

Defending Yourself

Theft Under \$5,000



**Legal
Services
Society**

British Columbia
www.legalaids.bc.ca

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

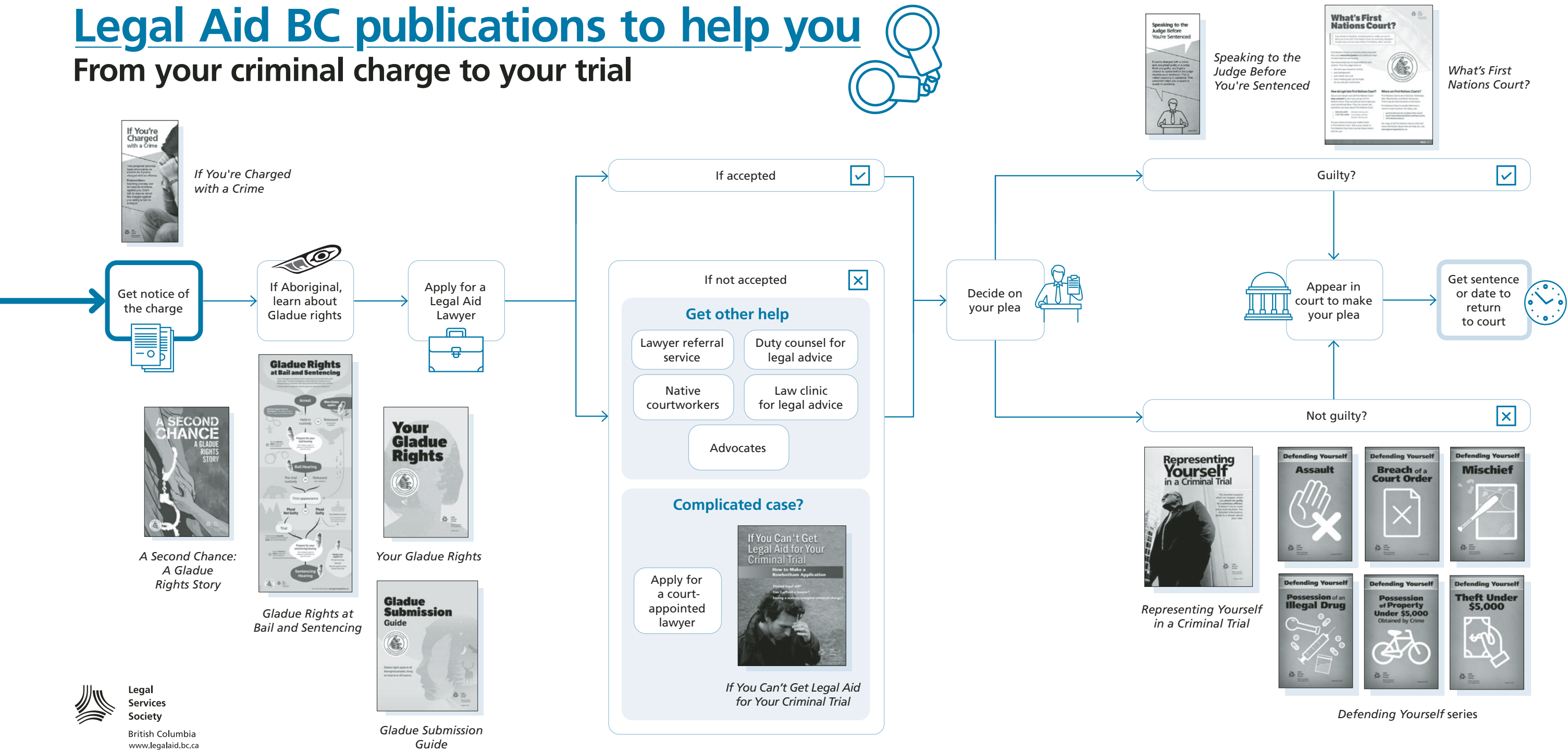
The flowchart under this flap shows how you can get help after you've been charged with a crime, including the free legal aid publications to help you at each stage.

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 October 2019.

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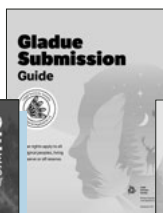
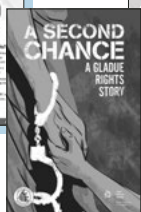
This guide is for people who want to plead **not guilty** to a charge of **theft under \$5,000**. Use this guide if you don't qualify for legal aid, you can't afford a lawyer, and you plan to represent yourself (be your own lawyer) in court.

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 theft under \$5,000. 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 and non-status Indians, First Nations, Métis, and 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 theft under \$5,000?

Generally, theft is taking, or trying to take, property that belongs to someone else, without the owner's consent and with the intention of stealing. The theft begins as soon as the property is picked up or moved. The property can be anything from food in a grocery store to a neighbour's dog.

Shoplifting is a common example of theft under \$5,000. If you take, or try to take, something from a store and you don't intend to pay for it, that is theft. You can be charged even if you didn't leave the store.

