

If You Can't Get Legal Aid for Your Criminal Trial

How to Make a Rowbotham Application

- Denied legal aid?
- Can't afford a lawyer?
- Facing a serious/complex criminal charge?

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Sixth edition: April 2023

First edition: May 2009

ISSN 2369-9523 (Print)

ISSN 2369-9531 (Online)

Published on the traditional unceded territory of the Coast Salish peoples, including the territories of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səliłwətaʔ/Selilwitulh (Tsleil-Waututh) Nations.

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If You Can't Get Legal Aid for Your Criminal Trial 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 April 2023.

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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 they make decisions about you, such as your bail or sentence. 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 Aboriginal Legal Aid in BC website at aboriginal.legalaid.bc.ca for information.

What if I can't get legal aid?



If you can't get legal aid for your criminal trial, you can ask a judge to **stay** (temporarily discontinue) your charges until the government gives funding for a lawyer to **represent** you (take your case). You may have a right to do this under the Canadian Constitution and your right to a fair trial. This is called a **Rowbotham application**. *Rowbotham* is the name of an important Ontario case about when a person should have a government-funded lawyer.

A *Rowbotham* application may be granted if you:

- need a lawyer but can't afford one, AND
- have applied for legal aid and been refused (even after appealing the decision), AND
- face a serious criminal charge, AND
- face a complex criminal charge, AND
- the court finds that you wouldn't receive a fair trial without a lawyer.

This booklet explains:

- Why a judge can stay your charges until the government gives funding for a lawyer.
- When and how to ask for a stay until the government gives funding for a lawyer (your *Rowbotham* application).
- What you have to prove.
- How to prepare for court.
- What happens in court.

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.

To talk to a lawyer:

- Speak to a **duty counsel** lawyer at the courthouse where your charges are being dealt with. Duty counsel are lawyers paid by Legal Aid BC. If you don't have your own lawyer, duty counsel can give you free brief advice about the charges against you, court procedures, and your legal rights (if time permits). They can also speak on your behalf the first time you appear in court. But they can't act as your permanent lawyer or prepare your *Rowbotham* application for you. Call Legal Aid BC at **604-408-2172** (Greater Vancouver) or **1-866-577-2525** (elsewhere in BC), or call your local courthouse to find out when duty counsel will be there. (See the Provincial Court of BC website at www.provincialcourt.bc.ca/locations-contacts for links to courthouse locations.)
- Contact a **private lawyer** to pay for legal advice. Even if you pay for just one or two meetings to get basic advice about your case, it could be worth the cost. Find out at your first meeting what kind of help the lawyer can give you and what it'll cost. Write down the information and keep a copy of any documents as it may be important if you do make a *Rowbotham* application.
- If you don't know a lawyer who handles criminal cases, call the **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).
- Contact **Access Pro Bono** to find legal advice clinics throughout the province. To make an appointment, call **604-878-7400** (Greater Vancouver) or **1-877-762-6664** (elsewhere in BC).
- If you live in Greater Vancouver, see UBC's **Law Students' Legal Advice Program**. They may be able to give you free legal advice, or help if you're charged with a **summary offence** (a less serious offence also known as a petty crime) and aren't likely to get a jail sentence if convicted. Call **604-822-5791** to find the nearest LSLAP clinic.
- If you live in Victoria, the **Law Centre** may be able to help you if you're eligible and qualify financially. The centre provides free legal representation if you're charged with a summary offence and aren't likely to get a jail sentence if convicted. Call **250-385-1221** or see thelawcentre.ca for information.



- If you live in Kamloops, **TRU Community Legal Clinic** can provide you with free legal help and advice. Call **778-471-8490** or visit tru.ca/law/students/outreach/Legal_Clinic.html.
- If you're Indigenous, you can contact these legal services:
 - **UBC 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** or see allard.ubc.ca/community-clinics/indigenous-community-legal-clinic.
 - **BC First Nations Justice Council** operates justice centres and provides Gladue services. Call **1-877-602-4858** or visit bcfnjc.com.
 - **Indigenous Justice Centres** offer culturally appropriate advice and representation services in Merritt, Prince George, and Prince Rupert. For contact information, see bcfnjc.com/indigenous-justice-centres-in-british-columbia. Eligible callers can also get help through the **Virtual Indigenous Justice Centre**. Call **1-866-786-0081** or see bcfnjc.com/virtual-indigenous-justice-centre/.
 - **Native Courtworker and Counselling Association of BC** helps Indigenous people involved in the criminal justice system. Call **604-985-5355** (Greater Vancouver) or **1-877-811-1190** (elsewhere in BC), or visit nccabc.ca.
- Get support from a **legal advocate**. Find a local organization on the **Clicklaw HelpMap** at clicklaw.bc.ca/helpmap.
- For more information about the law, see the Clicklaw website at clicklaw.bc.ca. 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.

