.

If the prosecutor tries to use evidence that they didn't tell you about in advance, you can object and ask the judge to dismiss the case or adjourn (postpone) the trial.

You can **cross-examine** (question) the prosecutor's witnesses. But you'll normally do so only if you disagree with their information. For details about how to cross-examine, see *Representing Yourself in a Criminal Trial*.

For a judge to find you guilty of breach of a court order, the prosecutor must prove the following things:

☐ A court order was made

The Crown prosecutor must prove that the court order was made. To do this, the prosecutor will have the court declare that it has the records to support this. Or, if the order was made in another court, the prosecutor will produce documents (such as a signed **Release Order**) to prove that the order exists.

If the order was made in another court, the prosecutor must give you advance notice that they're going to file documents to prove that the order exists. If they don't give you advance notice, you can object.

□ Your identity

The Crown prosecutor must prove that the court order was for you. The prosecutor may do this by calling witnesses who reviewed the order with you (such as a court clerk, probation officer, or bail supervisor) and/or by producing documents (such as a signed Release Order).

The prosecutor must then prove that you're the person who committed the breach. To do this, the prosecutor will call witnesses, which may include police officers, to give evidence. The witnesses will probably describe the person they saw or heard committing the breach. Then the prosecutor will ask the witnesses to say if that person is in the courtroom. The evidence, either from the witnesses or from other sources (such as fingerprints, a photograph, a video, or audio recording), must show that you committed the breach.

□ Jurisdiction

The Crown prosecutor must prove:

- that the breach happened in BC,
- the date of the breach, and
- the specific location where it happened.

These details are included on the **Information**. This is the official court form (listing the date, place, and type of offence) that the prosecutor will give you before the trial. The prosecutor must still *prove* these details at the trial.

Usually the prosecutor will call a witness to give evidence about the date and place of the crime. This witness may be a police officer or another person.

A breach of a court order may be **prosecuted** (brought to trial) either where the court order was made or in the specific location where the breach took place if it happened in Canada.

☐ You understood the condition that the prosecutor says you've breached

The Crown prosecutor must prove that the conditions in the court order were explained to you and that you were given a copy of the order. The prosecutor will ask the person who reviewed the order with you what they told you and if you had any questions. If you needed an interpreter, the prosecutor will call the interpreter who reviewed the order with you. The prosecutor may also use documents that you've signed to prove that you understood the conditions in the order.

☐ You failed to comply with a condition

The Crown prosecutor must prove that your action (what you did) or omission (what you didn't do) amounts to a failure to comply (follow) a condition of the court order.

For example, to prove this, the prosecutor might call as a witness any of the following people to give information:

- your probation officer to say that you haven't completed the number of community service hours within the time limit,
- your bail supervisor to say that you failed to report as required,
- the police officer who arrested you after the curfew hours, or
- the people whom you weren't allowed to contact to say that you did (by phone, email, etc.).

Affidavit evidence

Sometimes the prosecutor uses an **affidavit** to prove some of the points in the Crown's case. An affidavit is a document containing information that a person **swears** (promises) is true.

If the prosecutor plans to use an affidavit, they should give you a copy of this document before the trial. If you disagree with it, or if you think it should include other information, ask the court to make the person who swore the affidavit come to your trial. Then you can question that person about the information that they swear is true.

Present your case

After the Crown prosecutor finishes presenting the Crown's case, it's your turn.

You now have your chance to use the points you've prepared as your defence. You can use your gathered evidence, call witnesses, and, *if you want to*, give evidence as a witness yourself. You have the right to *not* testify. Ask a lawyer whether you should or not. See *Representing Yourself in a Criminal Trial* for more details.

Close your case

After you finish presenting your defence, you close your case. Tell the judge why you think the Crown prosecutor didn't prove that you're guilty beyond a reasonable doubt, or didn't prove your guilt on a balance of probabilities (in the case of a hearing on a breach of a conditional sentence order). Mention if you think the prosecutor's case was weak or inconsistent in any area. This summary is called your **submission**. See *Representing Yourself in a Criminal Trial* for more details.

What if the judge finds me guilty?

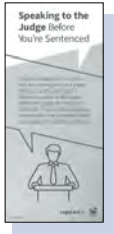
Once you and the Crown prosecutor have finished speaking, the judge will decide if you're guilty or not. If the judge finds you guilty, you'll receive a sentence. The sentence depends on the details of the offence and your criminal record. It could be any of the following:

- an **absolute discharge** (your record won't show a conviction)
- a **conditional discharge** (you'll be regarded as not having been convicted if you meet conditions that the judge sets)
- **probation** (a "suspended sentence" including various conditions, for example, community service)
- a **restitution order** (you must pay money to the victim)
- a fine (up to \$5,000)
- a **conditional sentence** (most often means house arrest for jail sentences of less than two years, which is like a jail term, but you serve it in the community)
- a **jail term** (up to two years less a day for a summary offence, or for an indictable offence up to two years for breach of bail or four years for breach of probation)
- cancellation of house arrest if you were on a conditional sentence order (you have to serve the rest of it or some of it in jail)

(Note that a judge usually only grants a discharge when an accused person has pleaded guilty and doesn't have a previous criminal record.)

Speaking to the judge before you're sentenced

You get a chance to speak to the judge before they decide your sentence. (This is called **speaking to sentence**.) The judge will give you a chance to explain why you committed the crime, why you won't do it again, and whether you need help for any problems you may have that were connected to the crime.



Speaking to sentence is important because it gives you a chance to explain your situation to the judge. You can ask for a lower sentence than what the Crown prosecutor is asking for.

