

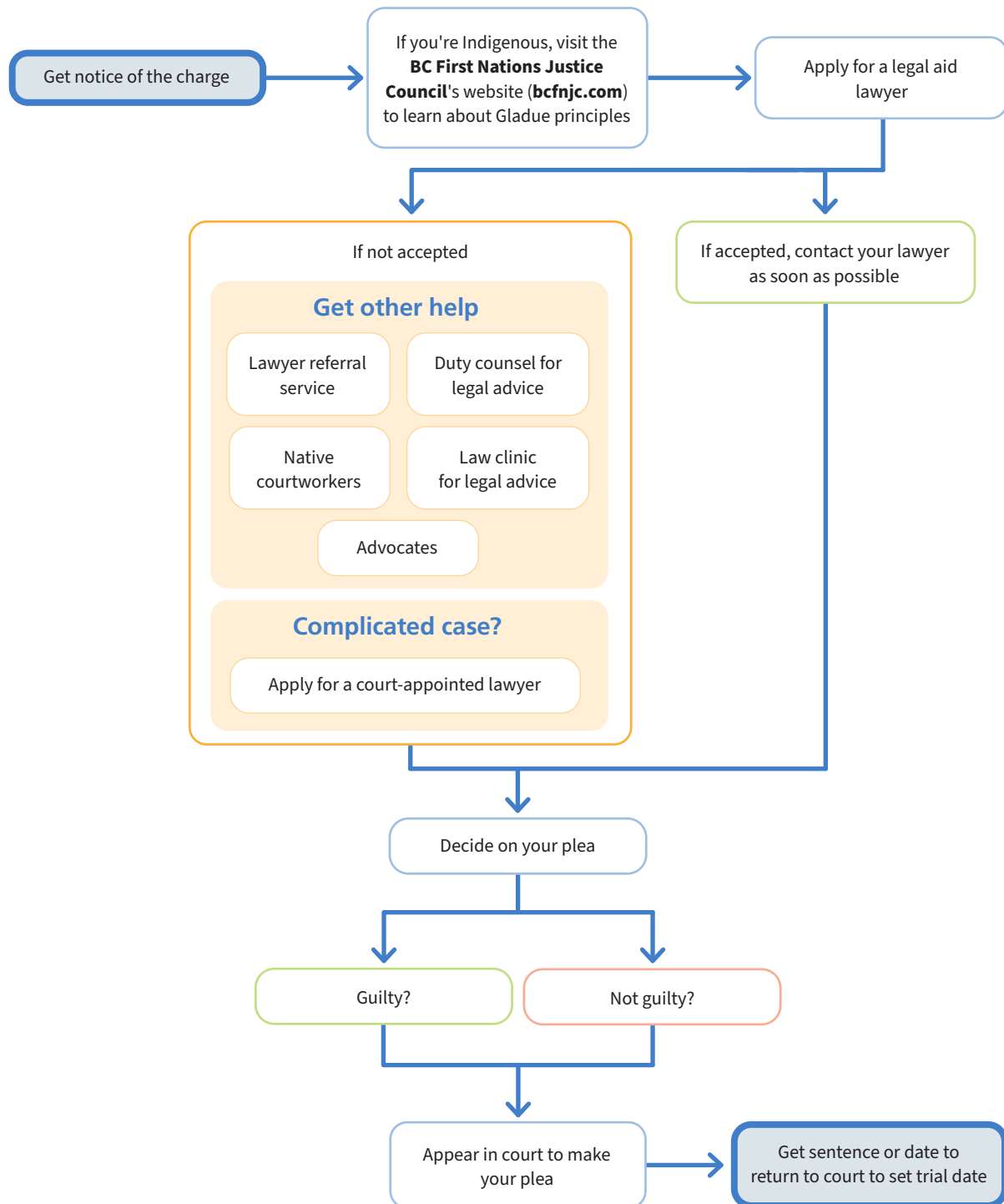
# Defending Yourself Possession of an Illegal Drug



March 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 **possession of an illegal drug**. 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.