Why can a judge stay my charges?

As part of the Canadian Constitution, the Charter of Rights and Freedoms says you have the right to a fair trial. Judges have a duty to protect this right. The courts have decided that sometimes a person can't have a fair trial if they don't have a lawyer.



If you need a lawyer and you've been denied legal aid, you have the right to ask a judge to stay your charges until the government pays for a lawyer for you. Whether the judge agrees to order a stay depends on your financial situation and the nature of your charges. You have to prove the following things to the judge.

What do you need to prove?

To convince the judge to order a stay, you need to prove the following four points. You'll put this information in your *Rowbotham* application (see page 8).

1. You've been denied legal aid, and you applied to have the decision reviewed and you were denied again.
2. You can't afford a lawyer.
3. You face a serious charge.
4. You can't defend yourself because the charge is too complex.

Later, you'll give the judge supporting documents. If the judge decides you need a lawyer to get a fair trial and orders a stay, you won't have to return to court for your trial unless the **Attorney General** (the government) agrees to pay for your lawyer. The Attorney General might agree to pay for your lawyer after seeing your application materials and documents without the need for a court hearing.

How do I start my *Rowbotham* application?

To make a *Rowbotham* application, you first apply to the court to ask for an official delay called a **stay of proceedings**.

Your application is made up of the following two forms (provided at the back of this booklet with instructions):

- **Notice of Application and Constitutional Issue** — a document that tells the federal government, provincial government, and Crown counsel office that you're asking for your case to be temporarily discontinued until you have a government-funded lawyer to represent you.

- **Affidavit** — a written statement with your background information that you **swear** (take an oath to confirm) or **affirm** (declare) to be true to the best of your knowledge. You'll attach the documents about your finances and the letters from Legal Aid BC to the Affidavit. Affidavits must be sworn in front of a lawyer, notary public, or a commissioner for taking affidavits.

Fill out both forms right in the booklet. (See the instructions in the left-hand columns.) Then tear out the forms along the dotted lines. See below for more information about how to prepare your forms.

Apply as soon as possible

Try to start your application as soon as you find out you can't get legal aid. Follow the same steps even if your trial has started.

Prepare the forms for your *Rowbotham* application

Complete the two forms in this booklet. These will be your *Rowbotham* application.

- The Notice of Application and Constitutional Issue form is on page 25.
 - The Affidavit form is on page 29.
1. Follow the instructions in the left-hand columns on each form. Fill out both forms right in the booklet. Then tear out the forms along the dotted lines.



2. Take the Affidavit form to a lawyer, a notary public, or a **commissioner** to be sworn or affirmed and signed. This means that:
 - you **swear** (take an oath) or **affirm** (declare) in front of them that the information in the affidavit is true, and
 - then you sign the form.

You can usually find a commissioner at the court registry who can do this for free.

3. Sign the Notice of Application and Constitutional Issue.
4. Make **four copies** of the signed Notice of Application and Constitutional Issue AND the signed Affidavit.

Apply to the court where your trial will be heard

Your trial may be heard in Provincial Court or Supreme Court, depending on what kind of offence you're charged with. It might also depend on how you choose to be tried. (For some offences, you have a choice of courts.)



If you don't know which court will hear your trial, ask a lawyer or the court registry to explain where you should apply. (To find a lawyer, see Where can I get legal help? on page 2.) If you do know, apply at the courthouse where your trial will be heard.

File your forms

File the forms at the court registry where your trial will be heard (or file in the BC Supreme Court registry if you don't know the level of court where your trial will be heard).

1. Take the originals and the 4 copies of the Notice of Application and the Affidavit forms with you to the court registry where your case will be heard.
2. The registry staff will:
 - look at the forms and ask you to fix any mistakes, and
 - give you the file number and a **fix-date**.

The fix-date is a date for you to attend court to schedule your application to be heard in front of a judge. This date must be at least two weeks after the date the government gets your application.

3. Add the court file number and the fix-date to all the copies. The registry staff will:
 - stamp all the documents,
 - keep the **originals**, and
 - give you back the other four stamped copies.

Your application is now filed with the court.

Serve your application on the government

Now you **serve** your application on (send it to) the government. The contact information is on page 25.

