

Defending Yourself

Possession of Property Under \$5,000 Obtained by Crime





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

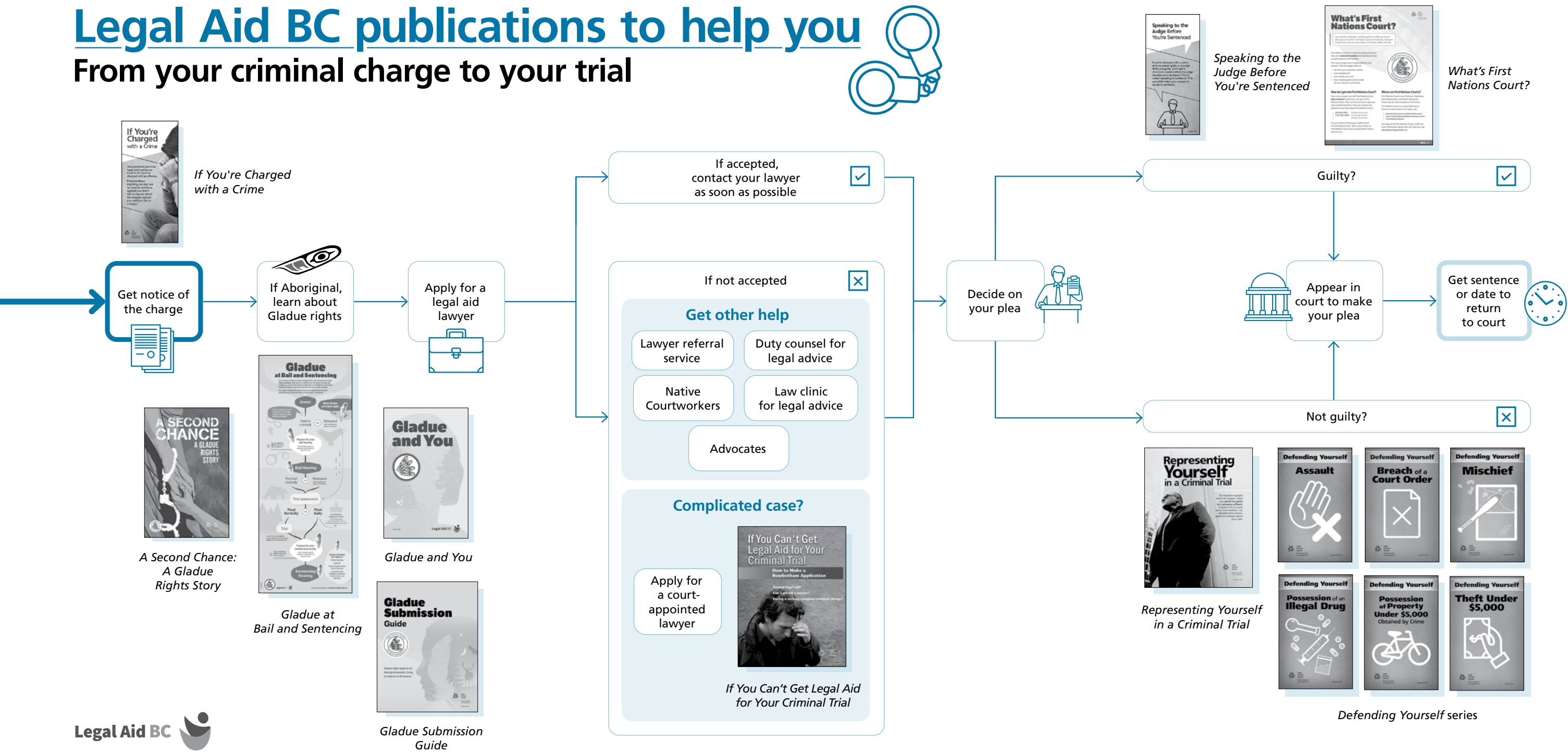
The flowchart under this flap shows how you can get help after you've been charged with a crime, including the free legal aid publications to help you at each stage.

Get these publications as soon as you can and read them before you go to court. Ask for them at the same place where you got this one or at any legal aid location.

You can also read these and other legal aid publications online at **legalaids.bc.ca/read**.

Legal Aid BC publications to help you

From your criminal charge to your trial



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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 booklet is up to date as of November 2020.

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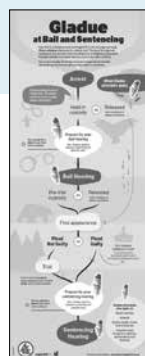
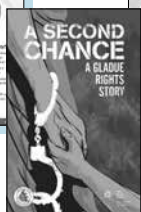
This guide is for people who want to plead **not guilty** to a charge of **possession of property under \$5,000 obtained by crime**. Use this guide if you don't qualify for legal aid, you can't afford a lawyer, and you plan to represent yourself (be your own lawyer) in court.

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 13.

This guide explains how to defend yourself when you're charged with possession of property under \$5,000 obtained by crime. It doesn't try to cover every situation. For detailed information, speak to a lawyer about your case.

