

Speaking to the Judge Before You're Sentenced

If you're charged with a crime and you plead guilty or a judge finds you guilty, you'll get a chance to speak to the judge before the judge decides your sentence. This is called speaking to sentence. This pamphlet helps you prepare to speak to sentence.





Are you Indigenous?

If you're Indigenous, you have rights under the Criminal Code, often called **Gladue rights**.

The judge must apply Gladue principles when sentencing you. This means the judge must consider your personal and unique circumstances as an Indigenous person, and options other than jail.

Gladue principles apply to *all* Indigenous peoples: First Nations, Métis, and Inuit. They apply whether you are status or non-status, or whether you live on or off reserve.

If you want Gladue applied to your case, you must tell the court that you're Indigenous *as soon as possible*. The judge will want to know about you, your family, and your community. You can tell this information to the court yourself. Or a **Gladue report** can do this for you.

A Gladue report gives detailed information about your background. If you're working with a lawyer, have them ask for a Gladue report for you. If you don't have a lawyer, ask an advocate, Native Courtworker, or **duty counsel** for help contacting the BC First Nations Justice Council.

The judge must consider your Gladue rights even if you don't have a lawyer or don't get a Gladue report. For more information and free publications, see aboriginal.legalaid.bc.ca (click Courts & criminal cases, then Gladue principles).

If you're pleading guilty, you may be able to have sentencing in a **First Nations/Indigenous Court**. At First Nations Court, the judge, the Crown prosecutor, Aboriginal community members, and your family will work with you to come up with a healing plan. For more information, see aboriginal.legalaid.bc.ca (click Courts & criminal cases, then First Nations Courts). Or call **604-601-6074** (Greater Vancouver) or **1-877-601-6066** (elsewhere in BC).



Your chance to speak before the judge decides your sentence

If you're charged with a crime and you plead guilty or a judge finds you guilty, the judge will decide your sentence. Your sentence could be:

- 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)
- a **suspended sentence/probation** (you're released on probation — you stay in the community and follow certain conditions, such as community service)
- losing your fishing, hunting, or driver's licence
- a **restitution order** (you must pay money to someone, usually the victim)
- a fine
- a **conditional sentence/house arrest** (like a jail term, but you serve it in the community with conditions that restrict your freedom. If you don't follow the conditions, you may have to serve the rest of your sentence in jail.)
- a **jail term**

The Crown prosecutor lets you and the court know which type of sentence they think is appropriate. The **initial sentencing position** in your particulars (the package of documents you got when you first went to court) is the sentence the prosecutor will ask for if you plead guilty. But it's up to the judge to decide what sentence you get.



Never plead guilty before speaking to a lawyer. Call Legal Aid BC to find out if you qualify for a free lawyer: **1-866-577-2525**.

You get a chance to speak to the judge before the judge decides your sentence. This is called **speaking to sentence**. When you speak to sentence, you let the judge know which type of sentence *you* think is appropriate and why. Speaking to sentence is important because you can try to convince the judge to give you a lighter sentence than what the prosecutor is suggesting.



It's a good idea to get legal advice before you speak to sentence. If you can't get a legal aid lawyer, a duty counsel lawyer may be able to give you free brief legal advice about how to plead. Call your local court registry or Legal Aid BC for contact information. See Get Legal Help at the end of this brochure.



How to prepare to speak to the judge

- Make sure you get copies of the police report and the Crown's initial sentencing position from the Crown prosecutor if you have spoken to a lawyer and plan to plead guilty without a trial. If you disagree with the prosecutor's version of the facts, you'll have a chance to say so when you speak to sentence. You should let the prosecutor know you disagree *before* your sentencing date because they might want to call witnesses to prove their version. You can also call witnesses to prove your version.
- The victim may say how they feel about the offence in a **victim impact statement**. It's a good idea to read that statement before you speak. Ask the prosecutor for it before the day you speak to sentence.
- Bring any reference letters, school records, or other documents that might help you.

- If you're Indigenous, bring information that explains your circumstances (for example, documents that show your or your family's history with Indian residential schools). See the *Gladue Submission Guide* at aboriginal.legalaid.bc.ca for more information. You can also arrange to have someone come with you to court for support. You may also ask the judge for time to have a Gladue report prepared before you're sentenced.

Ask for pre-sentence report

You or the prosecutor may want to ask the judge if a probation officer can do a **pre-sentence report** about you. This report gives the judge information about you and your background. It'll include whether there are circumstances in your life that might have led you to commit the offence, and if you have a previous criminal record. The report helps the judge come up with an appropriate sentence.

If the judge agrees to a pre-sentence report, the court will **adjourn** (postpone) your sentencing until it gets it. Your bail conditions last until you're sentenced. For the pre-sentence report, a probation officer will contact you. They'll ask you questions about your background, medical history, and arrest record. (Your medical history will include any addictions or history of substance abuse.) The probation officer will also talk to other people about you.