1. Send a copy of the **Notice of Application and Constitutional Issue** AND the **Affidavit** to each of the following offices:

- The **Crown** office that is responsible for your file. Ask the registry staff to confirm the Crown’s **address for service (copy 1)**.
- The **Attorney General of Canada**. Contact information is on the Notice of Application and Constitutional Issue form (**copy 2**).
- The **Attorney General of BC (copy 3)**. Contact information is on the Notice of Application and Constitutional Issue form. Visit the Attorney General website at gov.bc.ca/justice and search for the “serving legal documents on the Attorney General” page for more information.

Send these documents by *registered mail* or by *email*, so you keep track of them and have proof of delivery. If you use registered mail, you can check Canada Post’s website to see that they’ve been delivered.

2. Keep one copy of each document for yourself (**copy 4**).

Wait for the government to respond

Once the government lawyer gets your Notice of Application and Constitutional Issue and your Affidavit, they’ll send you a letter explaining the next steps in the process.

Whether or not you hear from the government lawyer, you must attend court for the fix-date. If you don’t attend, your application may be removed from the court list, so you won’t be able to ask a judge to grant a *Rowbotham* order.

What if my trial has already started?

You can still make a *Rowbotham* application if your trial has already started. If you appear in court without a lawyer, the judge will probably ask you if you plan to represent yourself. Do the following:

- Tell the judge: “I want to make a *Rowbotham* application because I can’t afford a lawyer and I’ve been denied legal aid.”
- Complete the steps on pages 4 to 7 of this booklet.
- Tell the judge if you:
 - filed your documents at the court registry,
 - sent copies to the Attorney General of BC, Attorney General of Canada, and Crown counsel, OR
 - haven’t filed or served your documents, and then say when you plan to file and serve them.

What do I do after the government responds?

After you send copies of your Notice of Application and Constitutional Issue and your Affidavit to the Attorney General of BC, the Attorney General of Canada, and Crown counsel, you'll get a letter from a government lawyer. If you need help understanding the letter, ask a lawyer. To find a lawyer, see *Where can I get legal help?* on page 2.

This letter will ask you to prove four points:

1. that you were denied legal aid, and have run out of all options to have the decision reviewed,
2. what your financial situation is,
3. how serious your charges are, AND
4. how complex your charges are.

How do I prove the four points?

Read the following section and refer to the checklist on pages 19 to 22 to find out what information you need to provide to answer the government lawyer's questions and prove the four points.

It takes time to gather all your supporting documents to provide to the court and counsel for the Attorney General (government lawyer), so *start right away*.

Your supporting documents will help the government lawyer determine whether you qualify for a *Rowbotham* order. If your documents are incomplete, the government lawyer might ask you to give more information.

You'll also attach your supporting documents to an affidavit to file in the court registry for the judge to review if a hearing proceeds. To find out what to do after you've gathered your supporting documents, see page 12.

1. How to prove you've been denied legal aid

Provide your documents from Legal Aid BC

- Provide your letter from Legal Aid BC telling you that you can't get legal aid. It explains why they denied your application.

- If the Legal Aid letter also says you can appeal, provide proof to the court that you appealed or asked for a review but were turned down again.
- Be prepared to provide any other documents from Legal Aid BC that show you were denied legal aid and the reasons why. If you've lost any of them, ask your contact person at Legal Aid BC for copies.

The government lawyer may ask you to sign an authorization form allowing them to obtain this information directly from Legal Aid BC. If you sign the form and return it, you don't need to provide copies of those letters yourself. (It's a good idea to check with a lawyer before signing any documents. See page 2 for how to find one.)

2. How to prove you can't afford a lawyer

Provide a clear picture of your finances (income and expenses), from the time you first learned you faced charges until now

- Make a list of your finances. Include the following information:
 - your job situation
 - your monthly income and household expenses, including any support payments you make
 - your assets and debts (if you have any)
 - your dependants (such as children that you support)
 - financial details about any adult who lives with you and contributes to your household expenses (make sure to get their permission first)
 - what you've done to save or borrow money to pay for a lawyer and how much money you'd need
- Gather documents to prove anything you say about your finances, including:
 - deposit statements, if you get welfare or disability benefits
 - pay stubs, if you have a job
 - personal financial statement (the government lawyer will give you a form when you apply)
 - your most recent income tax return and Canada Revenue Agency (CRA) assessment
 - bank and credit card statements
 - receipts for support payments and all other expenses (such as rent, utilities, transportation, and food)
 - statements for loans and investments

Explain how much you think it would cost to hire a lawyer

The cost of a lawyer depends on how long your trial is expected to last. Ask a few lawyers for a written estimate of their time and fees for a case like yours. Or you can make your own notes from their answers to your questions. (To find a lawyer, see *Where can I get legal help?* on page 2.)

