

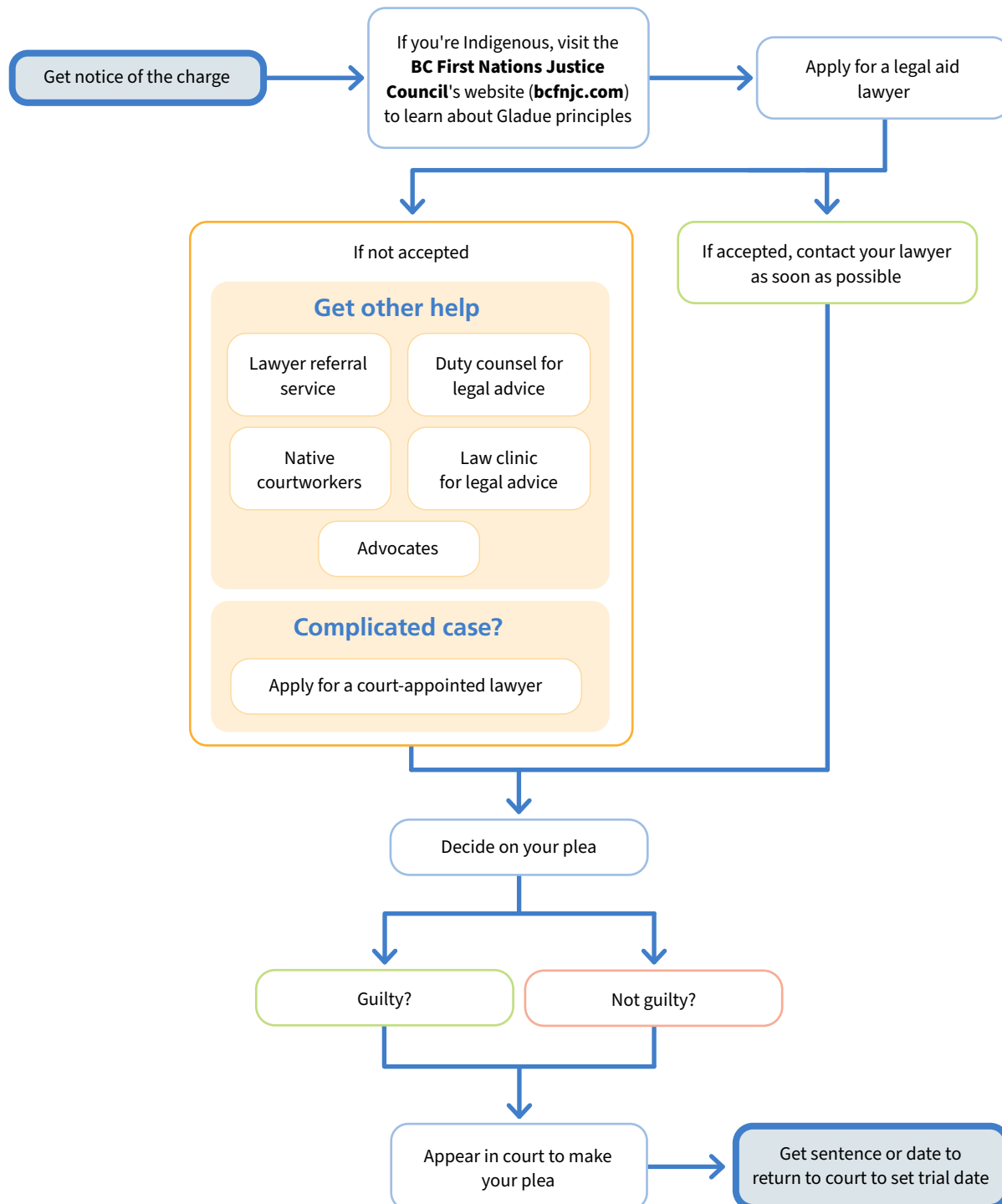
# Defending Yourself Assault



July 2024

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

This flowchart shows how you can get help after you've been charged with a crime, from your criminal charge to your trial.



