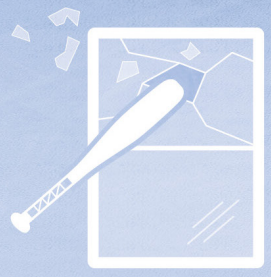
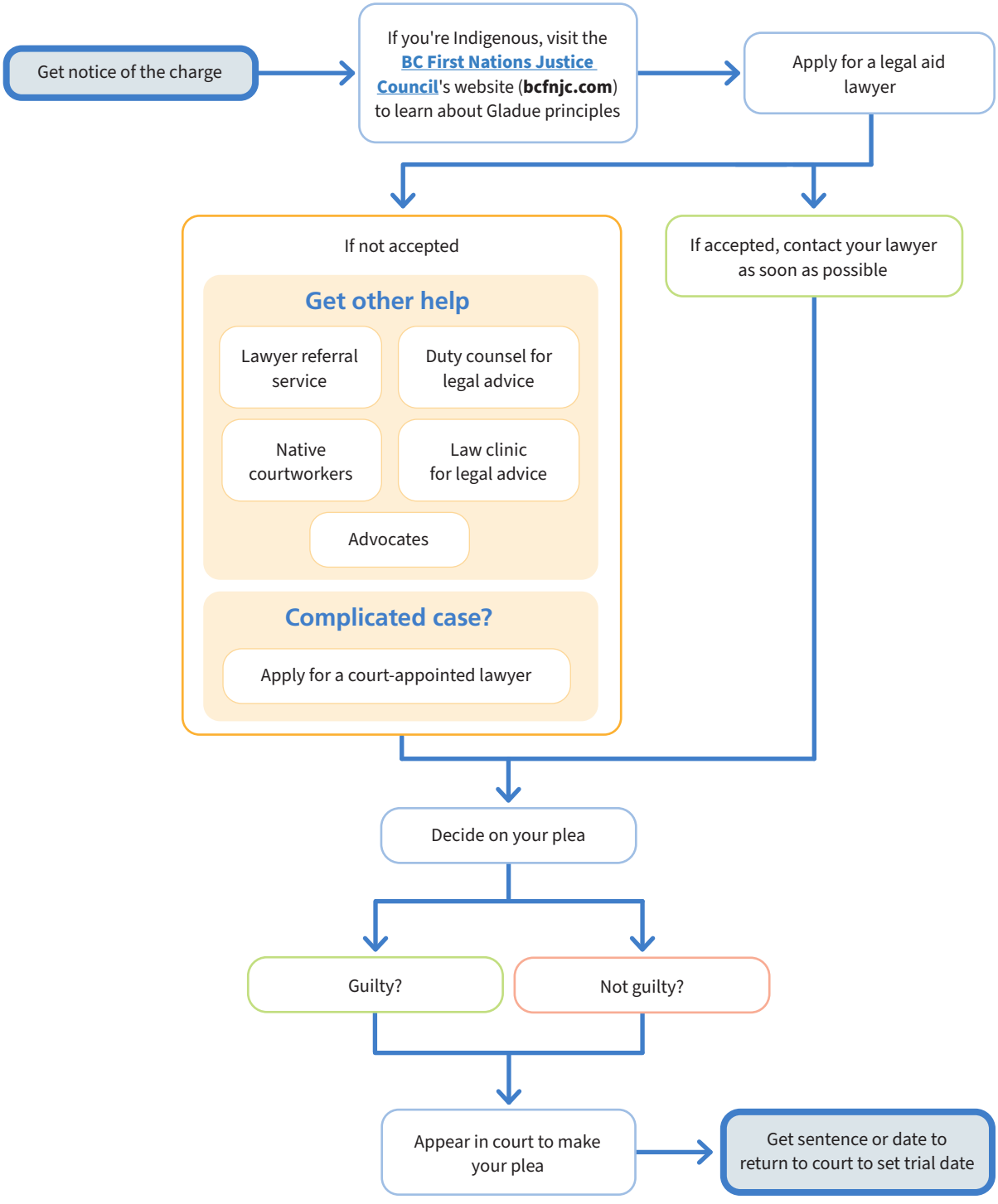
Defending Yourself
Mischief



September 2026

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

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



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

You should represent yourself *only* if you don't qualify for legal aid and you can't afford a lawyer. If you choose to do this, 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 p. 11 of this resource.

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

Are you Indigenous?
Indigenous peoples include First Nations, Métis, and Inuit. If you're Indigenous and charged with a crime, the judge must apply **Gladue principles** (rights under the Criminal Code that refer to the special consideration that judges must give an Indigenous person when setting bail or during sentencing). This means the judge must consider your personal and unique circumstances as an Indigenous person and options other than jail. Gladue principles apply to *all* Indigenous peoples. They also apply whether you live on or off reserve. They also apply whether you live on or off reserve. See the BC First Nations Justice Council (**bcfnjc.com**) for more information.