■ Show:

- that you tried to find a lawyer who'll work for free, OR
- that you tried to find a lawyer who'll work for a low rate you can afford, AND
- what it'll cost to have a lawyer defend you.

What if you don't give enough information about your finances?

If you don't include enough financial information in your application, the government lawyer may:

- **oppose** (argue against) your application, OR
- ask the judge to delay setting a hearing date until you give more information.

If you still don't give enough information, and if a hearing is held, the judge might **dismiss your application**. This means it won't be allowed and your trial will go ahead without a lawyer paid for by the government.

3. How to prove you face a serious charge

You need to prove that you're charged with a serious offence. Usually **serious** means you'll probably go to jail if you're **convicted** (found guilty).

You face a serious charge if:

- you face a **mandatory minimum jail sentence** (this means the judge has to follow certain rules about how to sentence you).

OR

- the **Crown counsel** will ask for a jail sentence if you're convicted.

Get Crown counsel's position on sentencing

- Ask Crown counsel to write down their **position on sentencing**. This is what's likely to happen if you're convicted *after a trial*.

Crown counsel's position on sentencing might be different from their **initial sentencing position**. The initial sentencing position, which you usually get with your documents about your charge when you first go to court, only states Crown counsel's position if you plead guilty.

Show that the penalties will seriously affect your life

- Explain that the penalties you likely face if you're convicted will seriously affect your life. For example, the sentence for a serious offence will affect your family or your job:
 - If you have children, a conviction could affect your parental rights or obligations.
 - You'll lose your job or be banned from working in certain jobs if you're convicted.

Some consequences you likely face are usually not considered serious enough to succeed on this type of application unless you also face a jail sentence. The following are *not* seen as serious consequences on their own, but may be serious if they happen along with other factors:

- a criminal record,
- travel restrictions, OR
- losing your driver's licence.

4. How to prove you can't defend yourself because the charge is too complex

You need to prove that your case is too complex for you to defend yourself. For example:

- Your case may raise technical legal issues (such as a violation of the Charter).
- The trial procedure may be too difficult for you to follow.
- There may be too much evidence or too many witnesses for you to handle on your own (especially if you're in jail).
- You have a medical or mental health condition that affects your ability to represent yourself.

Talk to a lawyer

- Ask a lawyer to explain what's complex about your case (see page 2 for how to find one). If you can, talk to a lawyer *before you go to court*. This way you can have all the information you need to show the judge your case is complex and that you need a lawyer to defend you. Also, ask the lawyer to help you plan your defence.

You may qualify for some free brief legal advice services. See [Where can I get legal help?](#) on page 2 for available services.

Give information about your ability to defend yourself

- Provide the following information to help them decide if you're able to defend yourself:
 - your education level
 - your reading, writing, and speaking abilities
 - anything that makes it difficult for you to speak for yourself (such as a disability or illness)
 - your knowledge of the criminal process

What do I do once I have my supporting documents?

1. Make copies of your documents

Make **2 copies** of all your supporting documents to attach to an Affidavit and file at the court registry.

If you can, attach all your supporting documents to another Affidavit that states that it's accurate and complete.

Put your court file number at the top. If you need help with this, ask the court registry or a lawyer. To find one, see [Where can I get legal help?](#) on page 2.

- File this new Affidavit (see step 2) and send a copy of it to the government lawyer.

If you can't attach the supporting documents to an Affidavit and file it:

- Send a copy of your unfiled documents to the government lawyer right away (see page 25 for contact information).

If a hearing will be held, the government lawyer will attach the documents to their own affidavit and file them. After the government lawyer reviews your documents, they'll respond to you.

2. Take your documents to the court registry and send them to the government lawyer



- Take the new Affidavit with the original documents and the 2 copies to the **same court registry** where you filed your Notice of Application and Constitutional Issue and your Affidavit forms.
- The registry staff will stamp the first page of the copies and keep the original. Keep a copy for yourself.
- Your documents are now filed with the court.
- Send all your documents to the government lawyer (to the address they provided in the letter they sent to you after they received your application).



3. Wait to find out the government's position

Before you get the government's position on your application, you may receive one or more letters from the government lawyer asking you to provide additional documents or information. Make sure you don't make any admissions about the allegations against you during this process. Ask a lawyer to review your response before you provide any additional information.