Ask for adjournment

If you're not ready to speak to sentence, you can ask the judge for an **adjournment** (to postpone your sentencing). For example, you may need more time to get your personal documents together. Ask after you enter your plea or at the end of your trial if the judge finds you guilty. The judge doesn't have to give you an adjournment, so be ready to speak to sentence on the day of your trial or guilty plea.



Speaking to the judge

When your case is before a judge, the Crown prosecutor will sum up the police report or the evidence (if after trial) and suggest a sentence for you. Then it's your turn. The judge wants to know why you committed the offence, whether you'll do it again, and whether you're **remorseful** (sorry). The judge also wants to know whether you need help for any problems. Tell the judge about yourself, explaining:

- why you committed the offence and why you won't do it again;
- how you feel about what you did — that you're sorry, you understand that it was wrong, and you understand how you hurt the victim;
- any problems you have that are connected to the offence, and what help you need with them; and
- if you're Indigenous, your Indigenous identity and whether you, your family, or your community faced racism, poverty, or other challenges including residential school.

When speaking to the judge, you can include the following information about yourself and your history:

- your age
- your income
- your education
- your job (or, if you don't have a job, why you aren't working and what is your source of income)
- your health

- whether you're living in poverty
- whether you have any disabilities
- your kids (how many and what ages)
- your spouse
- other people you live with
- other people you support
- your Indigenous background and circumstances (if this applies to you)
- whether you're a new immigrant, refugee, or permanent resident and how a criminal record might affect your status
- if English isn't your first language
- whether you grew up in a home where there were addictions, abuse, or neglect
- any addictions you have to alcohol or drugs,
- any treatment you're getting for these addictions or help that you need
- details about any other problems you have, any help you're getting for them, or help that you need
- that you have followed all the conditions of your bail
- anything else you think the judge should know to help your position
- If you're asking for an absolute or conditional discharge, you must tell the judge why it's in your best interest, and not against the public interest, for you to get one.

Give your information in a way that lets the judge be sympathetic toward you and your situation.



Fines

If the judge fines you at your sentencing hearing, you can ask for more time to pay. You'll need to let the judge know why. (For example, you may be on a limited income or have seasonal employment.) Tell the judge how much you can pay each month.

Surcharge

You'll also have to pay a victim surcharge, which is 30 percent of your fine, or \$100 for a summary offence, or \$200 for an indictable offence.

The judge can reduce the amount or drop the surcharge completely if you show that paying it would cause you undue hardship. For example, this could be because you:

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

Being in jail isn't an undue hardship.



Questions

If you don't understand something, ask the judge to explain it. You may not get another chance.

Later, if you find you can't pay your court fine on time, get our free brochure *If You Can't Pay Your Court Fine on Time*. Do this as soon as possible.

Get Legal Help



It's a good idea to get legal advice before you speak to sentence. If you can't get a legal aid lawyer, a duty counsel lawyer may be able to give you free brief legal advice. Call your local court registry or Legal Aid BC for contact information.

Don't plead guilty without getting legal advice first. Call Legal Aid BC immediately to find out if you qualify for a free lawyer: **1-866-577-2525**.

Legal Aid BC

604-408-2172 (Greater Vancouver)

1-866-577-2525 (elsewhere in BC)

legalaid.bc.ca (for Legal Aid BC locations)

Duty counsel

**gov.bc.ca/gov/content/justice/
courthouse-services/courthouse-locations**

BC First Nations Justice Council

bcfnjc.com

Access Pro Bono

604-878-7400 (Greater Vancouver)

1-877-762-6664 (elsewhere in BC)

accessprobono.ca

The Law Centre, Victoria

250-385-1221

uvic.ca/law/about/centre/index.php

Native Courtworker and Counselling Association of BC

604-985-5355 (Greater Vancouver)

1-877-811-1190 (elsewhere in BC)

nccabc.ca

TRU Community Legal Clinic, Kamloops

778-471-8490

**[tru.ca/law/students/outreach/
Legal_Clinic.html](http://tru.ca/law/students/outreach/Legal_Clinic.html)**

UBC Indigenous Community Legal Clinic

604-822-5421

**[allard.ubc.ca/community-clinics/
indigenous-community-legal-clinic](http://allard.ubc.ca/community-clinics/indigenous-community-legal-clinic)**

UBC Law Students Legal Advice Program

604-822-5791

lslap.bc.ca

Lawyer Referral Service

604-822-5421

**[accessprobono.ca/our-programs/
lawyer-referral-service](http://accessprobono.ca/our-programs/lawyer-referral-service)**

Notes:



How to Get Free Legal Aid BC Publications

Read: legalaid.bc.ca/read

Order: crownpub.bc.ca

(under Quick Links, click BC Public
Legal Education & Information)

Questions about ordering?

604-601-6000

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Legal Aid BC