This resource is for people who want to plead **not guilty** to a charge of **assault**. Use this resource 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, talk to a lawyer for advice before your trial. Some legal help is better than none. See **Where can I get legal help?** on p. 12 of this resource.

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

**If you are charged with any other types of assault other than common or simple assault, this resource does not apply to you. Make sure you talk to a lawyer.**

### **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 (rights under the Criminal Code that refer to the special consideration that judges must give an Indigenous person when setting bail or during sentencing). 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 live on or off reserve. See the [BC First Nations Justice Council \(bcfnjc.com\)](http://bcfnjc.com) for more information.



## **Introduction**

### **What is assault?**

Assault (also known as “common assault”) is:

- the intentional use, or threat of use, of force against another person directly or indirectly,
- without that person's consent (agreement).

Assault can range from mere touching to violent punching. Assault can include kicking someone or shoving someone out of your way.

Indirect use of force can also be an assault. An example of this is throwing a stone to hit someone. Spitting at someone is also considered assault.

Threatening or trying to use force can be an assault if you could have (or the other person reasonably believes you could have) carried out the threat. An assault can occur even if the victim isn't hurt. For the full definition of assault, see [section 265 of the Criminal Code of Canada \(laws-lois.justice.gc.ca/eng/acts/c-46/section-265.html\)](http://laws-lois.justice.gc.ca/eng/acts/c-46/section-265.html).

## Could I go to jail?

Depending on the details of what happened and your criminal record, the **Crown prosecutor** (government lawyer who presents the case against you, also called **the Crown**) can choose to charge you with either a summary offence (a less serious crime) or indictable offence (a more serious crime). You could get a jail sentence for either type of offence.

If the Crown proceeds “summarily,” the maximum jail sentence a judge could give you is two years less a day in jail and/or up to a \$5,000 fine or both. But the judge could give you a shorter sentence or a sentence that doesn’t include jail at all (especially if you don’t have a criminal record).

If the Crown proceeds “by indictment,” the judge could give you a longer jail sentence depending on the offence.

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

- particulars, (a package including the Information—the document setting out the charge(s) against you, and the place and date they allegedly occurred—a summary of the facts alleged against you, witness statements, and the Crown’s Initial Sentencing Position),
- details of the Crown’s case, and
- an Initial Sentencing Position, which tells you what the Crown would be seeking as a sentence if you were to plead guilty.



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Do not plead guilty before speaking to a lawyer.

## What to do if your sentence could be strict

If the Crown 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.

If the Crown says any of these things, immediately ask the judge to adjourn (postpone, or delay, a hearing or trial) your case so you can get legal help.

If the Crown 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 Crown 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, were denied legal aid and appealed your denial and were still denied;
- the Crown 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](#) ([info.legalaid.bc.ca](http://info.legalaid.bc.ca) under Criminal charges).

# Before the trial

## Prepare your defence

When you prepare your defence, think about what evidence (information about the crime) you can use. Evidence includes witnesses, documents, videos, recordings, or your own personal testimony (what you have to say about your case under oath, in court. Always check with a lawyer before you make any statements). You don't have to personally testify (speak). You should ask a lawyer if it's a good idea to testify. You have the right to not testify.



Make sure the Crown 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 Crown 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](#) ([info.legalaid.bc.ca](http://info.legalaid.bc.ca) under Criminal charges).

Prepare to give 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](#) ([info.legalaid.bc.ca](http://info.legalaid.bc.ca) under Criminal charges).



**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 assault, you may be able to use one (or more) of the following five points, if they're true:

### “I didn't intend to do it.”

You can use this defence if you touched the other person accidentally. For example, perhaps you were in a crowd and tripped. Or you lost your balance and bumped into a stranger, but it was an accident and you didn't mean to assault the person. If you didn't intend to hit someone, you haven't committed an assault.

### “I was acting in self-defence.”

You can use this defence if you were assaulted (or threatened) and you used reasonable force to protect yourself. You can also use this defence if you were protecting someone else from an assault.