Are you Aboriginal?

If you're Aboriginal, you have certain rights under the Criminal Code of Canada, often called **Gladue rights**. These rights apply to all Aboriginal peoples: status or non-status Indians, First Nations, Métis, or Inuit. They also apply whether you live on or off reserve. The judge must consider your Gladue rights when sentencing you. This includes considering all options other than jail. For more information, ask for the publications below at the same place where you got this one. Or go to the website Aboriginal Legal Aid in BC at aboriginal.legalaid.bc.ca.





Introduction

What is possession of property under \$5,000 obtained by crime?

This crime ("P.S.P. under") means possession of stolen property under \$5,000. If you're found guilty, it means that:

- o you possessed property — or the proceeds of property (money that you got from selling the property) — that was obtained by crime, and
- o you knew that this was obtained by crime — or you should have known, or you suspected that it was but you didn't ask because you didn't want to know the answer.

There are three ways you could have possessed the property:

- o **personal possession** (you knew that you had the stolen object in your physical possession — for example, in your bag or in your pocket),
- o **joint possession** (you knew that someone else had the stolen object and you had some control over it — for example, it was with a friend or relative), or
- o **constructive possession** (you knew that the stolen object was being kept for your benefit in a place under your control, whether it was your place or not — for example, a friend's place).

Could I go to jail?

Depending on the details of what happened and your criminal record, the Crown prosecutor (the 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.

A summary offence is a less serious crime. If the prosecutor proceeds "summarily," the maximum jail sentence

a judge could give you is two years less a day in jail, 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). An indictable offence is a more serious crime. If the prosecutor proceeds "by indictment," the judge is more likely to give you a longer jail sentence of up to two years.

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 prosecutor says they'll:

- o proceed "by indictment,"
- o ask for a sentence that includes jail, or
- o 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," you'll usually have a better chance of getting legal aid — so be sure you understand how the prosecutor will proceed. Legal Aid BC might 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:

- o you can't afford a lawyer and were denied legal aid;
- o 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
- o your case is too complicated for you to handle.

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





Before the trial

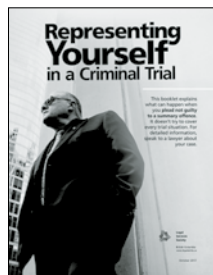
Prepare your defence

When you prepare your defence, think about what **evidence** (information about the crime) you can use. Evidence includes witnesses, documents, 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. 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 the guide *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*.



To defend yourself against a charge of possession of property under \$5,000 obtained by crime, you may be able to use one (or more) of the following four points if they're true:

☐ "The property was mine — I bought it."

You could explain that you bought the property legally, and show the judge your receipt.

□ “I didn’t know about the property or have control over it.”

Suppose the police found a stolen motorcycle in your backyard. Maybe you were out of town for three weeks and didn’t know anything about it. In this case, you can say that you didn’t know about the stolen property.

Or suppose the police found a stolen lawnmower in your garage. Three years ago, you rented the garage to your neighbour, who put his own lock on it. In this case, you would explain that you didn’t have control over the stolen property and you didn’t know about it.

□ “I didn’t know the property was stolen.”

You might have gone to a garage sale, where you bought the property at half price. Or you might have bought it from trustworthy friends, who said they had to move. Or maybe your nephew wanted to store some stuff in your basement because he didn’t have room in his apartment.

In any of these situations, you might not have known that the property you were buying or storing was stolen.

□ “My Charter rights were violated.”

If the police got evidence of the possession of property 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.

For example, if you were a passenger in a car that was stopped for speeding, and the police decided to search you on only a suspicion that you had possession of stolen property, you can challenge that as an unreasonable search.

Under the Charter, the police must do the following when they arrest you:

- o tell you immediately what they've arrested you for;
- o tell you immediately that you can talk to a lawyer, and let you do so in private before questioning you or taking any samples;
- o give you access to a phone; and
- o 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 is called the "Brydges Line.")

If the police didn't do all of these things (or other things 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 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 use the defence 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 prosecutor in advance* if you plan to use this type of an argument.



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 possession of property under \$5,000 obtained by crime.

To do this, the prosecutor presents evidence to the court, using witnesses, documents, videos, or recordings.

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 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 possession of property under \$5,000 obtained by crime, the prosecutor must prove the following things:

☐ Your identity

The Crown prosecutor must prove that you're the person who committed the crime. To do this, the prosecutor will call witnesses, including police officers, to give evidence.



The witnesses will probably describe the person they saw committing the crime. 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 or videotapes), must show that you're the person who committed the crime.

□ Jurisdiction

The prosecutor must prove:

- o that the crime happened in BC,
- o the date of the crime, and
- o 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 gives 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 will likely be the investigating police officer. The witness may also be the property owner.

□ The property wasn't yours and it was obtained by crime

The prosecutor must prove that the property wasn't yours and that you didn't have a right to take it. They must also prove that the property was obtained by crime. The prosecutor will usually do this by calling the owner as a witness. This person will:

- o identify the property,
- o testify that they didn't agree to you having it, and
- o describe how it was obtained by crime.