You might have to appear in court one or more times (for interim appearances) to tell the court about your progress. If you don't agree with or understand what the government lawyer is asking for, tell the judge at your next court appearance.

Get the government's position on your application

Once the government lawyer receives your documents, they'll tell you the government's position on your application. You'll probably receive a letter to tell you whether the government consents to or opposes your application. But you may find out first at a court appearance.

If the government says you do qualify OR you'll qualify if you contribute to the cost	If the government says you don't qualify OR your documents are incomplete
<p>The government will pay for a legal aid lawyer for you, and your trial will go ahead. You won't need a hearing for your <i>Rowbotham</i> application.</p> <p>OR</p> <p>The government will pay for a legal aid lawyer only if you agree to contribute to the cost of the lawyer.</p> <p>You'll need to negotiate with the government lawyer the amount you'll pay, sign an agreement, and make the first payment before a legal aid lawyer will be provided.</p> <p>You won't need a hearing for your <i>Rowbotham</i> application unless you disagree with the amount the government lawyer asks you to pay and can't agree on a different amount.</p>	<p>The government lawyer or judge may suggest that a hearing date should be set for your application, if you still want to go ahead with it.</p> <p>If a hearing date is set, the government lawyer will:</p> <ul style="list-style-type: none">■ prepare documents to explain why your application should be turned down, and send them to you before the hearing, AND■ appear at the hearing to oppose your application. <p>At any time, you can choose to:</p> <ul style="list-style-type: none">■ go ahead with a hearing, OR■ provide more documents, OR■ withdraw your application.

How do I prepare for a hearing at court?

Not all *Rowbotham* applications need a hearing. A judge will hold a hearing of your application if the government lawyer:

- opposes your application and you decide you still want to proceed with it, OR
- makes an offer to settle your application that you don't agree with.

If a judge holds a hearing of your application, do the following to prepare for court.

1. Think about what to tell the judge

Use the Affidavit on page 29 and the checklist on pages 19 to 22 as a guide to organize your thoughts. Think about how you can prove the four points that the judge will use to make a decision.

Remember, you can use:

- Your own **testimony** (what you say to the judge under oath in court)
- Your Affidavit
- Other documents (such as letters, forms, bank statements, and pay stubs)
- Witnesses

The law on *Rowbotham* applications says that your own testimony or testimony by a witness isn't enough to prove you qualify. You need documents that support what you or the witness plans to say. Use those documents while you give your testimony.

The government lawyer is allowed to see copies of all the documents you plan to use at the hearing before the hearing takes place. Prepare your documents well ahead of time. Send them to the government lawyer before the hearing. If you don't, your hearing might be **adjourned** (delayed).

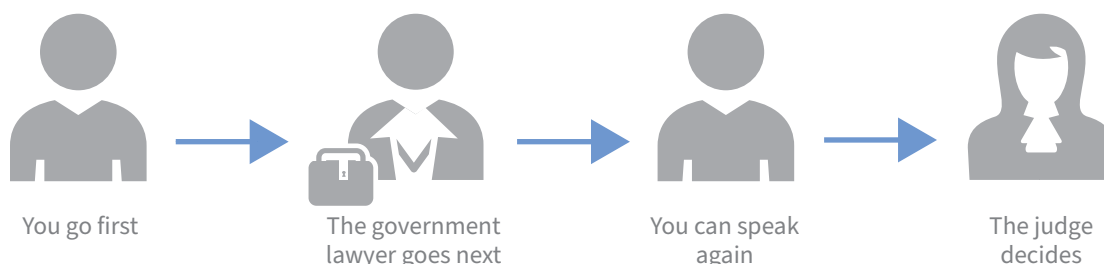
2. Meet with a lawyer and ask for help

Ask a lawyer to go over the four points and what you can expect in court. (See Where can I get legal help? on page 2.)

If you don't get legal help, you can still attend your hearing to prove the four points. To prepare for the hearing, follow the instructions in this booklet. The judge will know what you're asking for.

What happens at my hearing?

Whether you make a *Rowbotham* application before or after your trial starts, the judge may hold a hearing. At your hearing, the following will happen.



1. You go first



You present your arguments and evidence first. If you're in:

- **Provincial Court** — Call the judge “Your Honour”
- **Supreme Court** — Call the judge “Justice”

You need to prove the four points

You need to convince the judge that:

1. you've been denied legal aid, and you applied to have the decision reviewed and you were denied again,
2. you can't afford a lawyer,
3. you face a serious charge, AND
4. you can't defend yourself because the charge is too complex.