Read *Speaking to the Judge Before You're Sentenced* before you go to court.

Paying a fine

The maximum fine for most summary offences is \$5,000. If the judge fines you, you can ask for time to pay. Tell the judge how much you can pay each month.

Surcharge

You'll usually also have to pay a victim **surcharge**, which is 30 percent of your fine, or \$100 for a summary offence, or \$200 for an indictable offence. The judge can reduce the amount or drop the surcharge completely if you show that paying it would cause you **undue hardship**. For example, this could be because you:

- are unemployed,
- are homeless,
- don't have assets, or
- have significant expenses for your dependent(s).

Being in jail isn't an undue hardship.

Checklist: How well did the prosecutor do?

The prosecutor must prove all of these things:

- ☐ **a court order was made**
- ☐ **your identity**
 - ☐ you're the person the court order was for
 - ☐ you're the person who committed the breach
- ☐ **jurisdiction**
 - ☐ the crime happened in BC
 - ☐ the date of the breach (for summary offences, the Information must be sworn within one year of the date of the crime)
 - ☐ the town, city, or municipality where the breach took place
- ☐ **you understood the condition that the prosecutor says you've breached**
 - ☐ the conditions in the court order were explained to you
 - ☐ you were given a copy of the order
- ☐ **you knowingly or recklessly failed to comply with one of the conditions of the order (a breach took place)**



Remember: If the Crown prosecutor's case is weak or inconsistent in one of the above areas, mention this in your submission (see page 10) when you close your case.



Where can I get legal help?

Even if you can't afford a lawyer to represent you in court, it's a good idea to talk to a lawyer before your trial.

To find one:

- Speak to a **duty counsel** lawyer at the courthouse. Duty counsel are lawyers who give free legal advice. When they're available, they can give you brief, summary advice about the charges against you, court procedures, and your legal rights. Duty counsel can also speak on your behalf the first time you appear in court, but they can't act as your permanent lawyer.
- Call Legal Aid BC at **604-408-2172** (Greater Vancouver) or **1-866-577-2525** (elsewhere in BC) or your local courthouse to find out when duty counsel will be there. (See the Provincial Court of BC website at provinciacourt.bc.ca/locations-contacts for links to courthouse locations.)
- If you don't know a lawyer who handles criminal cases, contact the Lawyer Referral Service to get the name of a local lawyer to talk to for half an hour for free. You can find out what they'd charge if you need more help and decide whether you want to hire them. Call the service at **604-687-3221** (Greater Vancouver) or **1-800-663-1919** (elsewhere in BC).
- Access Pro Bono runs free legal advice clinics throughout the province. To make an appointment, call **604-878-7400** or **1-877-762-6664**.
- If you're Indigenous, you can contact BC First Nations Justice Council about their legal services, including justice centres and a Gladue program. See bcfnjc.com or call **1-877-602-4858**.

- You can get support from a Native courtworker. The Native Courtworker and Counselling Association of BC helps Aboriginal people involved in the criminal justice system. Call **604-985-5355** (Greater Vancouver) or **1-877-811-1190** (elsewhere in BC).
- UBC Indigenous Community Legal Clinic gives free legal help to Indigenous people who can't afford a lawyer. Call **604-822-5421** (Greater Vancouver) or see allard.ubc.ca/community-clinics/indigenous-community-legal-clinic.
- If you live in Greater Vancouver, you may be able to get help from the University of British Columbia's Law Students' Legal Advice Program (LSLAP). You can get free legal advice or assistance from LSLAP if you're charged with a summary offence and the prosecutor isn't asking for a jail sentence if you're found guilty. To find the nearest LSLAP clinic location, call **604-822-5791**.
- If you live in Victoria, the Law Centre may be able to help you. Call **250-385-1221** for more information.
- If you live in Kamloops, TRU Community Legal Clinic can provide you with free legal help and advice. Call **778-471-8490** or see tru.ca/law/students/outreach/Legal_Clinic.html.
- Contact a lawyer in private practice. Find out if the lawyer is willing to help and what it will cost. Even if you pay for just two meetings to get basic advice about your particular case, it could be worth the cost.
- A legal advocate can also support you. Find a local organization on the HelpMap at clicklaw.bc.ca/helpmap.
- For more information about the law, go to the Clicklaw website at clicklaw.bc.ca. Clicklaw has links to legal information, education, and help. You can find out about your rights and options, get toll-free numbers for law-related help, and learn about the law and the legal system.

Notes

This image shows a blank sheet of white paper with horizontal dotted lines, resembling notebook paper. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



How to get free Legal Aid BC publications

Read or order

legalaid.bc.ca/read

Questions about ordering?

604-601-6000

distribution@legalaid.bc.ca

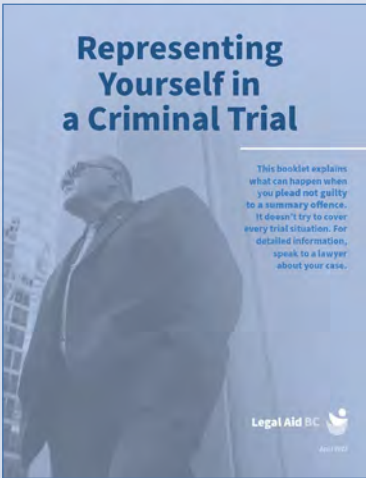
Feedback on this publication?

publications@legalaid.bc.ca



@legalaidbc

You'll also want to read



Read this *Defending Yourself* booklet along with *Representing Yourself in a Criminal Trial*. It has a blue pocket inside the back cover to hold this and other important documents.