The prosecutor could also identify the property by showing its serial number or other noticeable marks.

□ The property was in your possession

Usually, the prosecutor will show that you had **personal possession** of the property. For example, you might have had the stolen object in your coat pocket or your backpack.

Sometimes the prosecutor will show that you had **constructive possession** if you helped hide or sell the stolen property. For example, maybe you had a “hot” motorcycle in your garage. You didn’t put it in the garage yourself, but you knew it was stolen and that it was there because you let a friend use your garage for storage. Or you asked a friend to keep the stolen object at their place for you. The prosecutor will argue that you had constructive possession because you had some control over this stolen property.

The prosecutor might also try to show that you had **joint possession** of the property with someone else. In this case, the police might have charged you and another person with the same crime. The prosecutor will argue that you both knew about and had some control over the property.

□ You knew the property was obtained by crime

The prosecutor must prove you *knew* the property was obtained by crime. For example:

- You admitted to a police officer or another witness that you knew the property was stolen. The prosecutor can use anything you voluntarily said (or wrote) against you. The prosecutor would ask the witness to explain what you said or wrote.
- You ignored suspicious circumstances when you bought the property. For example, you bought a \$500 Seiko watch for \$20 from a stranger in a bar, and you didn’t ask why it was so cheap. In court, the prosecutor will say that you were being “willfully blind” if you did this. Or, you didn’t care that the watch was so cheap even though you knew the price didn’t make sense. In

court, the prosecutor will say you were being “willfully blind” to the fact it was stolen.

- o The property was stolen just before the police found you with it. If this happens, the court can assume that you knew the property was stolen (unless you can prove otherwise).

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, you’ll get 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 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* 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. 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 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 you get depends on the details of the offence and your criminal record. It could be any of the following:

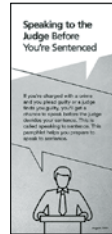
- o an **absolute discharge** (your record won't show a conviction)
- o a **conditional discharge** (you'll be regarded as not having been convicted if you meet conditions that the judge sets)
- o **probation** (a "suspended sentence" including, for example, community service)
- o a **restitution order** (you must pay money to the victim)
- o a fine
- o a **conditional sentence** (most often means house arrest, which is like a jail term, but you serve it in the community)
- o a **jail term** (up to two years less a day for a summary offence; up to two years for an indictable offence)

(Note that a judge usually only grants a discharge when an accused person pleads 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.

Get the brochure *Speaking to the Judge Before You're Sentenced* and read it 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. Later, if you find you can't pay on time, get the brochure *If You Can't Pay Your Court Fine on Time*. 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:

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

Being in jail isn't an undue hardship.

Checklist: How well did the prosecutor do?

Use this checklist at your trial to see if the prosecutor makes the case against you.

The prosecutor must prove all of these things:

- ☐ **your identity** (you were the one who committed the crime)
- ☐ **jurisdiction**
 - ☐ crime happened in BC
 - ☐ date of the crime (for summary offences, the Information must be sworn within one year of the date of the crime)
 - ☐ town, city, or municipality where the crime took place
- ☐ **property wasn't yours and it was obtained by crime**
- ☐ **you had personal, constructive, or joint possession of the property**
- ☐ **you had control over the property**
- ☐ **you knew the property was obtained by crime or you didn't care whether it was stolen or not**



Remember:

- o If the Crown prosecutor's case is weak or inconsistent in one of the above areas, mention this in your submission (see page 9) 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 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.

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.)

- 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.
- If you don't know a lawyer who handles criminal cases, contact the Lawyer Referral Service (run by Access Pro Bono). They'll give you some suggestions. You can meet for free with a lawyer they recommend for a half hour. You can see whether you want to hire the lawyer and how much it would cost.

Call the service at **604-687-3221** (Greater Vancouver) or **1-800-663-1919** (elsewhere in BC).

- Access Pro Bono also runs free legal advice clinics throughout the province. To make an appointment, call **604-878-7400** or **1-877-762-6664**.

- 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 help from LSLAP if you're charged with a summary offence and the Crown prosecutor isn't asking for a jail sentence if you're found guilty. Call **604-822-5791** to find the location of the nearest LSLAP clinic.
- If you live in Victoria, the Law Centre may be able to help you. Call **250-385-1221** for more information.
- You can get support from a Native Courtworker. The Native Courtworkers 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** (no charge, elsewhere in BC).
- 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.

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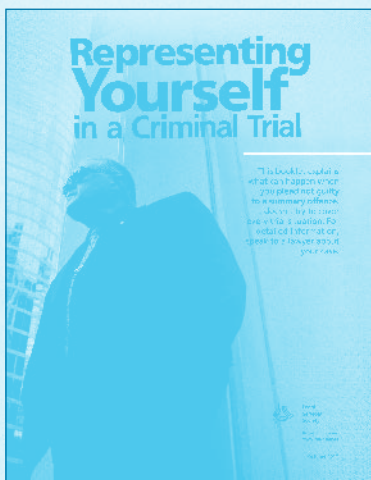
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