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. 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 could give you a longer jail sentence of up to two years or up to ten years for the theft of a motor vehicle.

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:

- 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" (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:

- 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

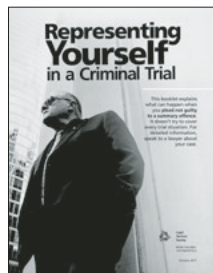
Prepare your defence

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 gave 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 deal with witnesses, prepare questions, and decide whether to **testify** (speak) yourself, see *Representing Yourself in a Criminal Trial*. You have the right to not testify. Ask a lawyer whether you should or not.



A common way to defend yourself against a charge of theft under \$5,000 is to show that you didn't intend to take the property from the property owner. Sometimes the only way you can show that is by testifying yourself.

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

❑ “I paid for the property.”

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

❑ “I honestly believed that the property was mine or that I had a right to it.”

You could argue that you had **colour of right** (an honest claim to the property). With this argument, you would explain why you believed the property was yours.

❑ “I forgot I had the property.”

You could argue that you didn’t intend to steal the property — for example, you simply forgot to pay for it.

You would have to explain your state of mind when the crime happened to support your claim of not intending to steal. This could be done through your own testimony or other forms of evidence. If you decide to use this defense, talk to a lawyer.

❑ “I got the property another way.”

You could argue that you got the property some other way and you didn’t know it was stolen.

❑ “My Charter rights were violated.”

If the police got evidence of the theft 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 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; 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 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 argue that they violated your rights. You would then argue 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. You must *tell the prosecutor in advance* if you plan to use this type of argument.



At the trial

What must the prosecutor prove?

At the trial, before you can 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 theft under \$5,000. 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 theft under \$5,000, 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 Crown 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 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 will likely be the investigating police officer, a store detective/loss prevention officer, and/or the property owner.

□ You intended to take something from the property owner without their consent, and did so (or tried to do so)

Usually, the Crown prosecutor must prove that you intended to take something from the property owner, even if only for a short time.

A clear example is shoplifting: you took the steak from the supermarket and you didn't intend to pay for it. Or you took a bike from somebody's front porch and the owner of the bike didn't say that you could take it.

To prove that you meant to commit the crime, the prosecutor will usually call witnesses to testify. For

example, store security guards might tell the court that they saw you pick up an item and take it out of the store without paying for it. Guards might also say that they then stopped you and got the stolen item from you. If the guards stopped you before you left the store, you can still be convicted if the prosecutor can show that you were going to take the item without paying for it.

The investigating police officers can testify that, when they arrived, the security guard had detained you.

If you voluntarily admitted to anyone (such as the property owner or the police officer) that you took the property without planning to pay for it, that person can tell the court what you said. The prosecutor can use anything you said (or wrote) to show you intended to steal the property. (They must prove in court that it was voluntary.) If you made a statement or confession, speak to a lawyer and get advice on how you may be able to keep it out of court.

If the prosecutor proves that you had property that was recently stolen, the judge can decide that you must have stolen it. They'll find you guilty of theft unless you can explain how you got the property.

The property belongs to someone else

The Crown prosecutor must prove that the property belongs to someone else and not to you. The prosecutor may ask the property owner (or, in the case of a business, their agent) to be a witness. The owner (or the agent) will testify that the property belongs to them (or the business). The owner will also identify the property as the stolen property. In the case of shoplifting, the store security guard will identify the property.

Affidavit evidence

Sometimes, but rarely, the Crown 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 think it should include other information, ask the prosecutor and the court to make the person who swore the affidavit come to the 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. It may be necessary for you to testify if, for example, the prosecutor proves that a property in your possession was recently stolen. Ask a lawyer whether you should testify or not. See *Representing Yourself in a Criminal Trial* for more details.

Close your case

After you've finished presenting your defence, you'll 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 Crown prosecutor have finished speaking, the judge will decide 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, for example, community service)
- a **restitution order** (you must pay money to the victim)
- a fine
- a **conditional sentence** (most often means house arrest, 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; up to two years for an indictable offence — or up to ten years for theft of a motor vehicle)

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

If you're found guilty of stealing from your employer and you were in a position of trust (for example, if you were a bookkeeper or a cashier), the judge will treat the matter very seriously. You may get a jail term even if you stole only a small amount and have no 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.

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 thirty 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 considered 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 theft)
- ☐ **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
- ☐ **you intended to take something from the property owner without their consent, and did so** (or tried to do so)
- ☐ **property belongs to someone else**



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** (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 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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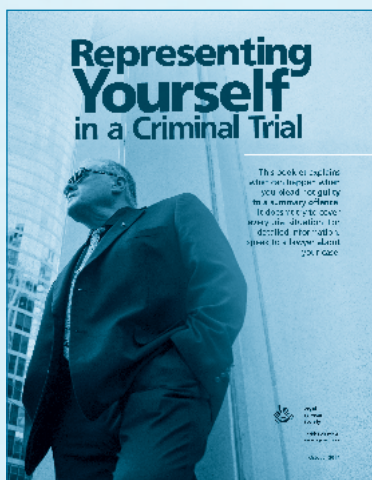
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