You can say that you acted in self-defence, if:

- it was reasonable to think that unauthorized or illegal force was being used (or threatened to be used) against you or another person and you were defending or protecting yourself or that other person against that force (or threat of force) in a reasonable way.

- you only intended to defend or protect yourself or the other person. For example, if you continued to use force after the threat ended, you can't argue that you did that to protect yourself.
- your actions were reasonable in the situation. To decide if this is true, the judge will consider factors including:
  - the type of force or threat you faced and if you had any other options,
  - your history with the other person,
  - how the incident started,
  - the size and strength of the people involved,
  - if your actions were appropriate for the threat,
  - whether you knew the other person had the right to use force, and
  - if a weapon was used.

For example, it probably wouldn't be reasonable for you to pull a knife on someone who threatened to punch you. Or, it may not be reasonable to use force if you're much larger than the other person and could easily have walked away.

You also can't use this defence if you used force against a police officer (or other person such as a court sheriff acting lawfully within the course of their duties), unless you had a good reason to think the person was acting illegally.

### **“The other person consented.”**

If the other person consented to the conduct which is subject to the allegation of assault, you can use the defence of consent. For example, if two people agree to a fist fight, one person can't claim to have been assaulted.

You can't use this defence if you pulled a knife and the other person agreed only to a fist fight. And you can't use the defence of consent if you injure the other person. This defence also won't work if you have special training or skill in fighting, and the other person didn't know that.

If you're going to say that the other person consented, both of you must have had the same idea about what you were getting into. The agreement wasn't real if it was based on a trick or lie.

### **“I was defending my or someone else's property.”**

If someone tried to illegally enter, take, damage, or destroy your (or someone else's) property and you used reasonable force to prevent it, you can argue that you were defending your (or someone else's) property. However, the force you used to do this must be reasonable and you must be right that the property is legally yours or belongs to the person you're defending and not to the person trying to take, damage, or destroy it.

For example, if you see a strange man taking your bike from your porch, you can try to stop him or get the bike away from him. But you can only use reasonable force to do so. The judge will look at the facts and decide what was reasonable in the situation.

You can't use this defence if you didn't possess the property at the time of the incident; for example, if you go to someone's house and use force to take back something they'd stolen or borrowed. You also can't use this defence if the other person legally possessed or was the legal owner of the property, even if by mistake you thought you were.

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

If the police got evidence of the assault by violating your rights under the Charter of Rights and Freedoms, the judge might not let the Crown use that evidence. And if that happens, and there is no other evidence proving your guilt, you can ask the judge to dismiss the charge against you.

For example, under the Charter, the police must do the following when they arrest you:

- tell you immediately 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 privately; and
- tell you that you can get legal help for free. (Legal Aid BC has lawyers available 24 hours a day to talk over the phone for free to people in police custody. This service is called the Brydges Line. Call 1-866-458-5500.)

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**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 (or others that the Charter requires such as get a search warrant before searching your house or belongings), you can say that they violated your rights. You would then say that the Crown 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 say that your Charter rights were violated, talk to a lawyer before your trial. Using the Charter is complicated and usually requires legal research. You must *tell the Crown in advance* if you plan to use this type of argument.



## At the trial

### What must the Crown prove?

At the trial, before you present your defence, the Crown presents its case against you.

The Crown must prove **beyond a reasonable doubt** that you're guilty of all the elements (the basic parts of a claim, offence, or cause of action) that make up the crime of assault. To do this, the Crown presents evidence to the court, using witnesses, documents, videos, or recordings.



If the Crown 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 postpone the trial.

You can cross-examine (question) the Crown's witnesses, but you'll normally do so only if you disagree with their information. You can ask relevant questions about what the witness saw or knows. You can also ask leading questions, which means making a statement and asking a witness if they agree with it. For example, you could ask "Isn't it true that you couldn't really see what happened?" For more details about how to cross-examine, see [Representing Yourself in a Criminal Trial](http://info.legaid.bc.ca) ([info.legaid.bc.ca](http://info.legaid.bc.ca) under Criminal charges).