Introduction

What is mischief?

Mischief is the deliberate destruction of or damage to property or interference with the lawful use of property. Property includes computer data. Mischief includes vandalism, such as spray-painting slogans on a building, breaking school windows, or letting the air out of someone's car tires. Destroying or altering data is also mischief. An example would be hacking into a computer or online account and then changing or deleting information.

Stopping people from using their property or interfering with someone else's property can also be mischief.

For the full definition of mischief, see section 430 of the Criminal Code of Canada (**laws-lois.justice.gc.ca/eng/acts/c-46/section-430.html**).

Could I go to jail?

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

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

If the Crown proceeds "by indictment," the judge could give you a longer jail sentence. The maximum penalties range from up to two years less a day for mischief under $5,000, up to 10 years for mischief over $5,000 or for mischief involving certain types of property, or life imprisonment if the mischief caused actual danger to life.

The first time you're in court, ask the Crown if they're proceeding "summarily" or "by indictment." The Crown should also say whether they're asking for a jail sentence.

The Crown should also provide you with:

- **Particulars**: a package including **the Information** (the document setting out the charge(s) against you, and the place and date they allegedly occurred) a summary of the facts alleged against you, and witness statements,
- details of the Crown's case, and
- an **Initial Sentencing Position** (tells you what the Crown would seek as a sentence if you were to plead guilty). You will need this when you apply for legal aid.



Do not plead guilty before speaking to a lawyer.

What to do if your sentence could be strict

The Crown might say they'll:

- proceed "by indictment,"
- ask for a sentence that includes jail, or
- ask for a sentence that will have other serious consequences for you.

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

If the Crown proceeds "by indictment" (or is asking for a jail sentence), you'll usually have a better chance of getting legal aid — so be sure you understand how the Crown will proceed. Legal Aid BC may change its decision to not cover your case.

You can ask the court to appoint a government-funded lawyer to your case (**a Rowbotham application**) if:

- you can't afford a lawyer, were denied legal aid and appealed your denial and were still denied,
- the Crown says that they'll seek a jail sentence if you're found guilty, or will seek any other type of sentence that will have serious consequences for you, and
- your case is too complicated for you to handle.

For more information on whether you're eligible for a Rowbotham application, see If You Can't Get Legal Aid for Your Criminal Trial (**info.legalaid.bc.ca** under Criminal charges).

Before the trial

Prepare your defence



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

Make sure the Crown has given you all the evidence that they'll use (called **the disclosure**), such as security videotapes or witness statements before the trial date. The Crown should also tell you who they'll call as a witness. You can send them a letter or email asking for this information. (See a sample letter in Representing Yourself in a Criminal Trial (**info.legalaid.bc.ca** under Criminal charges).

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 yourself, see Representing Yourself in a Criminal Trial (**info.legalaid.bc.ca** under Criminal charges).

Remember: you have the right to not testify. Speak to a lawyer before you decide whether you should testify.

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

"I didn't damage the property."

You could show that it wasn't you who damaged the property, or the property was already damaged and that you didn't cause any more damage to it, or that the property was not damaged. It is up to the Crown to prove that it was you who damaged the property.

"I didn't know I was damaging someone else's property."

The property needs to have been someone else's and damaged knowingly and intentionally. Being reckless can be considered to be intentional.

You can try to prove that you honestly and reasonably thought you owned the property. For example, perhaps you cut down a tree that you thought was in your yard, but it was actually in your neighbour's yard (close to the property line). You believed that you had a right to cut down the tree because you thought you owned it. In this case, you would probably need to testify. Speak to a lawyer before you decide whether you should testify.

Remember that even to be the owner of the damaged property isn't, in all cases, a defence to the charge against you. For example, if you own your TV set jointly with your spouse and you intentionally damage it without your spouse's consent, you would be guilty of mischief.

"It was an accident."

You could show that you weren't acting recklessly and that the damage was an accident and not on purpose.

For example, perhaps you were carrying a ladder and you tripped and fell. The ladder broke your neighbour's window, but this didn't happen because you were reckless. In cases like this, it helps if you have a witness who can tell the court that you were acting responsibly when the damage happened.

"My Charter rights were violated."

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

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

- tell you immediately what they've arrested you for,
- tell you immediately that you can talk to a lawyer, and let you do so in private before questioning you or taking any samples,
- give you access to a phone to speak to a lawyer, and
- tell you that you can get legal help for free. (Legal Aid BC has lawyers available 24 hours a day to talk over the phone for free to people in police custody. This service is called the Brydges Advice Line. Call **1-866-458-5500**.)