You need to give evidence for all four points

To present your evidence, you can:

- **testify** (speak) under oath,
- refer to your filed Affidavit,
- present your documents (such as pay stubs, receipts, bank statements), AND
- call witnesses (if you have any).

Your documents must support anything you or your witnesses say. If you don't provide your documents to the government lawyer before the hearing and you try to provide unfiled documents at the hearing, the judge may **adjourn** (delay) your hearing.

You may need to answer questions about your application

The government lawyer may ask you and your witnesses questions about your application. The judge may have questions too.

When you speak to the judge, refer to your documents or other parts of your evidence that support the four points you need to prove.

If the judge finds a problem with your application

If the judge says you made a mistake in your application or some documents are missing, don't give up. Ask the judge:

- what you should have done in the first place, AND
- for an **adjournment** (delay) so you can fix the mistakes and come back to court.

2. The government lawyer goes next



The government lawyer will probably try to prove that you can defend yourself because:

- the charge isn't serious or complex, OR
- you can afford a lawyer.

They might also ask the judge to dismiss your application if any information or documents are missing or incomplete.

3. You can speak again



After the government lawyer has finished speaking, you can speak again. This is a chance to reply to points made by the government lawyer. When you address the judge, only talk about the parts of your evidence that support the points you're trying to make.

4. The judge decides



After you and the government lawyer both present your evidence, the judge will decide if they'll **grant** (accept) your application. Sometimes the judge will **reserve their judgment**, which means they need time to think about the matter and will provide their decision at a later date.

- If the judge decides you should have a government-funded lawyer, they'll order a **stay of proceedings**. This means you'll return to court for your trial *only* if the government agrees to pay for your lawyer, and not until that happens.
- If the judge denies your application, you *can't* appeal it. But if your circumstances change before the end of the trial, you can make another legal aid application and/or *Rowbotham* application.

Checklist of points to cover in court on a *Rowbotham* application

Use this checklist to help you prepare what you need to prove in court. Remember that your own **testimony** (spoken evidence) or testimony from witnesses must be supported with documents. The law on *Rowbotham* applications says that your own testimony or testimony by a witness isn't enough to prove you qualify (see text box on page 15).

Make a list of the information you need to gather as supporting documents.

1. I've been denied legal aid

☐ Legal Aid BC turned me down

- To support this point, give details of when and where

☐ I appealed or asked for a review and was denied again

- To support this point, give details of when and where

☐ The reasons Legal Aid BC turned me down

- Give details of what the legal aid worker and/or the letter said

To prove point 1, I'll use:

- ☐ my own testimony
- ☐ my Affidavit
- ☐ letters or forms from Legal Aid BC

For additional support, I'll use:

- ☐ my witnesses' evidence (see text box on page 15)

2. I can't afford a lawyer

☐ **Because of my employment situation:**

- employment record
- proof of employment or layoff
- proof you're on social assistance or disability benefits

☐ **Because of my financial situation:**

- monthly income and household expenses and/or my assets and debts, including:
 - ☐ personal financial statement
 - ☐ pay stubs or deposit statements
 - ☐ support payment receipts
 - ☐ bills and receipts (such as rent, utilities)
 - ☐ bank and credit card statements
 - ☐ income tax return and assessment
 - ☐ property assessments
 - ☐ property tax notices
 - ☐ mortgage or loan statements
 - ☐ collection notices
 - ☐ financial details for any other adult who lives with me and contributes to my household expenses (make sure to get their permission first)

- my efforts to save and/or borrow money aren't enough
 - applications for loans
 - steps to reduce my expenses
 - people I've asked to lend me money

☐ **Because of my dependants (children I support):**

- child support order
- support payment receipts
- bank statements showing payments received
- details of dependants (such as number of children, their ages, associated expenses)

To prove point 2, I'll use:

- ☐ my own testimony
- ☐ my Affidavit
- ☐ documents (see the lists in the section above)
- ☐ my witnesses' evidence

3. I face a serious charge

☐ **I'm likely to go to jail if convicted**

- details of the charge (the court document also called the Information)
- Crown counsel's position on sentencing if I'm convicted *after a trial*
- my criminal record, if I have one

☐ **A conviction may have serious consequences for my life**

- for example, loss of my parental rights or employment

To prove point 3, I'll use:

- ☐ my own testimony
- ☐ my Affidavit
- ☐ documents, such as pay stubs, that show what I do for a living and information about any licences I need
- ☐ my witnesses' evidence

4. I can't defend myself because the charge is too complex

☐ **Technical legal issues are involved in my defence**

- use details from a lawyer or ask the judge to explain

☐ **The trial procedure is too difficult for me to follow because of:**

- my education level
- my language or ability to read
- my knowledge of the legal process
- my learning disability or other disabilities

☐ **There's too much evidence and/or too many witnesses for me to handle**

To prove point 4, I'll use:

- ☐ my own testimony
- ☐ my Affidavit
- ☐ documents, such as a letter from a lawyer about the legal issues
- ☐ my witnesses' evidence



Forms

Follow the instructions in the left-hand columns.