For a judge to find you guilty of assault, the Crown must prove the following things:

### Your identity

The Crown must prove that you're the person who committed the crime. To do this, the Crown will call witnesses, including police officers, to give evidence. The witnesses will probably describe the person they saw commit the crime. Then the Crown 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're the person who committed the crime.

### Jurisdiction

The Crown must prove:

- that the crime happened in BC,
- the date of the crime, 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 Crown gives you before the trial as part of your particulars. The Crown must still *prove* these details at the trial.

Usually the Crown calls a witness to give evidence about the date and place of the crime. This witness will likely be the investigating police officer.

## You intentionally used force (or tried or threatened to do so)

The Crown must prove that you intended to use force, and that the assault wasn't an accident. An attempt to use force or a threatening act or gesture can be an assault, but only if you could have carried out the threat (or caused the victim to reasonably believe that you could have carried out the threat or attempt). Threatening someone who isn't nearby is still a crime; it just isn't considered assault.

For example, if you said to someone on the phone, "I'll hit you," that wouldn't be assault because you weren't there and couldn't have done it. (However, it could be the offence of threatening.) But if you said that to someone in the same room, it could be considered an assault if you had the ability to (or the other person could reasonably believe that you were going to) use force.

The Crown will ask the victim, along with anyone else who was present, to give evidence about the force you used (or tried to use) or the threats you made.

## The other person didn't consent

The Crown must prove that you used force (or tried or threatened to do so) against the victim without their consent.

The Crown might argue that the victim consented out of fear, or that you tricked the victim into consenting. In either case, the Crown would argue that there was no real consent.



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Don't plead guilty to the charge of assault without talking to a lawyer.

## Affidavit evidence

Sometimes the Crown uses an affidavit to prove some of the points in their case. An affidavit is a document that contains facts that you swear under oath or affirm to be true. A lawyer, notary public, or commissioner for taking affidavits must witness your signature and sign your affidavit. If the Crown 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 Crown and 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. They take an oath in front of a lawyer, notary public, or commissioner for taking affidavits that statements made in court or the contents of an affidavit are true to the best of their knowledge and belief and that their oath is "under an immediate sense of responsibility to God." A non-religious alternative is to affirm.

## Present your case

After the Crown finishes presenting its case, it's your turn. You now have your chance to use the points you've prepared to use 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](#) ([info.legalaid.bc.ca](http://info.legalaid.bc.ca) under Criminal charges) for more details.



## Close your case

After you finish presenting your defence, you close your case. Tell the judge why you think the Crown didn't prove that you're guilty beyond a reasonable doubt. Mention if you think the Crown's case was weak or inconsistent in any area. This summary is called your **submission**. See [Representing Yourself in a Criminal Trial](#) ([info.legalaid.bc.ca](http://info.legalaid.bc.ca) under Criminal charges) for more details.

## What if the judge finds me guilty?

Once you and the Crown finish speaking, the judge decides if you're guilty or not. If the judge finds you guilty, you'll get a sentence. The sentence you get 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 **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** (generally up to two years less a day for summary offences; up to five years for an indictable assault; up to 10 years if a weapon or imitation weapon is used or bodily harm is caused; or up to 14 years for aggravated assault. A conviction on an indictable assault against an "intimate partner" (including a current or former spouse, common-law partner, or dating partner) carries even higher jail terms.



A judge usually only grants an absolute or conditional 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 is asking for. Read [Speaking to the Judge Before You're Sentenced](#) ([info.legalaid.bc.ca](http://info.legalaid.bc.ca) under Criminal charges) 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. If you think you will run out of the time set for paying your fine, you must come back to Court and get an extension. Do this as soon as possible.

## 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 dependant(s).

Being in jail isn't considered an undue hardship.

# Checklist:

## The Crown must prove all these things

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**Your identity**

- you were the one who committed the assault

**Jurisdiction**

- the crime happened in BC
- the date of the crime (for summary offences, the Information must be sworn within one year of the date of the crime)
- the town, city, or municipality where the crime took place

**You intentionally used force**

- you intentionally used force or tried or threatened to use force

**Other person didn't consent**

- the other person didn't know what they were getting into



Remember: If the Crown's case is weak or inconsistent in one of the above areas, mention this in your submission 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 one before your trial.