Don't make any statements to the police or anyone else before speaking to a lawyer.

If the police didn't do all the things listed above (or others that the Charter requires, such as get a search warrant before searching your house or belongings), you can say that they violated your rights. You would then say that the Crown shouldn't be able to use any statements you made or other evidence that the police got by violating your rights.

However, the judge won't automatically throw out the evidence in question. You must also show that accepting the evidence will reflect badly on how justice is carried out in Canadian courts.

If you plan to 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 Crown in advance* if you plan to use this type of an argument.

At the trial



What must the Crown prove?

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

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

If the Crown tries to use evidence they didn't tell you about in advance, you can object and ask the judge to dismiss the case or adjourn the trial.

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

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

Your identity

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

The evidence, either from the witnesses or from other sources (such as fingerprints, an image, a video, or audio recording), must show that you're the person who committed the crime.

Jurisdiction

The Crown must prove:

- that the crime happened in BC,
- the date of the crime, and
- the specific location where it happened.

These details are included on **the Information**. This is the official court form (listing the date, place, and type of offence) that the Crown will give you before the trial as part of your particulars. The Crown must still *prove* these details at the trial.

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

The type and value of the property

If you were charged with mischief to property worth more than $5,000, the Crown must prove that the property value was over $5,000. Depending on the type and value of property, the Crown can decide to proceed summarily or by indictment. The Crown could get the owner (or the person in charge of the property) to state its type and value.

The ownership of the property

The Crown must prove that the property you damaged or interfered with belonged to someone else. They can do this by having the property owner (or the person in charge of the property) tell the court who the property belongs to. Again, the fact that you own the damaged property isn't, in all cases, a defence to the charge against you. For example, if it is jointly owned by your spouse.

You damaged or destroyed the property

The Crown must prove that you actually interfered with, damaged, or destroyed the property and that it wasn't already damaged. They'll have witnesses or other evidence to show the court how you did that. If possible, the Crown will bring the property to court and get someone to tell the court how it was damaged or destroyed. Then the Crown will have the property entered as an **exhibit** (piece of evidence).

You intended to damage or destroy the property, or you were reckless

The Crown must prove that you intended to damage or destroy the property or that you were reckless and didn't care if you damaged it.

For example, the Crown can say that you intended to damage or destroy property if you threw a rock directly at a school window. If you were just throwing rocks in a school yard, and one of them happened to break a window, the Crown may argue that you were reckless. In other words, you knew or should have known that you could destroy something, but you didn't care.



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

Affidavit evidence

Sometimes the Crown uses an **affidavit** to prove some of the points in their case. An affidavit is a document that contains facts that you swear under oath or affirm to be true. A lawyer, notary public, or commissioner for taking affidavits must witness your signature and sign your affidavit.

If the Crown plans to use an affidavit, they should give you a copy of this document before the trial. If you disagree with it, or if you think it should include other information, ask the Crown and the court to make the person who swore the affidavit come to your trial. Then you can question that person about the information that they swear is true.

The person swearing an affidavit takes an oath in front of a lawyer, notary public, or commissioner for taking affidavits that statements made in court or the contents of an affidavit are true to the best of their knowledge and belief and that their oath is "under an immediate sense of responsibility to God." A non-religious alternative is to affirm that the statements are true.

Present your case

After the Crown finishes presenting its case, it's your turn.

You now have your chance to use the points you've prepared to use as your defence. You can use your gathered evidence, call witnesses, and, *if you want to*, give evidence as a witness yourself. You have the right to not testify. Ask a lawyer if you should testify. See Representing Yourself in a Criminal Trial (**info.legalaid.bc.ca** under Criminal charges) for more details.

Close your case

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

What if the judge finds me guilty?

Once you and the Crown 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 depends on the details of the offence and your criminal record. It could be any of the following:



- an **absolute discharge** (your record won't show a conviction)
- a **conditional discharge** (you'll be regarded as not having been convicted if you meet conditions that the judge sets)
- **probation** (a "suspended sentence" including various conditions, for example, community service)
- a **fine** (up to $5,000)
- a **conditional sentence** (most often means house arrest for jail sentences of less than two years, which is like a jail term, but you serve it in the community)
- a **jail term** (for up to two years less a day for summary offences; from two to 10 years for some indictable offences; and up to life if the mischief caused actual danger to life)

Note that a judge usually only grants a discharge when an accused person has pleaded guilty and doesn't have a previous criminal record. A discharge is not automatic. Speak to a lawyer before deciding to plead guilty.