Fill out the forms right in the booklet. Then tear out the pages along the dotted lines.

You need **four copies** of the forms on pages 25 to 30.

INSTRUCTIONS

Staff at the court registry will give you the file number. Print the name of the registry. Print the court where your trial will be heard: Provincial or Supreme.

You're the applicant. Print your name on the line.

Print the court name: Provincial or Supreme.

You get the hearing date, time, and place from the staff at the court registry.

Where it says, Attorney General of _____, you'll probably put "British Columbia." But, if you're charged under certain federal laws, such as the Controlled Drugs and Substances Act or the Fisheries Act, put "Canada."

File No. _____

_____ Registry

IN THE _____ COURT OF BRITISH COLUMBIA

BETWEEN:

HIS MAJESTY THE KING

and

(Applicant's name)

NOTICE OF APPLICATION AND CONSTITUTIONAL ISSUE

(*Constitutional Question Act*, R.S.B.C. 1996, c. 68, Section 8;
Constitution Act, 1982, Part I, Sections 7, 11(d) and 24(1))

TO: **Attorney General of Canada**
900 – 840 Howe Street
Vancouver BC V6E 3P9
AGC_PGC_Vancouver@justice.gc.ca
and

TO: **Attorney General of British Columbia**
PO Box 9290
Stn Prov Govt
Victoria BC V8W 9J7
Attn: Duty Counsel

Visit the Attorney General website at gov.bc.ca/justice and search for the "serving legal documents on the Attorney General" page for more information.

TAKE NOTICE that the applicant will make an application to a judge of the _____ Court on the day of _____, 20____ at _____, or as soon after that time as the application can be heard at the _____ Court at (address): _____

THE APPLICATION IS FOR an Order staying the proceedings until the Attorney General of _____ provides the necessary funding for counsel subject to any assessment of counsel's bill.

Write in the date the registry gives you for a fix-date.

List all of the charges you face.

Give your age and what grade you completed in school. (Or give the number of years of high school you completed if you didn't go to school in Canada).

THE GROUNDS FOR APPLICATION ARE:

1. The applicant has a hearing date of _____ with respect to offences, including charges of:

(list charges here) _____

2. The applicant wishes to retain counsel to defend these charges. To that end, the applicant applied to Legal Aid BC for legal aid and legal aid has been refused.
3. The applicant cannot pay for a lawyer.
4. Representation of the applicant by counsel is essential to a fair trial and to the ability of the applicant to make full answer and defence. The applicant believes that the charges are serious and complex. The applicant is _____ years old and his/her level of education is _____.
5. The appropriate remedy is a stay of proceedings until the necessary funding of counsel is available.

THE CONSTITUTIONAL ISSUES TO BE RAISED AND PRINCIPLES TO BE ARGUED ARE:

6. The applicant relies on Sections 7 and 11(d) and 24(1) of the *Charter*, Section 650(3) of the *Criminal Code of Canada*.
7. Sections 7 and 11(d) of the *Charter* guarantee the applicant the right to a fair hearing in accordance with the principles of fundamental justice and accordingly require funded counsel to be provided if the accused wishes counsel, cannot pay a lawyer, and representation of the accused by counsel is essential to a fair trial: *R. v. Rowbotham* [1988] O.J. No. 271.
8. Sections 7 and 11(d) of the *Charter* also guarantee the right to make full answer and defence.
9. The proper remedy is a stay of proceedings pursuant to Section 24(1) of the *Charter* until the necessary funding of counsel is provided: *R. v. Rowbotham* (1988), 41 C.C.C. (3d) 1 (Ont. C.A.).

IN SUPPORT OF THIS APPLICATION, THE APPLICANT RELIES UPON THE FOLLOWING:

(a) the Affidavit of the applicant;

(b) such further and other evidence as the court may permit.

Fill in this line at the registry.

DATED at _____, BC this ____ day of _____, 20____

Sign and print your name.

Applicant's signature: _____

Applicant's name: _____

Write in your address and phone number.