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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. 13 of this resource.

This resource explains how to defend yourself when you're charged with possession of an illegal drug. It doesn't try to cover every situation, and it does not cover other more serious drug offences such as possession for the purpose of trafficking. 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. See the [BC First Nations Justice Council \(bcfnjc.com\)](http://bcfnjc.com) for more information.



## Introduction

### What is possession of an illegal drug?

Possession of an illegal drug is a criminal offence under the Controlled Drugs and Substances Act. The act lists many types of illegal drugs, such as heroin, cocaine, fentanyl, oxycodone, morphine, etc. If you're convicted (found guilty) of possession of an illegal drug, it means that you had the substance, you knew you had it, you knew what it was, and you had some control over it. For the full definition of possession of an illegal drug, see [subsection 4\(3\) of the Criminal Code \(laws-lois.justice.gc.ca/eng/acts/C-46/page-2.html#h-115245\)](http://laws-lois.justice.gc.ca/eng/acts/C-46/page-2.html#h-115245).

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As of January 31, 2026, it is again illegal in BC to possess any amount of illegal drugs under the Controlled Drugs and Substances Act. Possession of any amount of illegal drugs is illegal anywhere except for supervised consumption and drug-checking sites.

Three ways you could have possessed the illegal drug:

### Personal possession

You physically had the illegal drug — meaning you handled it and had control over it. You knew you had it, and you knew what it was.

## Joint possession

You knew someone else physically had the illegal drug and you had some control over it.

## Constructive possession

You knew of, and had control over, the illegal drug being in the possession or custody of another person or in any place for your own use or the use of another person, whether or not that place belonged to or was occupied by you.

Being charged with a drug-related offence can have very serious consequences. If you're convicted, you'll likely get a criminal record, which can affect parental rights, limit the kinds of jobs you can get, and where you can travel.

## Could I go to jail?

Depending on the details of what happened and your criminal record, the **Crown prosecutor** (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," generally the maximum sentence a judge could give you for a first offence is up to six months in jail, or a fine of up to \$1,000, or both. If you've been convicted of this same offence before, the maximum jail term is up to one year, or up to a \$2,000 fine, or both.

These are maximums: 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 of up to seven years, depending on the type of drug. Possession for the purposes of producing, trafficking, or importing illegal drugs carries much higher maximum sentences (including life) and mandatory minimum sentences. If you're charged with any of those offences, be sure to talk to a lawyer. This resource does not apply to those offences.

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**, which tells you what the Crown would be seeking as a sentence if you were to plead guilty. Legal Aid BC will need this document to process your application.



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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, a hearing or trial) 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 the guide [If You Can't Get Legal Aid for Your Criminal Trial](#) ([info.legalaid.bc.ca](mailto: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 drug analysis reports 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](mailto: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](mailto: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 possession of an illegal drug, you may be able to use one (or more) of the following six points, if they're true:

### “I didn't know about the drug.”

The Crown must prove that you knew about the drug (you knew it existed). But you may not have known about the drug. For example, suppose that when the police stopped you, they found the drug in your jacket pocket. If you'd just borrowed the jacket from a friend, you may not have known that the drug was there.

### “I had no control over the drug.”

The Crown must also prove that you had some control over or intended to control the drug — so lack of control is also a good defence. For example, perhaps you were riding in someone else's car with two friends. They started smoking crack, but you refused. In a situation like this, you may argue that you had no control over the drug as long as you didn't cooperate with them in any way related to the drug use.

## **“I didn’t know that the substance was an illegal drug.”**

You can argue that you made a mistake of fact, but your excuse must be reasonable and believable. For example, maybe your son gave you a jar for the spice rack, telling you that it was baking powder. When the substance was analyzed, it turned out to be cocaine — but you really believed that it was baking powder.