Speaking to the judge before you're sentenced



You get a chance to speak to the judge before they decide your sentence. This is called **speaking to sentence**. The judge will give you a chance to explain why you committed the crime, why you won't do it again, and whether you need help for any problems you may have that were connected to the crime. Speaking to sentence is important because it gives you a chance to explain your situation to the judge. You can ask for a lower sentence than what the Crown is asking for.

Paying a fine

The maximum fine for most summary offences is $5,000. If the judge fines you, you can ask for time to pay. Tell the judge how much you can pay each month. If you think you will run out of the time set for paying your fine, you must come back to court to get an extension. Do this as soon as possible and before the deadline for paying your fine.

Surcharge

You'll usually also have to pay a victim **surcharge**, which is 30 percent of your fine. If no fine is imposed, the surcharge is $100 for a summary offence, or $200 for an indictable offence. The judge can reduce the amount or drop the surcharge completely if you show that paying it would cause you **undue hardship**. For example, this could be because you:

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

Being in jail isn't an undue hardship.

Checklist:
The Crown must prove all these things

- ◯ **Your identity**
  - you were the one who committed the mischief
- ◯ **Jurisdiction**
  - the crime happened in BC
  - the date of the crime (for summary offences, the Information must be sworn within one year of the date of the crime)
  - the town, city, or municipality where the crime took place
- ◯ **Value and type of the property**
- ◯ **Ownership of the property**
- ◯ **You damaged or destroyed the property, or interfered with its use**
- ◯ **You intended to damage or destroy the property, or you were reckless**

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

Where can I get legal help?

Even if you can't afford a lawyer to represent you in court, it's a good idea to talk to one before your trial.

Talk to a lawyer

Criminal Duty Counsel

Speak to duty counsel (**legalaid.bc.ca** under Services click on Advice) at the courthouse where you're charged. Duty counsel are lawyers who give free legal advice. When they're available, they can give you brief, summary advice about the charges against you, court procedures, and your legal rights. Duty counsel can also speak on your behalf the first time you appear in court, but they can't act as your permanent lawyer.

Legal Aid BC

Call Legal Aid BC (**legalaid.bc.ca**) 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 (**provincialcourt.bc.ca/court-locations**) for links to courthouse locations.

Legal Referral Service

If you don't know a lawyer who handles criminal cases, contact the Legal Referral Service (**accessprobono.ca/our-programs/legal-referral-service**) to get the name of a local lawyer to talk to for 15 minutes for free. You can find out what they'd charge if you need more help and decide whether you want to hire them. Call the service at **604-687-3221** (Greater Vancouver) or **1-800-663-1919** (elsewhere in BC).

Access Pro Bono

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

Contact Indigenous legal services

University of British Columbia's Indigenous Community Legal Clinic

The University of British Columbia's Indigenous Community Legal Clinic (**allard.ubc.ca/community-clinics/indigenous-community-legal-clinic**) 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 **604-822-1311** (Greater Vancouver) for more information.

BC First Nations Justice Council

The BC First Nations Justice Council (**bcfnjc.com**) operates justice centres and provides Gladue services. Call **1-877-602-4858**.

Indigenous Justice Centres

Indigenous Justice Centres (**bcfnjc.com/indigenous-justice-centres**), run by the BC First Nations Justice Council, offer culturally appropriate advice and representation services at locations across BC.

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

Native Courtworker and Counselling Association of BC

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

Get other help

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

Through UBC's Law Students' Legal Advice Program (LSLAP) (**lslap.bc.ca**), you can get free legal advice or help if you're charged with a summary offence and the Crown isn't asking for a jail sentence if you're found guilty.

The Law Centre: University of Victoria

If you live in Victoria, The Law Centre (**thelawcentre.ca**) may be able to help you.
Call **250-385-1221** for more information.

Community Legal Clinic: Thompson Rivers University

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

Contact a lawyer in private practice

Find out if the lawyer is willing to help and what it will cost. Even if you pay for just two meetings to get basic advice about your particular case, it could be worth the cost.

Get help from a legal advocate

Find a legal advocate at a local organization on the Clicklaw Legal Services webpage (**clicklaw.bc.ca/services**).

Visit the Clicklaw website

For more information about the law, visit Clicklaw (**clicklaw.bc.ca**). The website has links to legal information, education, and help. You can find out about your rights and options, get toll-free numbers for law-related help, and learn about the law and the legal system.

Published on the traditional unceded territory of the Coast Salish peoples, including the territories of the xʷməθkʷəy̓ əm (Musqueam), Sḵwx̱ wú7mesh (Squamish) and səl̓ílwətaʔɬ/ Selilwitulh (Tsleil-Waututh) Nations.