### Talk to a lawyer

#### Criminal Duty Counsel

Speak to [duty counsel](#) ([legalaid.bc.ca](http://legalaid.bc.ca) under Services click on Advice) at the courthouse where you're charged. 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.

#### Legal Aid BC

Call [Legal Aid BC](#) ([legalaid.bc.ca](http://legalaid.bc.ca)) 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](#) ([provincialcourt.bc.ca/court-locations](http://provincialcourt.bc.ca/court-locations)) website for links to courthouse locations.

#### Lawyer Referral Service

If you don't know a lawyer who handles criminal cases, contact the [Lawyer Referral Service](#) ([accessprobono.ca/our-programs/lawyer-referral-service](http://accessprobono.ca/our-programs/lawyer-referral-service)) to get the name of a local lawyer to talk to for 15 minutes 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

[Access Pro Bono](#) ([accessprobono.ca](http://accessprobono.ca)) runs free legal advice clinics throughout the province. To make an appointment, call **604-878-7400** or **1-877-762-6664**.

## Contact Indigenous legal services

### University of British Columbia's Indigenous Community Legal Clinic

The [University of British Columbia's Indigenous Community Legal Clinic](#) ([allard.ubc.ca/community-clinics/indigenous-community-legal-clinic](http://allard.ubc.ca/community-clinics/indigenous-community-legal-clinic)) in Vancouver's Downtown Eastside provides free legal advice, accompaniment to court, and advocacy to Indigenous people who don't qualify for legal aid. Call **604-822-5421** (Greater Vancouver) for more information.

### BC First Nations Justice Council

The [BC First Nations Justice Council](#) ([bcfnjc.com](http://bcfnjc.com)) operates justice centres and provides Gladue services. Call **1-877-602-4858** for more information.

## Indigenous Justice Centres

[Indigenous Justice Centres \(bcfnjc.com/indigenous-justice-centres-in-british-columbia\)](https://bcfnjc.com/indigenous-justice-centres-in-british-columbia), run by the BC First Nations Justice Council, offer culturally appropriate advice and representation services at 9 locations across BC.

Eligible callers can also get help through the [Virtual Indigenous Justice Centre \(VIJC\) \(bcfnjc.com/virtual-indigenous-justice-centre\)](https://bcfnjc.com/virtual-indigenous-justice-centre). Call **1-866-786-0081** for more information about the VIJC.

## Native Courtworker and Counselling Association of BC

You can get support from a Native courtworker. The [Native Courtworker and Counselling Association of BC \(nccabc.ca\)](https://nccabc.ca) helps Indigenous people involved in the criminal justice system. Call **604-985-5355** (Greater Vancouver) or **1-877-811-1190** (elsewhere in BC) for more information.

## Get other help

### Law Students' Legal Advice Program (LSLAP): University of British Columbia

You can get free legal advice or help if you're charged with a summary offence and the Crown isn't asking for a jail sentence if you're found guilty. To find the nearest LSLAP clinic location, call **604-822-5791** or visit the [LSLAP website \(lslap.bc.ca\)](https://lslap.bc.ca).

### The Law Centre: University of Victoria

If you live in Victoria, [The Law Centre \(uvic.ca/law/about/centre\)](https://uvic.ca/law/about/centre) may be able to help you. Call **250-385-1221** for more information.

### Community Legal Clinic: Thompson Rivers University

If you live in Kamloops, [Thompson Rivers University's Community Legal Clinic \(tru.ca/law/students/outreach/legal-clinic\)](https://tru.ca/law/students/outreach/legal-clinic) can provide you with free legal help and advice. Call **778-471-8490** for more information.

### 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.

### Get help from a legal advocate

Find a legal advocate at a local organization on the [Clicklaw HelpMap \(clicklaw.bc.ca/services\)](https://clicklaw.bc.ca/services).

### Visit the Clicklaw website

For more information about the law, visit [Clicklaw \(clicklaw.bc.ca\)](https://clicklaw.bc.ca). The website 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.