If the police found any drug supplies or equipment in your house, this defence probably won’t work. All the related circumstances have to support your argument if you want to claim that you didn’t know the substance was an illegal drug.

For example, if you say that you believed a white powdery substance in your possession was talcum powder, but the police found scales and crack pipes in your house, this defence will probably fail because the circumstances don’t support your argument.

## **“I only had a trace of the drug on me.”**

You might be able to use this defence if you possessed only a trace (a very tiny amount) of the drug. For example, maybe the police found only a trace of methamphetamine residue in a pipe.

For this defence to work, the quantity of the drug has to be very small. As well, there can be no other evidence that you possessed the drug that left the trace. It’s best to speak to a lawyer before using this defence.

## **“My Charter rights were violated.”**

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

For example, if you were a passenger in a car that was stopped for speeding, and the police decided to search you on only a suspicion that you had an illegal drug, you can say that was an unreasonable search.

Or, if the police found the drugs during a search without a warrant, you may be able to say they violated your rights. The police usually aren’t allowed to search your house, or your car, without a warrant.

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

- tell you 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 privately; and
- tell you that you can get free legal help. (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 Line](#). Call 1-866-458-5500.)



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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 possession of an illegal drug. To do this, the Crown presents evidence to the court using witnesses, documents, videos, or recordings.

If the Crown 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 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. For details about how to cross-examine, see [Representing Yourself in a Criminal Trial](#) ([info.legalaidbc.ca](http://info.legalaidbc.ca) under Criminal charges).

For a judge to find you guilty of possession of an illegal drug, the Crown must prove the following:

### Your identity

The Crown must prove that you're the person who possessed the illegal drug. To do this, the Crown will call witnesses, including police officers, to give evidence. The witnesses will probably describe the person they saw in possession of the illegal drug. 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, a photograph, 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 a 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.



## You possessed the drug

The Crown must prove that you had an illegal drug in your possession. To show that you had the substance, the Crown will call witnesses, including the investigating police officer.

The Crown will usually argue that you had personal possession of the drug. For example, suppose the police officer found cocaine in your jacket pocket. The Crown would argue that you had personal possession because you had physical control over the drug.

Sometimes the Crown will argue that you had constructive possession of the drug. For example, maybe the police officer found cocaine in your bathroom (and you live alone). The Crown would argue that you had constructive possession because you knew about the drug and had some control over it — even though you weren't carrying or holding it.

In some cases, the Crown will argue that you had joint possession of the drug. For example, suppose the police officer found cocaine in the bedroom that you share with your spouse. The Crown would argue that you had joint possession because you and your spouse both had control over the drug, and you knew about it.

If you're being charged with constructive or joint possession and the drug was found in your house or car, the Crown may use fingerprint evidence. Your fingerprints will be taken and examined to see whether they match the fingerprints found on the container that held the drug.

Keep in mind that anything you say (or write) can be used against you. For example, suppose the police stopped and searched you and they found the drugs on you. If you said to them, "Yes, that's my stuff," the Crown may be able to use this statement at the trial to show proof of possession.



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Don't make any statements before talking to a lawyer.

## The substance is an illegal drug

A substance isn't an illegal drug simply because you or the police say that it is. The Crown must prove that the substance is a drug by getting a government expert to analyze it. After testing the substance, the expert will prepare a certificate of analysis (a document that confirms what the substance is).

The Crown will use this certificate to prove that the substance was an illegal drug. The Crown must give you a copy of the certificate before the trial. They must give you reasonable notice (usually seven days) that they will use it at the trial.

When using the certificate as evidence, the Crown doesn't need to have the expert speak in court if the certificate is attached to an **affidavit**. An affidavit is a document that contains facts sworn under oath or affirmed to be true. It must be signed and the signature on it must be witnessed by a lawyer, notary public, or commissioner for taking affidavits.