Address: _____

Phone: _____

Once you've completed this Notice of Application and Constitutional Issue, make **4 COPIES**.

Take these copies plus the original to the court registry. Ask for the **ADDRESS FOR SERVICE** of the Crown office that is responsible for your file. Put one copy of this Notice of Application and Constitutional Issue and the Affidavit in an envelope and MAIL IT to this address (**copy 1**). **Send by registered mail.**

Then, SEND ONE COPY of this Notice of Application and Constitutional Issue and the Affidavit to the ATTORNEY GENERAL OF CANADA (**copy 2**). Contact information is on this form. (If you choose to mail the copy, send it by registered mail to keep track of it and get proof of delivery.)

SEND ONE COPY to the ATTORNEY GENERAL OF BC (**copy 3**). Contact information is on this form. (If you choose to mail the copies, send them by registered mail to keep track of them and to get proof of delivery.)

KEEP ONE COPY for yourself (**copy 4**).

INSTRUCTIONS

Staff at the court registry will give you the file number. Print the name of the registry. Print the name of the court where your trial will be heard: Provincial or Supreme.

You're the applicant. Print your name on the line.

Print your name on the line.

List the charges you face.

Check your:

- pay stubs
- bank statement
- rent, hydro
- tax return
- bills

Use them to provide the dollar amounts.

File No. _____
_____ Registry

IN THE _____ COURT OF BRITISH COLUMBIA

BETWEEN:

HIS MAJESTY THE KING

and

(Applicant's name)

AFFIDAVIT

I, _____, swear that the following is true:

1. That I am the accused in these proceedings and have personal knowledge of the matters referred to in this Affidavit.
2. That I am charged with:
(List the charges) _____

3. That my financial circumstances are:
(a) my income is: \$ _____
(b) my expenses are: \$ _____
(c) my debts total: \$ _____
(d) all the things that I own have a value of: \$ _____
4. That I have been refused legal aid.
5. That I have not been able to hire a lawyer because I cannot afford one.

You can list any additional reasons why a conviction may be serious: for example, loss of driver's licence if you drive for a living.

Put down what grade you completed in school. (Or the number of years of high school you completed if you didn't go to school in Canada.)

You can explain why you think your case is complex, if you want.

Where it says, Attorney General of _____ you'll probably put "British Columbia." But if you're charged under certain federal laws, such as the Controlled Drugs and Substances Act or the Fisheries Act, put "Canada."

Don't sign until you are in front of the lawyer, a notary public, or a commissioner for taking affidavits. See step 2 on page 5.

The lawyer, notary public or commissioner fills out the date and place, and signs the form.

6. That I believe my case is serious because I believe I may go to jail if convicted.

My case is also serious because: _____

7. That I do not know how to represent myself in a criminal trial. My education level is: _____

8. That I believe my case is complex.

My case is complex because: _____

9. I swear this Affidavit in support of an application to have a judge order that I be provided with counsel and for a stay of proceedings against me until the Attorney General of _____ provides the necessary funding for counsel.

SWORN BEFORE ME at the city of _____)
_____, in the province of _____)
British Columbia, this ____ day _____)
of _____, 20 _____.)

A commissioner for taking Affidavits within British Columbia)

Signature of applicant

When the lawyer, notary, or commissioner has completed this Affidavit, make **4 COPIES**.

Take these copies plus the original to the court registry and get them stamped. Ask for the **ADDRESS FOR SERVICE** of the Crown office that is responsible for your file. Put one copy of this Affidavit and the Notice of Application and Constitutional Issue in an envelope and MAIL IT to this address (**copy 1**). **Send by registered mail.**

Then, SEND ONE COPY of this Affidavit and the Notice of Application to the ATTORNEY GENERAL OF CANADA (**copy 2**). See the Notice of Application form for contact information. (If you choose to mail the copy, send it by registered mail to keep track of it and get proof of delivery.)

SEND ONE COPY to the ATTORNEY GENERAL OF BC (**copy 3**). Contact information is on the Notice of Application form. (If you choose to mail the copy, send it by registered mail to keep track of it and get proof of delivery).

KEEP ONE COPY for yourself (**copy 4**).

Also available



Defending Yourself series

Resources on how to defend yourself if you're charged with:

- Assault
- Breach of a court order
- Mischief
- Possession of an illegal drug
- Possession of property under \$5,000 obtained by crime
- Theft under \$5,000

If You're Charged with a Crime

Representing Yourself in a Criminal Trial

Speaking to the Judge Before You're Sentenced

You can read these publications online at
legalaid.bc.ca/read.



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