If you want to cross-examine the expert, you must ask the judge to have this person come to court. It's best to make this application before the trial starts and as soon as you receive the notice.



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Don't plead guilty to the charge of possession of an illegal drug if the analysis hasn't been completed. You may be pleading guilty to a criminal offence that doesn't exist if it turns out that the substance isn't an illegal drug. Never plead guilty without talking to a lawyer.

## Affidavit evidence

Sometimes the Crown uses an affidavit to prove some of the points in the Crown's case. 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. They take 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.

## 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 whether you should or not. See [Representing Yourself in a Criminal Trial](#) ([info.legalaiddbc.ca](http://info.legalaiddbc.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.legalaiddbc.ca](http://info.legalaiddbc.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 \$1,000 for a first offence or \$2,000 for subsequent offences)
- 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 a summary offence, up to six months for a first offence or one year for subsequent offences; up to seven years for an indictable offence)





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

## Speaking to the judge before you're sentenced

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



## Paying a fine

The maximum fine for a summary possession offence is \$2,000. 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 and get an extension. Do this as soon as possible and before the time runs out.

## Surcharge

You'll usually also have to pay a victim surcharge, which is 30 percent of your fine, or \$100 for a summary offence, or \$200 for an indictable offence. The judge can reduce the amount or drop the surcharge completely if you show that paying it would cause you undue hardship or it is more than your involvement in the crime deserves. For example, undue hardship 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 possessed the drug

**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

**You possessed the drug**

- you knew about the drug
- you had control over the drug
- type of possession (personal, constructive, or joint)

**The substance is an illegal drug**



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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](http://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](http://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](#) ([provincialcourt.bc.ca/court-locations](http://provincialcourt.bc.ca/court-locations)) website for links to courthouse locations.

#### BC Legal Referral Service

If you don't know a lawyer who handles criminal cases, contact the [BC Legal Referral Service](#) ([bclegal.help](http://bclegal.help)) to get the name of a local lawyer to talk to for 15 to 30 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** or visit the website to book an appointment online.

#### Access Pro Bono

[Access Pro Bono](#) ([accessprobono.ca](http://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](http://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 **604-822-5421** (Greater Vancouver) for more information.

#### BC First Nations Justice Council

The [BC First Nations Justice Council](#) ([bcfnjc.com](http://bcfnjc.com)) operates justice centres and provides Gladue services. Call **1-877-602-4858** for more information.

## Indigenous Justice Centres

[Indigenous Justice Centres](https://bcfnjc.com/indigenous-justice-centres-in-british-columbia) ([bcfnjc.com/indigenous-justice-centres-in-british-columbia](https://bcfnjc.com/indigenous-justice-centres-in-british-columbia)), 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 \(VIJC\)](https://bcfnjc.com/virtual-indigenous-justice-centre) ([bcfnjc.com/virtual-indigenous-justice-centre](https://bcfnjc.com/virtual-indigenous-justice-centre)). Call **1-866-786-0081** for more information about the VIJC.

## Native Courtworker and Counselling Association of BC

You can get support from a Native courtworker. The [Native Courtworker and Counselling Association of BC](https://nccabc.ca) ([nccabc.ca](https://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

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. To find the nearest LSLAP clinic location, call **604-822-5791** or visit the [LSLAP website](https://lslap.bc.ca) ([lslap.bc.ca](https://lslap.bc.ca)).

### The Law Centre: University of Victoria

If you live in Victoria, [The Law Centre](https://thelawcentre.ca) ([thelawcentre.ca](https://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](https://tru.ca/law/students/outreach/legal-clinic) ([tru.ca/law/students/outreach/legal-clinic](https://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 HelpMap](https://clicklaw.bc.ca/services) ([clicklaw.bc.ca/services](https://clicklaw.bc.ca/services)).

## Visit the Clicklaw website

For more information about the law, visit [Clicklaw](https://clicklaw.bc.ca) ([clicklaw.bc.ca](https://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.